IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HARRISON FRANKLIN,

Plaintiff,

OPINION AND ORDER

v.

GREGORY GRAMS, RICK RAEMISCH
GARY HAMBLIN, MICHAEL MEISNER,
DYLON RADTKE, JOHN DOES 1-50 and
JANE DOES 1-50,

11-cv-736-wmc

Defendants.

In this proposed civil action, plaintiff Harrison Franklin is seeking leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, on his claims that defendants violated his constitutional rights in numerous ways. In an order entered August 24, 2012, the court instructed Franklin that he needed to supplement his complaint, identifying which additional individuals discussed in the body of his complaint he intended to include as named defendants. Franklin has responded, naming 18 additional defendants, plus several John and Jane Doe defendants: Ms. Thorpe, Marc Clements, Dr. Scheller, Lori Alsum, Barbara Delap, Mardell Petras, Brian Franson, CO Dobrzynski, Anthony Ashworth, CO Beck, Sgt. Harris, Sgt. Foster, Lt. Karna, Lt. Pulver, Ryan Tobiasz, Sgt. Paul, Dr. Suliene, Capt. Morgan. (Dkt. #9.) The court will amend the caption to reflect these newly added defendants.

Normally, the next step would be for the court to screen plaintiff's complaint pursuant to 28 U.S.C. § 1915A. Unfortunately, plaintiff's supplements make it evident

that the complaint violates Fed. R. Civ. P. 20 just as the court warned plaintiff it might in its previous order: Franklin's complaint now plainly alleges numerous claims against different defendants for unrelated conduct. Such varied claims cannot be brought in a single action.[1]

In addition, Franklin has filed two motions seeking temporary restraining orders (dkts. #7, 12), as well as two letters including supplemental allegations regarding those motions (dkts. ##15, 19). The court will deny these motions, because Franklin has not complied with this court's procedures for seeking preliminary injunctions and because the facts do not warrant preliminary injunctions.

ALLEGATIONS OF FACT

In his complaint, Franklin alleges the following facts.

A. Parties

Plaintiff Harrison Franklin is an inmate at the Columbia Correctional Institution, located in Portage, Wisconsin. Defendant Gary Hamblin is the secretary of the Wisconsin Department of Corrections; defendant Rick Raemisch was his predecessor. The remaining defendants are employed or were previously employed in various positions at the Columbia Correctional Institution. Defendant Michael Meisner is the warden;

[1] Franklin has filed a motion to amend his complaint to add two "proposed addendums." (Dkts. ##16-18.) The court will deny this motion, because these documents repeat the allegations in Franklin's initial complaint. In addition, for Franklin's future reference, he should know that when a plaintiff wishes to amend his complaint, he must file one completely new complaint to replace the original complaint. It would be too difficult and confusing for the parties and the court to look at numerous different documents to try to figure out what claims plaintiff wishes to assert.

defendant Gregory Grams was his predecessor. Defendant Marc Clements is the assistant warden. Defendant Dylon Radtke was the administrative captain. Defendant Anthony Ashworth and Brian Franson are unit managers. Defendant Ryan Tobiasz is a psychologist; defendant Dr. Suliene is a physician. Defendants Dobrzynski, Beck, Harris, Foster, Paul, Karna, Pulver and Morgan are correctional officers of various levels of seniority. The positions held by defendants Thorpe, Lori Alsum, Barbara Delap, Mardell Petras and Dr. Scheller remain unclear.

B. Nature of Complaints

Franklin's factual allegations fall roughly into the following seven categories of complaints.

1. Diabetic Care

Franklin is a diabetic, but he frequently refuses recommended diabetic treatments, including refusing to submit to "Accu-checks" and to take his prescribed insulin shots. Defendants Grams and Clements told Franklin he would be subject to a "multi-disciplinary approach" for refusing treatment, beginning with conduct reports and cell confinement, progressing to segregation status and, ultimately, losing opportunities for parole, transfer, reduction in custody ratings and job placement.

On several occasions, employees of the Department of Corrections punished Franklin for refusing treatment by issuing him conduct reports:

- Defendants Dylon Radtke and Brian Franson issued Franklin a conduct report for disobeying orders after he refused treatment.

- On another occasion, defendant Lieutenant Davidson punished Franklin with a conduct report after other correctional officers forcibly tested Franklin's blood sugar, but then denied him treatment.

Twice, Franklin was placed on temporary lock up status as a punishment for refusing treatment:

- On January 26, 2011, defendants Lieutenant Karna and Sergeant Foster told plaintiff that he would be denied a shower and given temporary lock-up status if he did not take his insulin. Defendant Captain Ashworth, the unit manager, refused to stop Karna or Foster and told Franklin to stop arguing and do what he was told. When Franklin refused, he received a conduct report and 21 days of temporary lock up status.

- On March 18, 2011, as punishment for not taking his medication, Karna fabricated a conduct report against Franklin and placed him in temporary lock up status. Ashworth also encouraged the punishment by participating on the adjustment committee that gave Franklin time in segregation.

2. Retaliation

Along with the move to temporary lock up, John and Jane Doe defendants forced Franklin to use wool blankets to which he is allergic. Athletic shoes prescribed for his diabetic neuropathy were also taken away.

On other occasions, prison staff withheld Franklin's prescribed treatments:

- In October 2007, Franklin was placed in control status and staff refused to give him any form of diabetic medication.

- On another occasion (Franklin cannot recall the date), defendant Sergeant Harris came to Franklin's cell and told him that the Health Services Unit had ordered him not to give Franklin insulin. The Health Services Unit denies giving such an order.

- In February 2008, defendant correctional officer Pulver denied Franklin his insulin and made it clear that he was withholding the insulin as punishment for Franklin's lawsuits.

- Various defendants refused to permit Franklin to obtain dental care while he was in segregation, although prison policy required that diabetics receive

a teeth cleaning every six months. As a result, Franklin's periodontal disease worsened. Defendants Grams, Thorpe, Clements, Scheller, Alsum, Delap and John Doe (the acting dentist) "took part in the decision" to deny Franklin a dental cleaning.

- Franklin was receiving psychological treatment from Dr. Ryan Tobiasz. Tobiasz ordered a specific psychological treatment for Franklin, but later told Franklin that the staff decided he would not receive the prescribed treatment because of his refusal to participate in diabetic treatment.

- Defendants Suliene and John Doe told Franklin that he would not receive treatment for his deviated septum until he complied with his diabetic directives.

In addition to refusing treatment, Franklin often refuses to speak to staff about his medical treatment. On the following occasions, he was punished for refusing:

- On February 29, 2008, Franklin received a conduct report for disobeying an order from defendant correctional officer Dobrzynski to talk to psychological staff about his decision to refuse treatment.

- On another occasion, defendant Franson issued Franklin a conduct report for refusing to talk to correctional officer Beck about his reasons for refusing insulin. Harris sent Beck to speak with Franklin.

3. Disclosure of Health Information

In March 2008, defendant Dylan Radtke gave an attorney in an unrelated case protected health information about Franklin from his prison medical and psychological files. Radtke disclosed the information without Franklin's consent or knowledge and without a discovery request or court order.

4. Library Access

Prisoners in segregation receive only one hour of access to the law library each week. Defendant Grams and prison staff made Franklin choose between going to the law library and exercise, even though Dr. Suliene told Franklin that exercise was part of his

diabetic treatment. Defendant Mardell Petras told Franklin that he must decide what was more important and that this would force him to stop filing lawsuits.

5. Contamination of Food

Defendant John and Jane Does, correctional officers in Unit 7, refuse to wear hair-nets when passing out meal trays. In addition, they keep diabetic supplies, needles and (used) gauze on the food carts, handling these medical supplies while passing out food. After Franklin complained about these practices, defendant Franson retaliated by transferring him to Segregation Unit 2.

6. Conditions of Confinement and Discriminatory Treatment

Around May 1, 2009, Franklin was attacked by another inmate and had hot water thrown on him, causing second degree burns. He was then put in a segregation cell that required he sleep inches from the floor where ants bit his fresh wounds. In addition, the cell was cleaned only once a week and was contaminated with urine and feces. The other inmate who attacked Franklin received preferential treatment and was sent to the medical ward.

7. Fake Certificate

On July 7, 2011, defendant Ashworth issued Franklin a fake certificate of completion for the CCI building services program. In fact, the certificate had to be issued by Madison Area Technical College, and plaintiff needed to complete another class to receive the certificate. Ashworth, who was the Acting Education Director, issued the fake certificate as a form of punishment *and* told Franklin that the fake certification was

all he would ever get. After he was given the fake certificate, defendants Ashworth and Morgan fabricated a conduct report and put Franklin on "non-pay status."

OPINION

The Court of Appeals for the Seventh Circuit has emphasized that district courts have an independent duty to apply the permissive joinder rule in Fed. R. Civ. P. 20 to prevent improperly joined parties from proceeding in a single case. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (complaint raising unrelated issues against different defendants "should be rejected" by district court in accordance with Rule 20). Rule 20 prohibits a plaintiff from asserting unrelated claims against different defendants in the same lawsuit, unless (1) the plaintiff asserts at least one claim against each defendant arising out of the same transaction or series of transactions; and (2) the action presents a question of law or fact common to all of the defendants. Fed. R. Civ. P. 20(a); *George*, 507 F.3d at 607; 3A *Moore's Federal Practice* § 20.06, at 2036-45 (2d ed. 1978). If the requirements of Rule 20(a) are satisfied, then a plaintiff may join as many additional, unrelated claims as he has against the defendants. Fed. R. Civ. P. 18(a); *Intercon Research Assn., Ltd. v. Dresser Ind., Inc.*, 696 F.2d 53, 57 (7th Cir. 1983). A plaintiff may not, however, use Rule 18(a) to join claims against additional defendants outside the "core group" identified under Rule 20.

In this case, Franklin asserts separate claims against different "core groups" of defendants for different occurrences or series of occurrences. The court understands

Franklin to be bringing the following claims, which even generously divide into at least four separate lawsuits:

- **Lawsuit #1 (Retaliation for Complaints About Lack of Medical Treatment)**

  (a) Grams and Clements punished Franklin for refusing medical treatment in multiple ways;

  (b) Radtke and Franson punished Franklin by issuing conduct reports for Franklin's refusal to accept medical treatment;

  (c) Davidson punished Franklin for refusing medical treatment;

  (d) Karna, Foster and Ashworth punished Franklin for refusing medical treatment by placing him on temporary lockup and giving him a conduct report based on a fabricated incident;

  (e) John and Jane Does punished Franklin for refusing medical treatment by forcing him to use wool blankets and taking away his diabetic shoes;

  (f) Dobrzynski, Franson and Beck gave Franklin conduct reports for refusing to talk to staff about his refusal to accept treatment;

  (g) Harris, Pulver and John Doe withheld Franklin's insulin;

  (h) Grams, Thorpe, Clements, Scheller, Alsum and Delap denied Franklin dental cleaning, a recommended treatment for diabetics;

  (i) Tobiasz withheld a recommended special psychological treatment because Franklin refused to accept diabetic treatment; and

  (j) Suliene withheld treatment for his deviated septum because Franklin refused to accept diabetic treatment.

- **Lawsuit #2 (Violation of Privacy Rights)**

  Radtke disclosed protected health information about Franklin without his consent or knowledge.

- **Lawsuit #3 (Conditions of Confinement and Retaliation Claims)**

  (a) John and Jane Doe defendants contaminated Franklin's food;

  (b) Franson encouraged the contamination and retaliated against him for complaining about it;

  (c) John and Jane Doe defendants forced Franklin to sleep on the floor after he was attacked and injured by another inmate;

  (d) Anthony Ashworth gave Franklin a fake certificate of completion for a CCI program; and

  (e) Ashworth and Morgan fabricated a conduct report regarding the program.

- **Lawsuit #4 (Denial of Access to Courts)**

  Grams and Petras denied plaintiff access to the court by forcing him to choose between prescribed exercise and access to the law library.

Because these four distinct claims involve separate transactions against a different core set of defendants, they may not be brought in a single lawsuit. In a supplement to his complaint (dkt. #9) and accompanying affidavit (dkt. #10), plaintiff argues that all of these claims should be joined in a single lawsuit because he believes "defendants" (he does not name which defendants) orchestrated the apparently non-medical complaints in proposed lawsuit #3 (for food contamination, being forced to sleep on the floor and being given a fake certificate) in order to force him to withdraw his medically-related complaints. However, Franklin's conclusory allegation that these defendants conspired to force him into compliance is not enough to proceed under that theory. *Cooney v. Rossiter*, 583 F.3d 967, 971 (7th Cir. 2009) (conspiracy allegations held to a higher pleading standard); *Wine v. Thurmer*, 2008 WL1777264, *6 (W.D. Wis. Apr. 16, 2008)

("A suit stuffed with allegations that the plaintiff has been subjected to a variety of constitutional violations without some hint of a basis for plaintiff's belief that a genuine conspiracy exists will not suffice to satisfy the requirements of Rule 20.").

Under *George*, the court may apply the filing fee that Franklin owes in this case to any of the four lawsuits listed above, but Franklin will have to choose which of the four lawsuits to pursue as Case No. 11-cv-736.

For the other lawsuits, Franklin must make a choice. He may choose to pursue them separately. In that case, he will be required to file separate complaints as to each and pay a separate filing fee for each, understanding that Franklin will be subject to a separate strike for each lawsuit ultimately dismissed as legally meritless.[2] Alternatively, Franklin may choose to dismiss the other lawsuits voluntarily. If he chooses this latter route, he will not owe the additional filing fee or face a potential strike. Any lawsuit dismissed voluntarily would be dismissed without prejudice, so Franklin may be able to bring it at another time provided the applicable statute of limitation has not expired.

Because it is unclear which lawsuit Franklin wants to pursue, Franklin should also be aware that the court has not assessed the possible merits of either lawsuit identified above. Once Franklin identifies the suit he wants to pursue under this case number, the court will screen the actions that remain as required under 28 U.S.C. § 1915(e)(2). Because Franklin faces a filing fee and possible strike for each lawsuit pursued, he should

[2] Once a prisoner receives three strikes, he is not able to proceed in new lawsuits without first paying the full filing fee (except in narrow circumstances). 28 U.S.C. § 1915(g).

carefully consider the merits and relative importance of each potential lawsuit before proceeding.

TEMPORARY RESTRAINING ORDER

Franklin has also filed two motions for temporary restraining orders. (Dkts. ##7, 12.) In the first motion, he declares under penalty of perjury that: (1) Sergeant Harris has threatened to "teach [Franklin] a lesson" for filing this lawsuit by taking away his institutional job, denying him access to the law library and returning him to segregation status; (2) Jill Sommers, the records custodian at the Columbia Correctional Institution, told him that "relevant documents are being destroyed to ensure that [Franklin] will not be allowed to get [his] hands on them"; and (3) defendants are denying him discovery and access to the law library in order to hinder his ability to litigate this claim. In his second motion, Franklin lists a variety of petty retaliation by Harris and Foster and a change in medical protocols by Janet Nichols. In his latest letters, Franklin also claims that (1) Captain Castiano expressed his determination to "get" Franklin and (2) all of his legal work has been confiscated to discourage him from sending documents to the court.

The court will deny these motions for several reasons at this time. *First*, Franklin's motions are procedurally defective. As an initial matter, Franklin has not named Jill Sommers, Janet Nichols or Capitan Castiano as defendants in this lawsuit. As a general rule, this court will not grant injunctive relief against a person who is not a party to the lawsuit. Franklin's motion also fails to comply with this court's procedures for obtaining

preliminary injunctive relief, a copy of which will be provided to Franklin with this order. Under these procedures, a plaintiff must file and serve proposed findings of fact that support his claims, along with any evidence that support those proposed findings of fact. Although Franklin has declared under oath that Harris is threatening to punish him and Sommers is threatening to destroy documents, Franklin has submitted no proposed findings of fact to which the defendants would be required to respond.

Second, even if Franklin's motions were not facially flawed, the court would deny the motion on its merits at this time. Granting preliminary injunctive relief "is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Roland Mach. Co. v. Dresser Indus.*, 749 F.2d 380, 389 (7th Cir. 1984). A district court must consider four factors in deciding whether a preliminary injunction should be granted: (1) whether the plaintiff has a reasonable likelihood of success on the merits; (2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; (3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and (4) whether the granting of a preliminary injunction will disserve the public interest. *Pelfresne v. Village of Williams Bay*, 865 F.2d 877, 882-83 (7th Cir. 1989).

When a plaintiff alleges that the defendants have retaliated against him for bringing a lawsuit, it is the policy of this court to require the retaliation claim to be brought in a lawsuit separate from the one that allegedly provoked the retaliation. The court recognizes an exception to this policy only where it appears that the alleged

retaliation directly and physically impairs the plaintiff's ability to prosecute his lawsuit. This policy prevents the accumulation of unrelated claims in one lawsuit.

Franklin's allegations do not suggest that defendants' threats and retaliation are hindering his ability to prosecute this case. While he has alleged that he is being denied access to the library and that his "legal work" was confiscated, Franklin has not explained why he needed access to the library, what materials were confiscated, or why he needed them for this case. Furthermore, Franklin's motions do not identify what "relevant documents" defendants are threatening to destroy.

At this time, Franklin need only respond to this court's order, and the court will apply the appropriate law to screen his claims. Should he wish to pursue any motion for Temporary Restraining Order or Preliminary Injunction in the meantime, he must refile it in accordance with this opinion. Plaintiff is not, however, entitled to discovery (1) unless separately allowed by order of the court or (2) until after this court screens his complaint, the complaint is served on defendants *and* the court holds its preliminary pretrial conference. Fed. R. Civ. P. 26(b).

ORDER

IT IS ORDERED that:

1. Plaintiff Harrison Franklin's motions for temporary restraining orders (dkts. #7, 12) are DENIED without prejudice.

2. No later than June 27, 2013, Franklin must identify for the court which one of the four lawsuits identified in this opinion above, he wishes to pursue under the case number assigned to his complaint.

3. No later than July 5, 2013, Franklin must also inform the court whether he wishes to continue to prosecute any of his other claims as separate lawsuits or withdraw them voluntarily. If Franklin dismisses these claims voluntarily, he will owe no further filing fee. If Franklin advises the court he intends to prosecute one or more of these claims in a separate lawsuit, he will (1) owe a separate $350 filing fee for each new lawsuit and (2) need to file a separate complaint setting forth his claims.

4. If plaintiff fails to respond to this order by July 8, 2013, then the clerk is directed to enter an order dismissing without prejudice the entire lawsuit based on plaintiff's failure to prosecute it.

5. All other pending motions are DENIED at this time.

Entered this 13th day of June, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge