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

STEVEN D. STEWART,

Plaintiff,

v.

SECRETARY EDWARD F. WALL, JAMES GREER, KEISHA PERRENOUD, WARDEN TIM HAINES, WARDEN MICHEAL DITTMAN, DR. BURTON COX, JR., H.S.U. MARY MILLER, NURSE JOLINDA WATERMAN, NURSE SHIN YON, SGT. BRINKMAN, C.O. DUHA, DR. SULIENE, DR. MARTIN, DR. HIENZEL, DR. HOFFMAN, H.S.U. MANAGER KAREN ANDERSON, H.S.U. MANAGER C. WARNER, NURSE NATALIE, NURSE TRISHA ANDERSON, NURSE KIM CAMEBELL, NURSE MELISSA THORNE, NURSE ROSE, NURSE ANNE, NURSE PHIL KERNES, NURSE DAVID SPANNGEL, SGT. NELSON, CAPTAIN CASSIANA, SGT. STEPHENSON, SGT. MORRIS, SGT. MATTI, SGT. JAKUSZ, C.O. PEETZ, C.O. JAMES, C.O. GOLDSMITH, FOOD SERVICE LEADER KANNENBERG, ASST FOOD SERVICE R. BUTT, and UNIT MANAGER ZIEGLER

Defendants.

OPINION & ORDER

14-cv-665-jdp

Pro se prisoner Steven Stewart has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that defendants violated his Eighth Amendment rights by giving him two contradictory medications for a urinary tract infection. Plaintiff also alleges that defendants violated his Eighth Amendment rights by consistently failing to provide him with adequate medical treatment for his urinary retention condition. Plaintiff seeks monetary damages and injunctive relief. With his complaint, plaintiff has filed a motion for assistance recruiting counsel, and a motion to appoint a medical expert witness.

Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1). The next step in this case is for the court to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief

may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After reviewing the complaint with this principle in mind, I conclude that plaintiff has stated an Eighth Amendment claim against several of the named defendants for deliberate indifference to his serious medical needs and a First Amendment claim against them for retaliation. I also conclude that plaintiff has stated a state law medical malpractice claim against some of the named defendants. I will therefore grant plaintiff leave to proceed on these claims, although I will dismiss the defendants for whom plaintiff has not alleged any personal involvement. I will also deny plaintiff's motion for assistance recruiting counsel and his motion for appointment of a medical expert witness.

ALLEGATIONS OF FACT

Plaintiff is currently a prisoner at the Columbia Correctional Institution (CCI), located in Portage, Wisconsin. Most of the relevant events occurred at CCI, but some took place at the Wisconsin Secure Program Facility (WSPF), located in Boscobel, Wisconsin. Defendants are Wisconsin Department of Corrections staff and officers who work at CCI or at WSPF.

Plaintiff begins his complaint by recounting specific events that occurred in May and June of 2012, while he was incarcerated at WSPF. On May 26, defendant Dr. Burton Cox diagnosed plaintiff with a urinary tract infection, and informed him that he might go into shock unless treated right away. Plaintiff alleges that he did not receive medication for his infection until May 31. Per Dr. Cox's orders, plaintiff took one tab of Ciprofloxacin,[1] an antibiotic, two

[1] Plaintiff identifies his medication as "Ciprofloacin." Dkt. 1, at 2.

times a day. On June 4, defendant Correctional Officer Duha brought plaintiff two new packages of medication: one of Ciprofloxacin, and one of Levofloxacin. Plaintiff explained to Duha that he still had some Ciprofloxacin and did not need new medication.

Defendant Sergeant Brinkman arrived to resolve the dispute and took both packages of medication to the Health Services Unit. A short time later, Brinkman returned and told plaintiff that according to defendant Nurse Shin Yon, Dr. Cox wanted plaintiff to take all the antibiotics until they were gone. Plaintiff complied, and took both the Ciprofloxacin and the Levofloxacin. Plaintiff alleges that for the rest of the day he was very sleepy and that he felt "strange like I wasn't myself." Dkt. 1, at 3. He contends that this was a side effect of taking both antibiotics, as opposed to just one. Plaintiff reported his condition to health services and filed an inmate complaint regarding the duplicate medication. The institution complaint examiner consulted with medical personnel and concluded that plaintiff's medication had been changed mid-dosage, but that he had inadvertently received both medications. Defendants Mary Miller and Jolinda Waterman were aware that Dr. Cox had changed the prescription, but they failed to communicate the change to plaintiff or to notice the duplicate medication. On June 6, a nurse retrieved the Ciprofloxacin and explained the medication change to plaintiff. Miller, the Health Services Unit manager, followed up with staff about the proper procedure for order transcription and communicating changes in medication to patients. Plaintiff's inmate complaints were therefore dismissed.

Apart from the events of May and June 2012, plaintiff also alleges that between 2002 and 2014, he received poor medical treatment from WSPF and CCI staff. Since 2002, plaintiff has had medical issues with urination. A radiologist at the University of Wisconsin Hospital diagnosed plaintiff with a possible bladder outflow obstruction in December 2004, and referred him to a urology specialist. In August 2005, a urology resident at UW Hospital recommended

that plaintiff catheterize himself seven to eight times daily. In spite of these orders, plaintiff alleges that in October 2005, Nurse Waterman told him that he would have to wear a Foley catheter (which needs to be changed less often). According to plaintiff, this decision directly contradicted the orders that he received from doctors at UW Hospital.

Also while plaintiff was incarcerated at WSPF, he received permission to take Vicodin before catheterizing himself to help manage pain. He alleges that several UW Hospital doctors wrote orders for pain medication, as did two DOC doctors. At WSPF, plaintiff changed his catheter in his cell and he received pre-procedure pain medication. Whenever plaintiff needed to change his catheter, he would push a "call button" and defendant Sergeant Matti would then contact a nurse in the Health Services Unit. Plaintiff alleges that on one occasion in January 2013, Matti refused to contact a nurse and interfered with plaintiff re-catheterizing himself after removing the catheter, causing plaintiff severe pain and stomach spasms.

Plaintiff was transferred to CCI on January 17, 2013. He alleges that while he was incarcerated at CCI, defendant Dr. Dalia Suliene refused to allow him to change his catheter in his cell and insisted that he had to perform the procedure in the Health Services Unit. Dr. Suliene also informed plaintiff that there was no written order for Vicodin, and that CCI would not have to honor another institution's doctor's orders, even if Dr. Cox had prescribed pain medication. Plaintiff filed an inmate complaint in May 2013, contending that doctors had ordered him to take Vicodin before catheterizing himself but that CCI staff was withholding the medicine. The institution complaint examiner explained that "[a]ll orders are in place now for monthly catheter change with Vicodin for pain control" and dismissed the complaint. Dkt. 1-1, at 1. The dates in plaintiff's complaint are unclear, but it appears that he was without pre-procedure medication from January 2013 to June 2013.

In July 2013, plaintiff went to the Health Services Unit for a catheter change. When he arrived, defendants Kim Camebell, Nurse Natalie, Melissa Thorne, Phil Kernes, and David Spanngel—all nurses at CCI—informed him that defendant Dr. Martin had removed the order regarding pre-procedure Vicodin. Plaintiff had never met or been examined by Dr. Martin, and he asserts that the nurses must have said something to Dr. Martin to make him change the order. A year later, plaintiff saw defendant Dr. Hoffman, who again refused to provide plaintiff with pain medication.

Most of the rest of plaintiff's complaint generally describes the difficulties he had receiving treatment from CCI staff. For example, rather than permitting plaintiff to change his catheter "as needed," Waterman, Dr. Cox, Dr. Suliene, and Karen Anderson permitted him to change it only once per month, which contradicted the UW Hospital doctors' orders. Also, even after plaintiff received a prescription for pain medication in November 2013, defendant Dr. Hienzel removed that order less than a month later. Finally, plaintiff describes two events in 2014: (1) in March, his catheter came out and Nurse Spanngel, communicating through defendants Correctional Officer Peetz and Sergeant Stephenson, did not provide prompt treatment; and (2) in May, Nurse Anne and Nurse Rose refused to provide plaintiff with gloves and a syringe so that he could catheterize himself.

Although unrelated to plaintiff's underlying urinary retention condition, plaintiff's complaint also mentions incidents involving defendants Sergeant Jakusz, Unit Manager Ziegler, Food Service Assistant R. Butts, Food Service Leader Kannenberg, and Sergeant Nelson. These defendants took various actions against plaintiff, including refusing to deliver eyeglasses that he had received, denying plaintiff a calorie-controlled diet, and generally monitoring plaintiff's interactions with CCI medical staff. Plaintiff hints that these affronts are part of an overarching

conspiracy, but he does not explain how they are connected to his medical treatment or to the other named defendants in this case.

ANALYSIS

I understand plaintiff to allege two distinct causes of action against defendants. First, he alleges that defendants violated his Eighth Amendment right against cruel and unusual punishment by improperly treating his urinary tract infection in May and June of 2012. Second, plaintiff states a broad claim against defendants for contradicting the orders of UW Hospital doctors at various times throughout his incarceration and for deliberate indifference to his serious urinary retention condition, also in violation of the Eighth Amendment. I conclude that plaintiff's complaint does not state a claim under the Eighth Amendment against defendants for inadvertently giving him two antibiotics in 2012. But I conclude that these allegations state a plausible claim under Wisconsin law for medical malpractice. I also conclude that plaintiff states a plausible claim under the Eighth Amendment against some of the named defendants for contradicting a medical specialist's orders regarding his overall treatment, and that he states a plausible claim under the First Amendment against some of the named defendants for retaliating against him.

A. Plaintiff's claims

To succeed on an Eighth Amendment claim for inadequate medical treatment, plaintiff must demonstrate that defendants "display[ed] deliberate indifference to serious medical needs of prisoners." *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (internal citations and quotation marks omitted). "A claim of deliberate indifference to a serious medical need contains both an objective and a subjective component." *Id.* at 653. "In the medical care context, the objective element requires that the inmate's medical need be sufficiently serious." *Gutierrez v.*

Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The Seventh Circuit defines "[a] serious medical condition [a]s one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno*, 414 F.3d at 653. Here, plaintiff alleges that doctors at UW Hospital diagnosed him with a urinary retention condition, and ordered that he catheterize himself several times a day. I conclude that this condition qualifies as a "serious medical need," for purposes of alleging an Eighth Amendment claim.

"To satisfy the subjective component, a prisoner must demonstrate that prison officials acted with a sufficiently culpable state of mind. . . . [I]t is enough to show that the defendants knew of a substantial risk of harm to the inmate and disregarded the risk." *Id.* (internal citations and quotation marks omitted). In this case, plaintiff has alleged that several defendants disregarded his serious medical needs or provided medical care that did not follow the orders of UW Hospital doctors. For example, Dr. Cox and Nurse Waterman provided plaintiff with a Foley catheter, rather than allowing plaintiff to self-catheterize with a straight catheter "as needed" each day. Dr. Suliene apparently continued this practice once plaintiff arrived at CCI. *See Arnett v. Webster*, 658 F.3d 742, 753 (7th Cir. 2011) ("Allegations of refusal to provide an inmate with prescribed medication or to follow the advice of a specialist can also state an Eighth Amendment claim."). Plaintiff also alleges that for the first few months that he was at CCI, staff did not provide him with pre-procedure Vicodin, as ordered by Dr. Cox. *See Walker v. Benjamin*, 293 F.3d 1030, 1040 (7th Cir. 2002) ("Walker was not seeking an expensive or unconventional treatment; he just wanted the pain medication that the prison doctor had prescribed for him.") (internal citations and quotation marks omitted). Finally, plaintiff identifies CCI staff members who did not contact Health Services Unit personnel when he needed medical attention, and these allegations demonstrate the required disregard of a risk of harm. *See Foster v. Ghosh*, No.

11-cv-5623, 2013 WL 3790905, at *4 (N.D. Ill. July 19, 2013) (citing *Arnett*, 658 F.3d at 755) ("Once a non-medical official is aware of the deprivation of a serious medical need, failure to use his or her authority to take steps to correct the condition by contacting the appropriate medical officials may qualify as deliberate indifference.").

I will therefore permit plaintiff to proceed against some of the named defendants with his claim of deliberate indifference for their failure to adequately address his urinary retention condition. Specifically, plaintiff may proceed against:

- Jolinda Waterman, who contravened the orders of UW Hospital doctors and forced plaintiff to wear a Foley catheter;
- Dr. Cox, who agreed with Waterman's course of treatment, in contradiction of UW Hospital doctors' orders;
- Sergeant Matti, who refused to contact a nurse in January 2013, when plaintiff showed him that his catheter had come out;
- Dr. Suliene, who contravened the orders of UW Hospital doctors and forced plaintiff to wear a Foley catheter, and who failed to provide pre-procedure pain medication to plaintiff;
- Karen Anderson, Kim Camebell, David Spanngel, Nurse Natalie, Melissa Thorne, Trisha Anderson, Phil Kernes, Nurse Anne, and Nurse Rose, who recorded false progress notes, denied plaintiff pre-procedure pain medication, and failed to provide plaintiff with necessary medical supplies; and
- Doctors Martin, Hienzel, and Hoffman, who removed plaintiff's prescription for pre-procedure Vicodin and failed to provide other pain relief for plaintiff's catheterization needs.

Plaintiff's complaint does not, however, state an Eighth Amendment claim for the events of May and June 2012. Plaintiff affirmatively alleges that he received treatment for his urinary tract infection, albeit in the form of two separate antibiotics. The correctional officers who brought plaintiff his medication were not deliberately indifferent to his condition; they were following the orders given to them by staff in the Health Services Unit. Likewise, even if the medical personnel at WSPF did not properly communicate plaintiff's change in medication or

notice that he was being asked to take two separate antibiotics, the complaint establishes that they were not indifferent to his medical needs; plaintiff has simply alleged that they made an error in how they treated him. Such an "inadvertent failure to provide adequate medical care cannot be said to . . . be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976).

This is not to say that plaintiff cannot proceed with allegations about his duplicate medication. Because I conclude that plaintiff has already stated an Eighth Amendment claim for deliberate indifference to his urinary retention condition, he can properly invoke this court's supplemental jurisdiction over state law claims that arise out of the same case or controversy. 28 U.S.C. § 1367. Wisconsin law defines medical malpractice as the failure of a medical professional to "exercise that degree of care and skill which is exercised by the average practitioner in the class to which he belongs, acting in the same or similar circumstances." *Sheahan v. Suliene*, 12-cv-433, 2014 WL 1233700, *9 (W.D. Wis. Mar. 25, 2014) (internal citations omitted). To succeed on a medical malpractice claim in Wisconsin, plaintiff must prove that defendants breached their duty of care to him and that he suffered an injury as a result. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860.

Plaintiff's complaint adequately pleads the elements of a medical malpractice claim. He alleges that after WSPF medical personnel diagnosed and treated him for a urinary tract infection, he inadvertently received two duplicate medications and he suffered an injury as a result—albeit a relatively mild one. I will therefore permit plaintiff to proceed against defendants Dr. Cox, Mary Miller, Shin Yon, and Jolinda Waterman with his claim of medical malpractice for their conduct in May and June 2012. According to plaintiff, each of these

medical professionals should have noticed that plaintiff was being asked to take two different medications, and should have come to his cell in person rather than using correctional officers to administer medicine.

Finally, I note that plaintiff's complaint uses the heading "retaliation" for certain factual allegations. *See, e.g.*, Dkt. 1, at 12-13, 18-20. Plaintiff appears to suggest that some of the named defendants withheld pain medication or catheterization supplies to retaliate against him for filing inmate complaints. Although plaintiff does not specifically mention the First Amendment in his complaint, I conclude that he is attempting to state a claim for retaliation, and that these allegations are all part of the same case or controversy. To adequately allege such a claim, plaintiff's complaint must describe how: "(1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was at least a motivating factor in the [d]efendants' decision to take the retaliatory action." *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) (internal citations and quotation marks omitted). Plaintiff's complaint satisfies these requirements. He states that he formally complained about his medical providers and the treatment that they gave him, and he alleges that, in response, these providers withheld medication and supplies. I will therefore grant him leave to proceed against defendants Kim Camebell, David Spanngel, Nurse Natalie, Melissa Thorne, Trisha Anderson, Phil Kernes, and Doctors Martin and Hienzel with a claim of retaliation, in violation of the First Amendment.

B. Plaintiff's named defendants

Plaintiff's complaint names 37 individual defendants, all of whom he contends have violated his Eighth Amendment rights. But "[i]n addition to the element of deliberate indifference . . . § 1983 lawsuits against individuals require personal involvement in the alleged constitutional deprivation to support a viable claim." *Palmer v. Marion Cnty.*, 327 F.3d 588, 594

(7th Cir. 2003). In the context of supervisory officials, plaintiff does not need to allege direct participation in a deprivation of constitutional rights, *Miller v. Smith*, 220 F.3d 491, 495 (7th Cir. 2000), but "there must be a showing that the official knowingly, willfully, or at least recklessly caused the alleged deprivation by his action or failure to act." *Rascon v. Hardiman*, 803 F.2d 269, 273-74 (7th Cir. 1986); *see also Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010) ("To be personally liable under these circumstances, [a director of medical services] must have condoned or acquiesced in a subordinate's unconstitutional treatment."). Likewise, plaintiff cannot bring § 1983 claims for inadequate medical care against non-medical personnel such as complaint examiners and DOC administrative employees unless those defendants simply ignored plaintiff's complaints or failed to refer them to medical providers. *Greeno*, 414 F.3d at 656-57. With these principles in mind, I conclude that several of the named defendants must be dismissed from this case because plaintiff fails to allege that they were personally involved in any deprivation of his Eighth Amendment rights.

Defendants Edward Wall, James Greer, Tim Haines, and Michael Dittman must be dismissed because they are DOC officials with no personal involvement in plaintiff's claims of inadequate medical care. Plaintiff simply alleges that these individuals are "in charge" of the DOC, prisons, or Health Services Units where key events occurred. Dkt. 1, at 5, 8. Likewise, defendants Keisha Perrenoud and Health Services Unit Manager Warner must be dismissed because they are supervisory personnel who each answered a question from an institution complaint examiner. Plaintiff alleges that he has "never met, seen nor spoken with Keisha Perrenoud," *id.* at 16, and that Warner simply reviewed treatment notes from other providers in answering a question to an institution complaint examiner, *id.* at 15. Finally, defendants Sergeant Stephenson, Sergeant Brinkman, Captain Cassiana, Correctional Officer Goldsmith, Correctional Officer Peetz, Correctional Officer Duha, and Sergeant Morris must be dismissed

because they are non-medical personnel who followed the instructions of medical professionals during their interactions with plaintiff. *Id.* at 2-4, 14, 17-18.

This leaves defendants Sergeant Jakusz, Unit Manager Ziegler, Food Service Assistant R. Butt, Food Service Leader Kannenberg, Sergeant Nelson, and Correctional Officer James, all of whom must be dismissed from this case as well. Plaintiff recounts incidents with these defendants that are unrelated to his medical treatment. These allegations range from withholding eyeglasses because plaintiff had not given DOC officials information about a prescription for them, to refusing to provide a "diet tray" because plaintiff's calorie-controlled diet did not require such a tray. Plaintiff has not alleged that these defendants were personally involved in depriving him of medical care for his urinary retention condition, and his vague allegations regarding an overarching retaliatory scheme are too conclusory to justify including these defendants in his retaliation claim against medical personnel. Plaintiff is free to file a separate suit against these defendants, but any potential claims against them do not appear to be part of the same case or controversy that will form the basis of this suit. Finally, plaintiff's only allegation against James is that he took plaintiff to the Health Services Unit by wheelchair on July 31, 2014. *Id.* at 22. Thus, James must be dismissed from this case as well.

C. Plaintiff's miscellaneous motions

With his proposed complaint, plaintiff has filed a motion for assistance recruiting counsel, Dkt. 4, and a motion to appoint a medical expert witness, Dkt. 5. I will deny both motions. But I will do so without prejudice to plaintiff refiling either, or both, later in this case.

To support his motion for recruitment of counsel, plaintiff has attached letters from three different attorneys who declined to assist him with this case. Dkt. 4-1. These efforts satisfy the requirement that plaintiff make a reasonable effort to locate an attorney of his own. *See Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992) ("[T]he district judge must

first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts."). But this court will seek to recruit counsel for a pro se litigant only when the litigant demonstrates that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). It is too early to tell whether plaintiff's First Amendment, Eighth Amendment, and medical malpractice claims will outstrip his litigation abilities. In particular, the case has not even passed the relatively early stage in which defendants may file a motion for summary judgment based on exhaustion of administrative remedies, which often ends up in dismissal of cases such as plaintiff's before they advance deep into the discovery stage of the litigation. Should the case pass the exhaustion stage, and should plaintiff continue to believe that he is unable to litigate the suit himself, he may renew his motion.

To support his motion for an expert witness, plaintiff informs the court that the state has retained several doctors as experts—actually, these "experts" are just the employee-doctors who plaintiff is suing—and so he needs an expert to ensure a "just trial or settlement." Dkt. 5, at 1. There is no statutory requirement that the court appoint a medical expert witness to plaintiffs in civil suits. Although Federal Rules of Evidence 614 and 706 permit the court to appoint neutral expert witnesses to assist in analyzing complex testimony, it is again too early in the case to determine whether such measures are necessary here. Should this case progress to the point where a medical expert may be required, I will revisit the issue.

ORDER

IT IS ORDERED that:

1. Plaintiff Steven Stewart is GRANTED leave to proceed on his Eighth Amendment claims of deliberate indifference against defendants Dr. Burton Cox, Jr., Nurse Jolinda Waterman, Dr. Suliene, Dr. Martin, Dr. Hienzel, Dr. Hoffman, H.S.U.

Manager Karen Anderson, Nurse Natalie, Nurse Trisha Anderson, Nurse Kim Camebell, Nurse Melissa Thorne, Nurse Rose, Nurse Anne, Nurse Phil Kernes, Nurse David Spanngel, and Sergeant Matti.

2. Plaintiff is GRANTED leave to proceed on his state law claim for medical malpractice against defendants Dr. Cox, Mary Miller, Shin Yon, and Jolinda Waterman.

3. Plaintiff is GRANTED leave to proceed on his First Amendment claims of retaliation against defendants Kim Camebell, David Spanngel, Nurse Natalie, Melissa Thorne, Trisha Anderson, Phil Kernes, Dr. Martin, and Dr. Hienzel.

4. Plaintiff is DENIED leave to proceed against the remaining defendants, who are DISMISSED from this case.

5. Plaintiff's "motion to appoint counsel," Dkt. 4, and "verified motion to appoint medical expert witness," Dkt. 5, are both DENIED without prejudice to plaintiff renewing his requests later in this case.

6. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

7. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

8. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

9. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments, as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under

Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered March 30, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge