UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NATHAN GILLIS,

Plaintiff,

v. Case No. 02-C-463

JON E. LITSCHER,
GERALD A. BERGE,
MR. HOMPE,
P. BARTEL,
SUE WATTERS, and
K. COON

Defendants.

ORDER

On May 8, 2002, plaintiff Nathan Gillis, a state prisoner currently incarcerated at the Wisconsin Secure Program Facility (WSPF), formerly known as the Supermax Correctional Institution, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. United States District Judge J.P. Stadtmueller screened the complaint pursuant to 28 U.S.C. § 1915A and allowed the plaintiff to proceed *in forma pauperis* on claims that the defendants violated his rights under the Eighth and Fourteenth Amendments of the United States Constitution. This case was reassigned to me on October 9, 2002. The plaintiff has filed numerous motions, all of which will be addressed herein.

Motion to Amend the Complaint

On October 22, 2002, plaintiff filed a motion to amend the complaint (Docket #39) along with a proposed amended complaint. Rule 15(a) of the Federal Rules of Civil Procedure states that leave to file an amended complaint "shall be freely given when justice so requires." The Supreme Court has explained the meaning of "freely given" as used in Rule 15(a) by stating:

> In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of a movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc. - the leave sought should, as the rules require, be freely given.

Foman v. Davis, 371 U.S. 178, 182 (1962).

The proposed amended complaint restates some of the allegations contained in the original complaint. It also sets forth some new allegations and new defendants not included in the original complaint. This will be the plaintiff's first amended complaint and it comes at a relatively early stage of this case. Moreover, granting the motion will not unduly prejudice the defendants. Therefore, the plaintiff's motion to amend the complaint will be granted. The plaintiff's proposed amended complaint is now the operative complaint in this action. See *Duda v. Bd. of Ed. of Franklin Park Public Sch. Dist. No. 84*, 133 F.3d 1054, 1056 (7th Cir. 1998) (if a motion to file an amended complaint is granted, the amended complaint supersedes the prior complaint).

I now proceed to screen the plaintiff's amended complaint. I am required to screen complaints brought by prisoners seeking relief against a governmental entity or

officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious", that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327.

A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 [1957]). In reviewing a complaint under this standard, I must accept as true the allegations of the complaint in question, *Hosp. Bldg. Co. v. Rex Hospital Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

To state a claim for relief under 42 U.S.C. § 1983, plaintiffs must allege: 1) that they were deprived of a right secured by the Constitution or laws of the United States,

and 2) that the deprivation was visited upon them by a person acting under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff's *pro se* allegations, however inartfully pleaded, a liberal construction. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

There are no special pleading rules for prisoner civil rights cases. *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002) (citing *Swierkiewicz v. Sorema*, 534 U.S. 506, 512-14 [2002]). The Federal Rules of Civil Procedure require (with irrelevant exceptions) only that the complaint state a claim, not that it plead the facts that if true would establish (subject to any defenses) that the claim was valid. *Nance v. Vieregge*, 147 F.3d 589, 590-91 (7th Cir. 1998). All that needs to be specified is the bare minimum facts necessary to put the defendant on notice of the claim so that he can file an answer. *Beanstalk Group, Inc. v. AM General Corp.*, 283 F.3d 8956, 863 (7th Cir. 2002).

In the amended complaint, plaintiff identifies three claims: 1) intentional and malicious infliction of cruel and unusual punishment, 2) deliberate indifference to serious medical needs, and 3) denial of access to the inmate grievance process and retaliation for seeking redress of grievances. Plaintiff was incarcerated at the WSPF at all times relevant to this case.

In regard to claims one and two, plaintiff alleges that beginning on March 1, 2002, he was subjected to the Behavioral Management Program (BMP). Plaintiff alleges that defendants Hompe and Berge created and implemented the BMP. He did

not receive due process procedures before being sanctioned with the BMP. Plaintiff was apparently sanctioned with the BMP for not sleeping in his bed in the mandatory position - a position plaintiff says was difficult or impossible because of his 6'5" height.

The BMP consisted of placing plaintiff, without any clothing, in a cell that was stripped of a mattress, clothing, linen, toilet paper, and hygiene products. Plaintiff remained there for thirteen days. Plaintiff received twelve squares of toilet paper twice a day. He did not receive a shower for thirteen days. Plaintiff was also not allowed to send or receive mail and he was denied a pen or paper for which to complete an inmate complaint. He was fed only Nutraloaf for the duration of the BMP. According to plaintiff, the conditions during the BMP were more severe than control segregation, which plaintiff says is the highest level of segregation permitted by the state administrative code.

For thirteen days, plaintiff slept on bare concrete and thereby received painful sores and rashes that occasionally bled on various parts of his body. Plaintiff paced the cement floor in an effort to stay warm and the constant barefooted pacing resulted in injury to the plaintiff's feet causing painful cracking, peeling, and bleeding of the skin. Plaintiff suffers from chronic high blood pressure that requires blood pressure stabilization medication and monitoring. During the thirteen day BMP, plaintiff's blood pressure reached levels that caused him dizziness and confusion.

Plaintiff alleges that he began to suffer mental decomposition including anxiety attacks, severe depression, helplessness, a sense of despair, suicidal thoughts, and hearing voices. Defendant Nancy Wilmont was contacted to converse with plaintiff pursuant to his mental state of mind. Defendant Wilmont discovered that plaintiff had bitten a hole in his wrist, smeared both blood and feces on the cell walls, and was in a general unstable mental state as a result of the BMP. Defendant Wilmont intervened with the BMP and placed plaintiff on medical observation, where he remained for approximately eight days. However, the medical observation also took place in a stripped cell and the plaintiff did not have any clothes. Following plaintiff's assignment to medical observation he was returned to the BMP.

While he was in the BMP cell, the plaintiff was able to converse with other inmates through vent ducts. Those inmates filed medical request slips with defendants Nurse Sue and Pam Bartells about plaintiff's high blood pressure, skin sores, rashes, and foot injury. Defendant Bartells ignored the plaintiff's medical condition. Defendant Nurse Sue visited plaintiff but refused to check his blood pressure or treat his injuries. Defendants Litscher, Berge, Hompe, and Coon also ignored medical requests sent to them by the other inmates about plaintiff's blood pressure and injuries.

Plaintiff had the inmates send requests and letters to Dr. Hagan and Dr. Maier pertaining to plaintiff's mental decomposition. Dr. Hagan ignored the requests. Dr. Maier did visit with plaintiff while he was on the BMP but he only stated that plaintiff is now at Supermax (now the WSPF) and that he should follow its rules.

Based on the conditions alleged in the amended complaint and plaintiff's resulting medical needs, I find that plaintiff has adequately stated a claim of cruel and unusual punishment in claim one and a claim of deliberate indifference to serious medical needs in claim two.

As part of claim one, plaintiff also asserts that he was placed in the BMP without due process. To establish a procedural due process violation, a prisoner must demonstrate that the state deprived him of a liberty or property interest created either by state law or the Due Process Clause itself. *See Sandin v. Connor*, 515 U.S. 472, 483-84 (1995). A liberty interest exists when prison officials restrain the freedom of inmates in a manner that "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. However, discipline in segregated confinement does not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest. *Id.* at 485; *see also Thomas v. Ramos*, 130 F.3d 754, 760-62 (7th Cir. 1998) (prison inmate's 70-day confinement in disciplinary segregation was not "atypical and significant" deprivation of prisoner's liberty and thus did not implicate liberty interest protectable under due process clause; prisoner has no liberty interest in remaining in the general prison population). In this case, plaintiff has alleged that the conditions in the BMP were atypical and far harsher than those in Control Segregation. I therefore conclude that the complaint is sufficient to state a due process claim.

In what plaintiff has labeled claim three he asserts both a denial of access to the inmate grievance process and retaliation for using that process. Plaintiff alleges that defendant Coon failed to process many of his inmate grievances when he got out of the BMP. The plaintiff does acknowledge that an ample amount were filed and proceeded through the grievance system to satisfy the herein contentions. But he alleges that defendant Coon intentionally interfered with the exhaustion process by not letting him file inmate complaints. Plaintiff does not say what he was prevented from complaining about. Plaintiff also complains that the inmate grievance system fails to comport with requirements of federal law and regulations.

Plaintiff must advance through a five-step level system at the WSPF in order to be returned to the general prison population. Plaintiff alleges that defendant Sharpe retaliated against him for filing administrative grievances by keeping plaintiff on Level 2 at WSPF.

Plaintiff also asserts that he complained to defendants Wilmont and Hagan and filed a grievance about the severe side effects he was suffering from medication prescribed by Maier. In retaliation for the complaints, plaintiff says, Wilmont placed plaintiff in a stripped cell for five days for medical observation and Dr. Maier terminated any medication. They and Hagan now refuse to treat plaintiff's medical condition at all. Plaintiff's allegations concerning Sharpe, Wilmont, Maier, and Hagan state a retaliation claim. *See Walker v. Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002); *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002).

Plaintiff has also stated a claim for denial of access to the courts. Prisoners have a Fourteenth Amendment due process right to adequate, effective, and meaningful access to courts to challenge violations of their constitutional rights. *Bounds v. Smith*, 430 U.S. 817, 821-22 (1977). In order to prevail on such a claim, an inmate must demonstrate that the alleged denial of access hindered his efforts to pursue a legal claim. *Lewis v. Casey*, 518 U.S. 343, 351 (1996). He must prove he was prevented "from litigating a nonfrivolous case." *Walters v. Edgar*, 163 F.3d 430, 434 (7th Cir. 1998). In his amended complaint, plaintiff alleges that he was prevented from filing some inmate grievances during the thirteen-day BMP. Although he fails to state what he would have complained about if allowed, I conclude that this failure is not fatal to his claim at this stage of the proceeding.

Plaintiff's allegation that the inmate grievance fails to meet federal standards, however, does not state a claim. Plaintiff contends that the Wisconsin Department of Corrections Inmate Complaint Review System has no employee and prisoner adversary role in formulating and operating the grievance system, has no expedited procedure for emergencies, and has no person performing an independent review who is not under the direct control an supervision of the institution and the Department, all in violation of "42 U.S.C. § 1997(E)(2)(B)(2)". The problem with this claim is that it is based on an earlier version of the statute. Congress has expressly amended the statute making exhaustion mandatory instead of discretionary, and has expressly eliminated provisions relating to minimum standards of prison grievance systems and requirements for

certification of those systems. 42 U.S.C. § 1997e, as amended by Pub.L. 104-134, § 101(a), § 803(d), 1996. Thus, the failure to comply with the former version of 42 U.S.C. § 1997e does not state a claim upon which relief can be granted.

Additional Motions

Plaintiff has filed numerous motions. First, he filed two motions that he later requested withdrawn. On October 2, 2002, plaintiff filed a motion to compel assistant Attorney General Jennifer Sloan Lattis to follow Rule 26(f) (Docket #21). On October 31, 2002, plaintiff filed a motion to withdraw motion to compel defendants to have a Rule 26(f) meeting (Docket #43). The court will grant the motion to withdraw and therefore the motion to compel will be denied as moot.

Likewise, on October 15, 2002, plaintiff filed a motion to take remaining filing fees out of my release account (Docket #34), but he subsequently filed a motion to withdraw motion to take remaining filing fees out of my release account. (Docket #42). The motion to withdraw will be granted and the filing fees motion will be denied as moot.

Next, the court notes that on August 13, 2002, plaintiff filed an amended complaint. He did not file a motion to amend. Although plaintiff filed the amended complaint prior to the filing of any responsive pleading, the amended complaint added defendants and therefore leave of the court was required. Rule 15(a) of the Federal Rules of Civil Procedure states that a party may amend a pleading once as a matter of course any time before a responsive pleading is served. However, if a plaintiff seeks

to add additional defendants, he must first obtain leave from the court, regardless of when the amended complaint was filed. *Moore v. Indiana*, 999 F.2d 1125, 1128 (7th Cir. 1993). No motion was filed and therefore no further court action is required with respect to that amended complaint. In any event, the court granted plaintiff's October 22, 2002, motion to amend the complaint, which was filed after this August 13, 2002, amended complaint.

On September 4, 2002, plaintiff filed a motion to have defendant served with amended complaint according to Rule 4(c)(2) & (d)(2) (Docket #15). The motion refers to the August, 2002, amended complaint, discussed in the preceding paragraph. In light of that discussion, plaintiff's motion will be denied.

On October 8, 2002, plaintiff filed a Rule 15(d) Supplemental Pleadings Motion (Docket #27). Plaintiff's October 22, 2002, amended complaint, which is now the operative complaint in this action, was filed after the motion to supplement. The court assumes that plaintiff included all of his claims in the amended complaint. Therefore, plaintiff's motion to file a supplemental complaint will be denied as moot.

On October 9, 2002, plaintiff filed a Rule 55(a) Default Motion, requesting that the court enter default judgment against the defendants because they did not answer his August 13, 2002, amended complaint (Docket #30). As explained, plaintiff required leave of the court to file that amended complaint because he sought to add new defendants. Leave was not requested nor was it granted. That proposed amended complaint was never the operative complaint in this action. As such, the

defendants were not required to respond to it. Therefore, plaintiff's motion for default judgment will be denied.

On May 8, 2002, plaintiff filed a motion to stop defendant from using behavior management plan till the court can review this case (Docket #4). The court reviewed plaintiff's case when it issued the first screening order, based on the original complaint. Although the allegations are serious, they are only allegations at this point. Moreover, it appears that the Behavior Management Plan was discontinued on July 17, 2002, and plaintiff is no longer subjected to the conditions of which he complains. (*See* Pl.'s September 12, 2002, motion [Docket #18]; Exhibit A). Therefore, plaintiff's motion to discontinue the plan will be denied.

On August 13, 2002, plaintiff filed his motion for mental examination according to Rule 35(a) (Docket #11). Plaintiff states that he has a long history of mental health issues and currently suffers from depression and has suicidal thoughts. Plaintiff was recently taken off his medication.

Rule 35(a) of the Federal Rules of Civil Procedure states:

> **(a) Order for Examination.** When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

To obtain a Rule 35 examination, a party seeking such examination must show that each condition for which the examination is sought is "genuinely in controversy" and that "good cause exists for ordering the examination." *Schlagenhauf v. Holder*, 379 U.S. 104, 118-19 (1964); *see also Green v. Branson*, 108 F.3d 1296, 1304 (10th Cir. 1997) (Rule 35 motion is not properly used to obtain medical care or to complain of deliberate indifference to a prisoner's serious medical needs). Such showings are not met by mere conclusory allegations of the pleadings or by mere relevance to the case. *Schlagenhauf*, 379 U.S. at 118-19. Rather, an affirmative showing by the movant of the factors specified by Rule 35 is required. *Id.* "Mental and physical examinations are only to be ordered upon a discriminating application . . . of the limitations prescribed by the Rule." *Id.* at 121.

Plaintiff has failed to make the requisite showing that "each condition for which the examination is sought is genuinely in controversy" and that there is good cause for such examinations. *Id.* at 118-19. Accordingly, his motion for a Rule 35 examination will be denied. I do note, however, that prison officials have a duty to insure that inmates receive adequate medical care. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). If plaintiff has a serious need for mental health care and treatment, it must be addressed wholly apart from any allegation plaintiff has made in his lawsuit.

On September 4, 2002, plaintiff filed a motion for mental health evaluation and to be placed back on depression medication Prozac according to Rule 35(a) (Docket #16). For the reasons discussed above, plaintiff's motion will be denied.

On September 12, 2002, plaintiff filed a motion 1) for preliminary injunction to place plaintiff back on depression medication; 2) to either provide plaintiff with copies of plaintiff's mental health file, or provide the court with copies of plaintiff's mental health file; and 3) to transfer plaintiff to another institution because inmates with mental illness aren't to be housed at SMCI, according to judge Barbara Crabb's order (Docket #19). Both the motion for the preliminary injunction and the motion for a transfer relate to plaintiff's claim that he is in immediate need of treatment for mental illness. In addition, on October 8, 2002, plaintiff filed Plaintiff's motion for temporary restraining order; notice; hearing; duration, pursuant to Rule 65(b) (Docket #25). Plaintiff requests that the court order defendants to place plaintiff back on his depression medication due to suicidal thoughts and hearing voices.

Defendants have not filed a response to these motions. Given the number and frequency of plaintiff's filings, this is not surprising. But before addressing these motions for preliminary relief which relate to the present treatment of plaintiff, the court should have the benefit of defendants' response. I therefore direct that a response to plaintiff's motion for a preliminary injunction be filed within thirty days of the date of this decision. I will address plaintiff's request for preliminary relief after that time.

The second request in plaintiff's September 12 filing (Docket #19), related to copies of plaintiff's mental health file, is a discovery request. That request has been addressed in Defendant Berge's response to plaintiff's request for production of

documents, which states that the requested records will be made available for plaintiff's inspection upon submission of a request to clinical services. *See infra.* No further action by the court is needed and that portion of the motion is denied.

On September 12, 2002, plaintiff filed Plaintiff's motion request that defendant Hompe refrain from communicating to plaintiff to dismiss the above case (Docket #18). As long as this case moves forward, defendant Hompe's communications to plaintiff are not harmful in that they do not interfere with this case. Plaintiff should ignore defendant Hompe. His motion will be denied.

On October 15, 2002, plaintiff filed Plaintiff's Rule 34, Production of Documents motion (Docket #32). On October 29, 2002, defendants filed Defendant Berge's Responses to Plaintiff's Request for Production of Documents (Docket #40). Therefore, plaintiff's production of documents motion will be denied as moot.

On November 8, 2002, plaintiff filed Plaintiff's motion to compel defendants to produce the documents he had requested (Docket #45). Plaintiff states that the defendants responded to only three of his fifteen requests for production of documents, and that the court should compel them to respond to the remaining twelve. Plaintiff further states that he has written two letters to the defendants without response. Defendants state that they responded to plaintiff's lengthy discovery request by providing copies of some things on plaintiff's list, denying him access to other things on a variety of specified grounds, and providing alternative means of access for other items. Defendants point out that plaintiff has not provided reasons

Defendants point out that plaintiff has not provided reasons contesting the sufficiency of defendants' objections and that they stand by their objections.

Upon my review of the documents produced by the defendants and their objections, I conclude, with one exception and based upon the record as it now stands, that defendants have properly responded to plaintiff's discovery request. Other than plaintiff's own health records, which defendants state are available from clinical services upon written request, the documents defendants have refused to provide consist of medical and mental health records as to other inmates, as well as other inmate complaints. The defendants assert that these records are confidential. The medical and mental health records or other inmates involve privileged information, and the other inmate complaints are confidential pursuant to Wis. Adm. Code § DOC 310.16. Defendants also assert that the confidential records are beyond the scope of discovery. Plaintiff has not provided any response or explained how such records may lead to the discovery of admissible evidence. Until and unless he does, I will not consider these requests further.

One of plaintiff's document requests that defendants refused, however, does not seem unreasonable. Request Number 5 asks for "All court decisions and consent decrees involving the defendant in the last two years." Defendants objected to this request on the grounds that the request was overly broad and not likely to lead to the production of admissible evidence. (Defendant Berge's Responses to Plaintiff's Request of Production of Documents at 3).

While the Request is somewhat ambiguous and could be considered overbroad if it were construed to cover all of the institutions operated by the Wisconsin Department of Corrections, a fair reading of the request in the context of this case would include only those court decisions and consent decrees relating to the conditions of confinement at the institution that is the subject of this action, i.e., WSPF. If so construed, plaintiff's request would seem, at least on the surface, a reasonable one. I therefore direct that plaintiff's request be construed in the manner indicated and that defendants respond to this narrowed request for the production of documents within thirty days of this decision.

Finally, I note that after defendants file a responsive pleading to the amended complaint, plaintiff may have another opportunity to conduct discovery. Therefore, plaintiff's motion to compel will be denied.

CONCLUSION

THEREFORE, IT IS ORDERED that plaintiff's motion to stop defendant from using behavior management plan until the court can review the case (Docket #4) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's motion for a mental examination according to Rule 35(a) (Docket #11) is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to have the defendants served with amended complaint according to Rule 4(c)(2) & (d)(2) (Docket #15) is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for a mental health evaluation and to be placed back on depression medication according to Rule 35(a) (Docket #16) is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion request that defendant Hompe refrain from communicating to plaintiff to dismiss the case (Docket #18) is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to either provide plaintiff with copies of plaintiff's mental health file, or provide the court with copies of plaintiff's mental health file (Docket #19) is DENIED.

IT IS FURTHER ORDERED that defendants shall file a response to plaintiff's motion for a temporary restraining order; notice; hearing; duration, pursuant to Rule 65(b) (Docket #25) and his motion for a preliminary injunction to place plaintiff back on depression medication and to transfer him to a different institution (Docket #19) within the next 30 days.

IT IS FURTHER ORDERED that plaintiff's motion to compel Assistant Attorney General Jennifer Sloan Lattis to follow Rule 26(f) (Docket #21) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's Rule 15(d) Supplemental Pleadings Motion (Docket #27) is DENIED.

IT IS FURTHER ORDERED that plaintiff's Rule 55(a) Default Motion (Docket #30) is DENIED.

IT IS FURTHER ORDERED that plaintiff's Rule 34 Production of Documents Motion (Docket #32) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's motion to take remaining filing fees out of release account (Docket #34) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's motion to amend the complaint (Docket #39) is GRANTED. The clerk of court is directed to detach the proposed amended complaint from plaintiff's motion and file and docket it immediately. The defendants in this case are: Jon E. Litscher, Gerald A. Berge, Bradley Hompe, John Sharpe, Pam Bartells, Sue Watters, Tayler Hagan, Gary Maier, Kelly Coon, and Nancy Wilmont.

IT IS FURTHER ORDERED that plaintiff's motion to withdraw motion to take remaining filing fees out of release account (Docket #42) is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion to withdraw motion to compel defendants to have a Rule 26(f) meeting (Docket #43) is GRANTED.

IT IS FURTHER ORDERED that the plaintiff's motion to compel defendants to produce production of documents (Docket #45) is DENIED IN PART AND GRANTED IN PART. Plaintiff'S Request Number 5 is construed to apply only to court decisions and consent decrees relating to conditions of confinement at WSPF, and defendants shall respond to such request within thirty days of the date of this order.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the amended complaint, the summons, and this order upon the newly-added defendants (John Sharpe, Tyler Hagan, Gary Maier, and Nancy Wilmont) pursuant to Federal Rule of Civil Procedure 4. A copy of plaintiff's amended complaint will be

mailed with a copy of this order to counsel for the defendants who have already appeared in the case.

IT IS FURTHER ORDERED that the defendants shall file a responsive pleading to the plaintiff's amended complaint.

Plaintiff is hereby notified that, from now on, he is required, under Fed. R. Civ. P. 5(a), to send a copy of every paper or document filed with the court to the opposing parties or their attorney(s). Plaintiff should also retain a personal copy of each document. If plaintiff does not have access to a photocopy machine, plaintiff may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each defendant or to their attorney(s).

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute.

In addition, the parties must notify the Clerk's Office of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated this 17th day of January, 2003.

William C. Griesbach
United States District Judge