IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MONTELL M. HORTON,

Plaintiff, ORDER

v. 02-C-0470-C

TOMMY G. THOMPSON, JON E. LITSCHER,
CINDY O'DONNELL,DICK VERHAGEN,
RICHARD SCHNEITER, STEVEN SCHNEIDER,
JAN MINK, STEVEN E. PUCKETT, MARIANNE
COOKE, RON EDWARDS, CRAVENS, TRINA
HANSON, TIM HAINES, LT. HORNEL, GERALD
BERGE, CAPTAIN BLACKBOURN, PETER HUIBREGTSE,
JAMES PARISI, CAPTAIN RICHARDSON, JON RAY,
CAPTAIN BOUGHTON, L. CLARY, H. BLOYER,
JOHN BELL, JULIE BIGGAR, KELLY COON,
T. HARIG, YVETTE DUESTERBECK, DEBORAH
BLACKBOURN, MARLA K. WALTERS,
SHARON ZUNKER, PAMELA BARTELS,
and JOHN and JANE DOE 1 THROUGH 100,

Defendants.

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This is a civil action for monetary, declaratory and injunctive relief. Plaintiff Montell M. Horton, an inmate at the Supermax Correctional Facility in Boscobel, Wisconsin, alleges violations of state and federal constitutional law as to his (1) transfer to Supermax, administrative confinement and level reviews; (2) incoming and outgoing mail; (3) retaliation; (4) inmate compensation; (5) medical care; (6) conditions of confinement; and (7) various state law claims.

Because plaintiff is a prisoner proceeding pro se, his complaint must be screened pursuant to 28 U.S.C. § 1915A. In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the prisoner's complaint must be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. See 42 U.S.C. § 1915e.

Originally, plaintiff filed this complaint in the Circuit Court for Dane County, Wisconsin. On August 26, 2002, defendants removed the case to this court. On September 4, 2002, plaintiff filed a motion to oppose defendants' removal that I construe as a motion to remand this case to the circuit court. Remand is proper only when a case has been removed improperly. Here, plaintiff has made no showing that defendants lacked any basis for removing this case. He argues that he pleaded only violations of state tort law and that he never pleaded violations of the United States Constitution or federal law. This is a curious position for him to take in light of the explicit allegations in his complaint that he had suffered violations of the "1st, 8th, 14th Amendments to the United States Constitution" and his "United States and Wisconsin State Constitutional rights." Plt.'s Cpt., dkt. #1, at ¶¶ 34, 216. A defendant may remove to federal court any action brought in state court over which the federal court has original jurisdiction. 28 U. S.C. § 1441(a). Federal courts have original jurisdiction over cases raising questions of federal constitutional law, such as those plaintiff raises in his complaint. Therefore, this court has jurisdiction under 18 U.S.C. § 1331, removal was proper and plaintiff's motion to remand will be denied.

Plaintiff will be allowed to proceed on the following four claims only: (1) that on October 26,

2001, defendants Peter Huibregste and John Doe denied plaintiff's advancement to level 4 in retaliation for grievances he had filed; (2) that defendant Pamela Bartels was deliberately indifferent to his serious medical need when she refused to let him see an optometrist for over 21 days for his eye condition; (3) that defendant Berge's policy of 24-hour cell illumination and keeping seriously mentally ill inmates at the institution caused plaintiff sleep deprivation; and (4) that the combination of certain conditions of confinement imposed by defendant Berge deprived plaintiff of his Eighth Amendment rights to be free from cruel and unusual punishment. I will decline to exercise supplemental jurisdiction over plaintiff's state law claims that do not arise out of the same operative facts as the four federal claims on which I am allowing him to proceed.

In his complaint, plaintiff makes the following material allegations of fact. (As an aside, many of plaintiff's allegations of wrongdoing appear concern other inmates and, thus, are irrelevant to this lawsuit and will not be recounted here.)

ALLEGATIONS OF FACT

Plaintiff is an inmate at the Supermax Correctional Institution in Boscobel, Wisconsin. Defendants are employees of the Wisconsin Department of Corrections.

A. Transfer to Supermax

On March 21, 2000, defendant Schneiter and defendant John Doe ordered plaintiff transferred to Supermax. On April 28, 2000, plaintiff was transferred to Supermax. Plaintiff did not have a pre-

transfer hearing to dispute his placement at Supermax. Because Supermax has no general population, his transfer to Supermax was tantamount to a transfer to administrative confinement.

Immediately upon arrival at Supermax, defendant Hornel placed plaintiff in temporary lock-up pending an administrative confinement hearing. Plaintiff did not receive a program review committee hearing within seven days of arrival.

The intake assessment committee determines whether a prisoner should be placed or retained at Supermax. Plaintiff cannot see his case file, participate in the review or appeal any finding.

On June 1, 2000, defendant Captain Blackbourn placed plaintiff in administrative confinement. On June 6, 2000, defendants Hanson, Captain Blackbourn and Haines conducted plaintiff's program review committee hearing, noting that plaintiff was then on level 1.

On September 21, 2000, plaintiff filed a complaint challenging his confinement at Supermax that was rejected. On May 22, 2001, defendant Captain Blackbourn conducted plaintiff's six-month review of his administrative confinement status.

On June 18, 2001, defendant Schneiter and defendants John Doe mislabeled plaintiff a "gang leader" and retained him in administrative status beyond one year. Defendant Schneiter gave other prisoners program review committee hearings before their transfers back to Wisconsin from out-of-state facilities.

All of Supermax staff are white; many are married or otherwise related (for example, as siblings). African Americans make up 61% of the Supermax population and 46% of the Wisconsin prison population.

B. Conditions of Confinement

Prisoners are housed in windowless cells with no contact with other prisoners, no ability to go outdoors and 24-hour cell illumination. They have four hours of "so-called exercise" and use of the library for 100 minutes a week. The indoor exercise cell is also illuminated and use is limited to Sunday, Monday and Tuesday mornings. Prisoners must remain in full restraint while using the non-electronic law library. Prisoners are forced to sleep with their faces uncovered. All visiting is conducted through video monitors. Only two 12-minute phone calls are allowed each month. Prisoners are subjected to video monitoring when showering, undressing and using the toilet. Prisoners do not receive meaningful programming. Instead, programming is limited to television, video, individual books and writing reports to unknown staff. Prisoners are housed with mentally ill prisoners who cause a high level of noise, which prevents sleep and mental concentration. Plaintiff's cell is too cold in the winter and extremely hot in the summer.

C. Incoming and Outgoing Mail

Plaintiff's outgoing mail to family, citizens and citizen groups is read and, as a result, plaintiff's mail is delayed, withheld and not delivered.

Plaintiff is charged 40 cents for a 34-cent postage stamp. This is done to limit plaintiff's ability to communicate with open society.

Plaintiff is prohibited from sending photocopies of legal documents to other inmates, including

case law. This policy harasses plaintiff, causes delay and non-delivery of his legal materials and deprives plaintiff of access to the courts.

Defendants Richardson, Haines, Duesterbeck, Bloyer and John Doe retaliated against plaintiff by "harassing" plaintiff's incoming and outgoing mail because he sought administrative remedies for "defendants' wrongdoings."

On September 4, 2001, plaintiff wrote to defendants Richardson and Haines concerning the holding and non-delivery of plaintiff's outgoing and incoming mail. Neither defendant acknowledged his correspondence.

On September 10 and November 6, 2001, plaintiff wrote defendant Richardson about the holding and non-delivery of his outgoing and incoming mail. Defendant Richardson did not respond.

D. Inmate Compensation

On June 28, 2000, defendant Huibregste issued a memorandum describing a new policy regarding inmate compensation that "abolished plaintiff's pay for enforced 'turning point' and education programming to Supermax prisoners." Because of the lack of compensation, plaintiff could not purchase stamps, legal supplies and toiletries. This furthered plaintiff's social isolation and denied him access to the courts.

E. Level Review System

The level committee determines plaintiffs movement through the program levels. There are no

objective criteria to determine placement level.

On April 2, 2001, defendant Berge rejected plaintiff's application to move to level 4. Originally, the rejection was dated March 13, 2001, but that date was crossed out.

On October 26, 2001, defendant Huibregste denied plaintiff's advancement to level 4 on the exaggerated charges that plaintiff caused "a death." Defendants Huibregste and John Doe advanced similarly situated prisoners who refused to participate in the recommended programming. These defendants retaliated against plaintiff for filing grievances.

F. Medical Care

On April 6, 2001, plaintiff sought care for blurred vision and excruciating eye pain. On April 9, 2001, an optometrist examined plaintiff and prescribed eye drops that were to be taken through April 30, 2001. Plaintiff was instructed to set up a follow-up exam to evaluate the effect of the eye medication on his condition.

On an unspecified date, plaintiff submitted a request to be seen by the eye doctor immediately because his eyes were in extreme pain. On May 21, 2001, after pleading with defendant Bartels for over 21 days to see an optometrist, Bartels allowed him to see one. Plaintiff learned that his eyelids were filled with pus. The optometrist would not tell plaintiff the cause of the infection. Plaintiff was prescribed steroid eye drops to take for four days in an attempt to "repair the torn bottom eyelids." Plaintiff suffered severe depression, weight loss, disruptive sleep pattern, sensory deprivation, severe deteriorating eye vision and pain.

DISCUSSION

A. Transfer, Administrative Confinement and Level Review

I understand plaintiff to allege that his Fourteenth Amendment due process rights were violated when he was (1) transferred to Supermax; (2) placed in administrative confinement; and (3) not advanced to level 4.

The Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Before plaintiff is entitled to Fourteenth Amendment due process protections, he must first have a protected liberty or property interest at stake. Averhart v. Tutsie, 618 F.2d 479, 480 (7th Cir. 1980). Liberty interests are "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995) (citations omitted).

Prisoners do not have a liberty interest in remaining out of administrative confinement so long as that period of confinement does not exceed the remaining term of their incarceration. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty). In Sandin, 515 U.S. at 486, the Supreme Court held that an inmate's "discipline in segregated confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." Plaintiff does not have a liberty

interest in remaining free of administrative confinement or being advanced to level 4 confinement because such confinement does not impose an atypical and significant hardship on him in light of "the ordinary incidents of prison life." Id. at 484. To the extent plaintiff is alleging that he was not given due process protections at his administrative confinement and level review hearings, such procedures are not warranted in the absence of a liberty interest. See Montgomery v. Anderson, 262 F.3d 641, 644 (7th Cir. 2001) (in absence of liberty interest, "the state is free to use any procedures it chooses, or no procedures at all.").

For the same reason, plaintiff's transfer to Supermax does not implicate a liberty interest. Prisoners do not have a liberty interest in not being transferred from one institution to another. See Meachum v. Fano, 427 U.S. 215 (1976) (due process clause does not limit interprison transfer even when the new institution is much more disagreeable).

Because defendants' alleged acts of transferring plaintiff to Supermax, placing him in administrative confinement and denying him advancement to level 4 do not implicate a liberty interest under Sandin, he will not be allowed to proceed on these claims.

B. Mail

1. Postage stamps

Plaintiff alleges that he is charged 40 cents for a 34-cent postage stamp and that this is done to limit his ability to communicate with society. I understand plaintiff to allege that this is a violation of his First Amendment rights. However, defendants are not constitutionally required to provide postage

to plaintiff so that he can correspond with "open society." Thus, the fact that the prison allegedly imposes a 6-cent surcharge does not implicate plaintiff's constitutional rights. Accordingly, plaintiff will not be allowed to proceed on this claim.

2. Reading mail

I understand plaintiff to allege that his First Amendment rights have been violated when his outgoing mail is delayed because it is being read by prison officials. Prisoners have a limited liberty interest in their mail under the First Amendment. Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987). As a general rule, inmate mail can be opened and read outside the inmate's presence, Martin, 830 F.2d at 77, but legal mail may be subject to somewhat greater protection. See Antonelli v, Sheahan, 81 F.3d 1422, 1432 (7th Cir. 1996) (holding that prisoner stated First Amendment claim when he alleged that officials delayed mail delivery "for an inordinate amount of time"). In this case, plaintiff complains that his mail is delayed (the length of which is unspecified) because prison officials are reading his *non-legal* mail. Accordingly, plaintiff will not be allowed to proceed on this claim.

3. Access to the courts

Plaintiff alleges that the prohibition of sending photocopies of legal documents to other inmates deprives him of access to the courts. To have standing to bring a claim of denial of access to the courts, a plaintiff must allege facts from which an inference can be drawn of "actual injury." See Lewis v.

Casey, 518 U.S. 343, 349 (1996). The plaintiff must have suffered injury "over and above the denial." See Walters v. Edgar, 163 F. 3d 430, 433-34 (7th Cir. 1998) (citing Lewis, 518 U.S. 343). At a minimum, a plaintiff must allege facts showing that the "blockage prevented him from litigating a nonfrivolous case." See id. at 434; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint). This principle derives from the doctrine of standing and requires that plaintiff demonstrate that a non-frivolous legal claim has been or is being frustrated or impeded. Lewis, 518 U.S. at 353. Because plaintiff does not allege an actual injury, he will not be allowed to proceed on this claim.

C. Retaliation

Plaintiff alleges two separate acts of retaliation: (1) defendants Richardson, Haines, Bloyer and John Doe retaliated against him by "harassing" his incoming and outgoing mail because he sought administrative remedies for "defendants' wrongdoings" and (2) on October 26, 2001, defendants Huibregste and John Doe retaliated against him by denying him advancement to level 4 because he had filed grievances.

Although plaintiff need not plead a chronology of events to support a claim of retaliation, see Walker v. Thompson, 283 F.3d 1005 (7th Cir.2002), there is an obvious problem with plaintiff's first allegation of retaliation. It is unclear what plaintiff means by "harassing" his mail and what "wrongdoings" plaintiff exposed that caused defendants Richardson, Haines, Bloyer and John Doe to allegedly retaliate against him. Because of these pleading deficiencies, plaintiff has failed to specify the

minimum facts necessary to put defendants on notice of the claim so that they can file an answer. See Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (insufficient simply to allege the ultimate fact of retaliation). Accordingly, plaintiff will not be allowed to proceed on his first allegation of retaliation.

However, plaintiff's second allegation of retaliation successfully states a claim on which relief can be granted because it specifies the minimum facts necessary for defendant to file an answer. See id. Accordingly, plaintiff will be allowed to proceed on his claim that on October 26, 2001, defendants Huibregste and John Doe denied plaintiff advancement to level 4 because he had filed grievances. Once plaintiff learns the name of defendant John Doe, he will have to amend his complaint to name that individual as a defendant.

D. Inmate Compensation

I understand plaintiff to allege that defendant Huibregtse implemented a policy that resulted in plaintiff's losing compensation for his work that, in turn, causes him to suffer social isolation and interferes with his ability to pay costs associated with gaining access to the courts. In Higgason v. Farley, 83 F.3d 807, 809 (7th Cir. 1996), the Court of Appeals for the Seventh Circuit held that the loss of "social and rehabilitative activities" are not "atypical and significant hardships" that are constitutionally actionable rights under Sandin, 515 U.S. 472. In Vanskike v. Peters, 974 F.2d 806, 809 (7th Cir. 1992), the court stated expressly that a prisoner has no protected liberty interest in a prison job. In Vanskike, the court of appeals also noted that the Constitution does not require that prisoners be paid

for their work. Id. ("[T]here is no Constitutional right to compensation for [prison] work; compensation for prison labor is by 'grace of the state'") (quoting Sigler v. Lowrie, 404 F.2d 659, 661 (8th Cir. 1968)). Plaintiff's contention that he is entitled to a prison job is legally frivolous. In addition, plaintiff's claim that the loss of work-related compensation effectively denies him access to the courts fails as well because, as discussed earlier, plaintiff has not alleged facts from which an inference can be drawn that he suffered an actual injury. Walters, 163 F. 3d at 433-34. Accordingly, plaintiff will not be allowed to proceed on this claim.

E. Medical Care

I understand plaintiff to allege that defendant Bartels violated his Eighth Amendment rights by being indifferent to his serious medical need when she deliberately failed to set up an appointment to see the optometrist for over 21 days for his eyes.

The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, plaintiff must establish facts from which it can be inferred that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). See Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). In attempting to define "serious medical needs," the Court

of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. See Gutierrez, 111 F.3d at 1371, 1373. ("'serious' medical need is one that has been diagnosed by a physician as mandating treatment"). Plaintiff alleges that he had blurred vision, excruciating eye pain and that his eyelids were filled with pus. These allegations are sufficient to suggest that he had a serious medical need.

The Supreme Court has held that deliberate indifference requires that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 824, 837 (1994). Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. Deliberate indifference in the denial or delay of medical care can be shown by a defendant's actual intent or reckless disregard. Reckless disregard is highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. See Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985).

The question is whether the denial of medical treatment is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition," Snipes, 95 F. 3d at 592, giving rise to a claim of deliberate indifference. See also Estelle, 429 U.S. at 104 (holding that deliberate indifference "is manifested by prison doctors in their response to the prisoner's needs or

by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed"). In this case, plaintiff alleges that defendant Bartels prohibited him from seeing an optometrist for over 21 days. At this early stage of the proceedings, allegedly denying plaintiff a follow-up eye care visit for 21 days is sufficient to show deliberate indifference. Accordingly, plaintiff will be allowed to proceed against defendant Bartels as to this claim.

F. Conditions of Confinement

1. Individual conditions

Plaintiff alleges that he is subjected to a number of allegedly unconstitutional conditions of confinement. Because three of these conditions do not contribute to plaintiff's claim that he is subjected to social isolation or deprived of outside stimulus, I will examine these conditions independently rather than collectively. These three conditions include: (1) 24-hour cell illumination and noise; (2) full restraints while using the law library; and (3) extreme hot and cold cell temperatures.

a. Cell illumination and excessive noise

I understand plaintiff to allege that he is forced to sleep under illuminated lights with his face uncovered and that he is housed with mentally ill inmates who cause excessive noise, both of which cause him to be sleep deprived. Although such illumination and excessive noise may not rise to the level of an Eighth Amendment violation in and of themselves, when they are coupled with the allegation that

he suffers sleep deprivation, I cannot say that plaintiff could not prove any set of facts entitling him to relief on this claim. Accordingly, plaintiff will be allowed to proceed on this claim against defendant Berge, the warden.

b. Restraints

Plaintiff alleges that he is required to wear full restraints while using the law library. Although prisoners are entitled to "the minimal civilized measure of life's necessities," Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997) (citing Farmer v. Brennan, 511 U.S. 825, 833-34 (1994)), conditions that create "temporary inconveniences and discomforts" or that make "confinement in such quarters unpleasant" are insufficient to state an Eighth Amendment claim. Adams v. Pate, 445 F. 2d 105, 108, 109 (7th Cir. 1971). The fact that plaintiff must wear restraints while using the law library does not rise to the level of an Eighth Amendment violation. The use of restraints does not "involve the wanton and unnecessary infliction of pain" or create a condition of confinement that is "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Thus, plaintiff will not be allowed to proceed on this claim.

c. Cell temperatures

Plaintiff alleges that his cell is too cold in the winter and too hot in the summer. These allegations do not suggest that plaintiff is suffering cell temperatures beyond the constitutionally permissible discomforts of prison life. See Dixon v. Godinez, 114 F.3d 640, 645 (7th Cir. 1997) (duty

on prison officials to provide adequate shelter, although conditions may be harsh and uncomfortable). Accordingly, plaintiff will not be allowed to proceed on this claim.

2. Combination of conditions

Plaintiff alleges the following conditions of confinement cause him social isolation and sensory deprivation: (1) windowless cell; (2) no contact with other prisoners; (3) four hours of "so-called exercise" a week; (4) limited use of library (100 minutes a week), exercise cell (Sunday, Monday and Tuesday mornings) and telephone (two 12-minute phone calls a month); (5) visits by video; (6) video monitoring; and (7) the lack of any meaningful programming. It is possible to draw the inference that these alleged conditions have a mutually enforcing effect that produces the deprivation of a separate identifiable human need, such as the need for human contact and sensory stimulation. See Wilson v. Seiter, 501 U.S. 294, 304 (1991). Accordingly, I conclude that plaintiff's allegations make out a claim that the combination of these conditions of confinement deprives him of his Eighth Amendment rights. Thus, plaintiff will be allowed to proceed on this claim against defendant Berge, warden of the Supermax facility.

One final note is warranted. On March 28, 2002, I approved the settlement agreement in that class action Jones 'El v. Berge, 00-C-421-C, which addressed many of the conditions of confinement that plaintiff now complains of. Because there was no finding of liability in Jones 'El, it will be up to plaintiff to prove the extent of the social isolation and sensory deprivation he experienced during his confinement leading up to the date of settlement. As a member of the class in Jones 'El, plaintiff will

be able to seek monetary damages only through March 28, 2002, the date the consent decree was entered.

G. State Law Claims

Typically, I exercise supplemental jurisdiction over a plaintiff's state law claims when the state law claim arises out of the same operative facts as the federal claims on which I have allowed the plaintiff to proceed. See 28 U.S.C. § 1367(c)(3)); see also Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999) (district court has discretion to retain or refuse jurisdiction over state law claims). In this case, it is impossible to determine which state law claims relate to the federal claims on which I have allowed plaintiff to proceed because plaintiff has littered his complaint with dozens of citations to Wisconsin statutes and cases. Plaintiff may have until October 15, 2002, to allege in writing to this court, *in a very short and concise manner,* which state statutes, if any, were violated by the same alleged acts of wrongdoing that make out the *four* federal claims on which I am allowing him to proceed. If he fails to do so, I will decline to exercise supplemental jurisdiction over any state law claims; if he responds as instructed, I will screen plaintiff's state law claims pursuant to 28 U.S.C. § 1915A. In any event, I decline to exercise supplemental jurisdiction over plaintiff's state law claims that do not arise out of the same operative facts as the four federal claims on which I am allowing him to proceed.

ORDER

IT IS ORDERED that

1. Plaintiff Montell M. Horton's motion to remand this case to state court is DENIED;

2. Plaintiff is allowed to proceed on the following four claims only : (a) that on October 26, 2001, defendants Peter Huibregste and John Doe denied plaintiff's advancement to level 4 in retaliation for grievances he had filed; (b) that defendant Pamela Bartels was deliberately indifferent to his serious medical need when she refused to let him see an optometrist for over 21 days for his eye condition; (c) that defendant Berge's previous policy of 24-hour cell illumination and allowing noisy mentally ill inmates to be confined at Supermax caused sleep deprivation; (d) that the combination of certain conditions of confinement imposed by defendant Berge (windowless cell; no contact with other prisoners; four hours of "so-called exercise" a week; limited use of library, exercise cell and telephone; visits by video; video monitoring; and the lack of any meaningful programming) caused him social isolation and sensory deprivation in violation of his Eighth Amendment rights;

3. All defendants except defendants Peter Huibregste, Pamela Bartels, Gerald Berge and John Doe are DISMISSED;

4. I decline to exercise supplemental jurisdiction over plaintiff's state law claims that do not arise out of the same operative facts as the four federal claims on which I am allowing him to proceed; and

5. Plaintiff may have until October 15, 2002, to allege in writing to this court, *in a very short and concise manner,* which state statutes, if any, were violated by the same alleged acts of wrongdoing that make out the *four* federal claims on which I am allowing him to proceed. If plaintiff fails to do so, I will decline to exercise supplemental jurisdiction over

any state law claims; if he responds as instructed, I will screen plaintiff's state law claims pursuant to 28 U.S.C. § 1915A.

Entered this 23rd day of September, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge