

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

JUAN SALINAS,

Plaintiff,

v.

DALIA SULIENE, BURT TAMMINGA, TRAVIS
BITTELMAN, PATRICK HOOPER, JOSEPH
CICHANOWICZ, BRIAN NEUMAIER and
JOHN DOE 1-4,

Defendants.

ORDER

12-cv-82-slc

Pro se plaintiff Juan Salinas is proceeding on the following claims in this prisoner civil rights case:

- (a) Several unknown officers (John Does 1-4) refused to provide medical assistance when he complained about his symptoms on August 5, 2010 and August 13, 2010, in violation of the Eighth Amendment;
- (b) Defendant Dalia Suliene refused to treat him until his condition became so serious that he had to be taken to the emergency room, in violation of the Eighth Amendment; and
- (c) Plaintiff complained to defendants Burt Tamminga, Travis Bittelman, Patrick Hooper, Joseph Cichanowicz and Brian Neumaier about spoiled food, but they refused to do anything, in violation of the Eighth Amendment.

Two matters are before the court for resolution: (1) defendants' motion for summary judgment on the ground that plaintiff failed to exhaust his administrative remedies, as required by 42 U.S.C. § 1997e(a), dkt. 15; and (2) a document in which plaintiff identifies three Doe defendants, dkt. 18. Although plaintiff did not file a response to defendants' motion, I still must determine whether the undisputed facts show that defendants are entitled to summary judgment. *E.g., Doe v. Cunningham*, 30 F.3d 879, 883 (7th Cir. 1994); *Glass v. Dachel*, 2 F.3d 733, 739 (7th Cir. 1993); *Wienco, Inc. v. Katahn Associates, Inc.*, 965 F.2d 565, 567 (7th Cir. 1992). Having reviewed defendants' summary judgment submissions, I conclude that they have

shown that plaintiff did not exhaust his claims that various prison officials failed to provide medical assistance after he consumed spoiled food, but that he did complete the grievance process with respect to his claim that defendants Tamminga, Bittelman, Hooper, Cichanowicz and Neumaier knew that he was getting sick from spoiled food, but refused to take any action to stop it from happening again in the future. Because I am dismissing the complaint as to all of the Doe defendants, it is unnecessary to decide whether the caption should be amended to include the names plaintiff has identified.

OPINION

Under 42 U.S.C. § 1997e(a), “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” Generally, to comply with § 1997e(a), a prisoner must “properly take each step within the administrative process,” *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002), which includes following instructions for filing the initial grievance, *Cannon v. Washington*, 418 F.3d 714, 718 (7th Cir. 2005), as well as filing all necessary appeals, *Burrell v. Powers*, 431 F.3d 282, 284-85 (7th Cir. 2005), “in the place, and at the time, the prison’s administrative rules require.” *Pozo*, 286 F.3d at 1025. The purpose of these requirements is to give the prison administrators a fair opportunity to resolve the grievance without litigation. *Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). If a prisoner fails to exhaust his administrative remedies before filing his lawsuit, the court must dismiss the case. *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999).

In this case, a record custodian for the Department of Correction avers in her affidavit that plaintiff has not filed any grievances about a failure to provide medical care that plaintiff needed as a result of food poisoning. Dkt. 17. Because plaintiff has not disputed this averment, I must accept it as true and dismiss plaintiff’s claims that (1) several unknown officers (John

Does 1-4) refused to provide medical assistance when he complained about his symptoms on August 5, 2010 and August 13, 2010, in violation of the Eighth Amendment; and (2) defendant Suliene refused to treat him until his condition became so serious that he had to be taken to the emergency room, in violation of the Eighth Amendment.

This leaves plaintiff's claim that he complained to defendants Burt Tamminga, Travis Bittelman, Patrick Hooper, Joseph Cichanowicz and Brian Neumaier about the spoiled food, but they refused to do anything to prevent problems in the future. Defendants acknowledge that plaintiff filed a grievance and all necessary appeals about the spoiled food, dkt. 17-1, but they argue that plaintiff cannot rely on that grievance because he did not complain specifically about *defendants'* actions or inactions.

Defendants' argument fails because it has been established for several years that § 1997e(a) does not require prisoners to identify particular defendants in their grievances. *Jones v. Bock*, 549 U.S. 199, 219 (2007)("[E]xhaustion is not per se inadequate simply because an individual later sued was not named in the grievances."). Rather, the question is whether the prisoner "alerted prison officials to the nature of his problem and gave them an opportunity to resolve it." *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005). Plaintiff satisfied that test in his grievance by complaining about the spoiled food and asking prison officials to fix the problem. The absence of defendants' names from the grievances did not prevent the examiner from considering the grievance and ruling on the merits. Although courts have held that prison officials may adopt their own rules that impose additional content requirements on prison grievances, *Jones*, 549 U.S. at 218, *Strong v. David*, 297 F.3d 646, 647 (7th Cir. 2002), defendants point to no rule that would have required plaintiff to be more specific. Accordingly, I am denying defendants' motion for summary judgment with respect to this claim.

Although defendants have not shown that they are entitled to dismissal of all of plaintiff's claims, plaintiff's failure to file any response to defendants' motion raises a question about

whether he is still interested in pursuing this lawsuit. Accordingly, I will give him an opportunity to inform the court of his wishes. If he does not respond by the deadline, I will dismiss the case for his failure to prosecute it.

ORDER

It is ORDERED that:

- (1) The motion for summary judgment filed by Burt Tamminga, Travis Bittelman, Patrick Hooper, Joseph Cichanowicz, Brian Neumaier and Dalia Suliene, dkt. 15, is DENIED with respect to plaintiff's claim that defendants Tamminga, Bittelman, Hooper, Cichanowicz and Neumaier refused to take any steps to prevent plaintiff from receiving spoiled food.
- (2) Defendants' motion is GRANTED in all other respects.
- (3) Plaintiff's complaint is DISMISSED as to defendants Dalia Suliene and John Does 1-4.
- (4) Plaintiff may have until October 26, 2012, to inform the court whether he wishes to continue litigating this case. If plaintiff does not respond by that date, I will dismiss the case for plaintiff's failure to prosecute it.

Entered this 12th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge