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

WALTER J.D. MOFFETT,

Plaintiff,

v.

MICHAEL A. DITTMAN, REWEY, DONALD STRAHOTA, BORTEZ, GOLDSMITH, JULSON, SCHMIDTKNECHT, GOODWIN, MILLER, MORGAN, GOHDE, SYED, DEYOUNG, MITCHELL, BATES, PETERS, LEISER, ZIGGLER, PROCKNOW, GAMBARO, PIFZL, FRISH, ROEKER, and GERRY,

Defendants.

OPINION AND ORDER

18-cv-656-wmc

Pro se plaintiff Walter J.D. Moffett, who is currently incarcerated at the Wisconsin Secure Program Facility ("WSPF"), filed this civil lawsuit, claiming that his constitutional, statutory and state law rights were violated in numerous ways by 48 defendants between 2015 and 2018, when he was incarcerated at Columbia Correctional Institution ("Columbia"). Previously in this lawsuit, the court concluded that Moffett's complaint involved too many claims and defendants to proceed in this lawsuit and thus directed Moffett to file an amended complaint to bring just one lawsuit. Moffett timely submitted an amended complaint, narrowing his allegations to those challenging the conditions of his confinement between January and May of 2016, when he was housed in segregation at Columbia. (Dkt. #22.)[1] The court has reviewed his allegations as required by 28 U.S.C. §§ 1915(e)(2), 1915A, and for reasons that follow will grant him leave to proceed against

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[1] The court has modified the caption to include only the defendants named in the amended complaint and directs the clerk of court to do the same.

some of the proposed defendants on Eighth Amendment medical care deliberate indifference claims, and against defendant Dittman in his official capacity, on an Americans with Disabilities Act/Rehabilitation Act claim. Finally, Moffett has two motions currently pending, which the court is denying.

ALLEGATIONS OF FACT[2]

A. Parties

Plaintiff Walter Moffett was incarcerated at Columbia in 2016, when the events outlined in this lawsuit took place. Moffett seeks to proceed against the following 24 current or former Columbia employees: Warden Michael Dittman; Correctional Officers Rewey, Bortez, Goldsmith, Julson, Goodwin, Miller, Morgan, Mitchell, Bates, Peters, Pifzl, Roeker and Gerry; Security Director Donald Strahota; Unit Manager Schmidtknecht; Health Service Unit ("HSU") manager Gohde; Dr. Syed; Nurse DeYoung; Inmate Complaint Examiner ("ICE") Leiser; Social Workers Ziggler and Procknow; Director of Psychology Dr. Gambaro; and Dr. Frish, a psychologist.

B. Temporary Lock Up Placement

On January 21, 2016, Moffett was placed in isolation in a building called "R&O." Although not explicitly alleged, it appears that Moffett remained in isolation until May of 2016. It appears that at certain points during his time housed in the R&O building,

[2] In addressing any *pro se* litigant's complaint, the court must read the allegations generously and draw all reasonable inference in his favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the following facts based on the allegations in plaintiff's amended complaint, unless otherwise noted.

Moffett did not have cold running water, a drinking cup or property; he was denied access to the law library, exercise, law books, showers and inmate complaint forms; and he endured "excessive heat" and the smell of chemicals.

Moffett claims that Warden Dittman failed to respond to his letters and requests complaining about the conditions of confinement he endured when he was in the R&O unit. Moffett does not allege when he wrote these letters to Dittman. He also claims that while he was in isolation, defendant Rewey was the sergeant in charge of the area in which he was housed. Moffett claims that asked Rewey for inmate complaint forms, opportunities for exercise, showers, cold running water, personal property and for a fix to the heating. However, Rewey refused to take any steps to address his concerns with respect to any of these issues. Moffett similarly claims that he complained to defendant Strahota about the conditions he endured in segregation in January and February 2016, and Strahota never responded to his letters.

Moffett further alleges that he had frequent contact with correctional officer defendants Bortez, Goldsmith, Julsen, and had told them about his concerns about his conditions of confinement, but none of them took corrective action. Then in February of 2016, defendants Bortez and Goldsmith allegedly put something in his milk that made him sick to the point where he felt like he was dying, but Bortez and Goldsmith refused to call HSU on his behalf. Additionally, although Moffett told defendant Goodwin that he was very ill from something in his food, Goodwin also refused to contact the HSU.

Moffett adds that he believes Dr. Syed "allowed" Goldsmith and Bortez to put a medicine into his food, and that Nurse DeYoung orchestrated this plot to give Moffett a

medicine that made him sick. Moffett adds that Dr. Syed did not take corrective action when Moffett informed him about his "uncomfortable housing situation." (Dkt. #22, at 12.) Moffett also claims that on "one occasion" he fell and required medical attention, and DeYoung responded but did not take his vitals and just dragged him to his cell.

Moffett claims that he spoke directly with defendants Miller, Frish, and Roeker about his belief that he was being discriminated against because of the conditions he endured in isolation. Moffett does not allege when he raised these concerns with Miller, but Miller responded at some point by referring Moffett to the unit manager.

Similarly, Moffett claims that he wrote to, and spoke with, defendant Morgan about the conditions in the R&O building, and that he was not being housed in a wheelchair accessible hall. Morgan allegedly did nothing to correct the situation.

Moffett claims that he informed defendants Pifzl and Gerry that he was unable to move off the concrete floor, which was infested with insects, and that he had to crawl around the cell to eat. Moffett also complained that there were no wheelchair accommodations for the shower or toilet facilities, and Pifzl and Gerry took no corrective action.

Finally, Moffett claims that defendant Schmidtknecht was supervising the R&O at the time he was housed there. Moffett claims that he directed numerous communications to the former supervisor, Ms. Fry, in which he complained in detail about his food and mail being tampered with, as well as the general conditions of confinement outlined above. Apparently neither Schmidtknecht nor Fry took corrective action.

C. Placement in General Population without Wheelchair Access

Moffett was released to general population in June of 2016, and he was placed in Unit #5, which was not wheelchair accessible. It is unclear exactly who assigned him to this unit, but Moffett alleges that several defendants knew that he should have been placed in a wheelchair accessible unit and allowed him to be housed in that unit, nonetheless.

Then at some point, Schmidtknecht removed the walker from Moffett's cell. Moffett claims that he needed the walker to move around, and that Schmidtknecht worsened the situation by ordering that no other inmates or staff could assist Moffett. He claims that defendant Gohde knew he needed a wheelchair and took no corrective action. Moffett also alleges that defendant Peters was on duty when he arrived in Unit #5. He claims that even though Peters ordered two correctional officers to carry him to his cell hall, and that he had "many falling incidents," Peters never called HSU on his behalf.

Moffett claims that defendant correctional officer Mitchell was aware that Moffett should have been placed in a wheelchair accessible unit and was amused when he saw Moffett drag himself around the cell to use the toilet and sick, or to sit in a chair. Yet Mitchell refused to assist Moffett and would not allow any other inmates assist him. Mitchell also would routinely ransack his cell when Moffett left, and once broke his denture during a cell search.

Moffett claims that defendant Bates contacted the HSU on his behalf, and Bates relayed that HSU had told him he only had access to a wheelchair for long distances. Moffett claims that for seven months afterwards, Bates would watch Moffett struggle up and down stairs, crawling and pulling himself across his cell.

Moffett claims defendants Ziggler and Procknow, social workers assigned to Unit #5, failed to respond appropriately to his requests to be transferred to a wheelchair accessible housing unit. It appears that Moffett explained that he was unable to leave the cell hall, which resulted in him missing out on law library and recreation time.

Moffett claims that Dr. Gambaro, a psychologist, was aware that he needed to be in a wheelchair accessible unit but failed to act. He adds that on one occasion, Dr. Gambaro witnessed him crawling up the stairs towards where his wheelchair was waiting for him, and that Dr. Gambaro moved his wheelchair 25 feet away from the stairs to amuse herself.

Moffett charges ICE Leiser with failing to assist him with his many complaints, and that she attempted to cover up the wrong-doing.

OPINION

The court understands plaintiff to be seeking to proceed claims that defendants violated his rights under the Eighth Amendment, in subjecting him to inhumane conditions of confinement and responding to his serious medical need with deliberate indifference, the Americans with Disabilities Act, and state law. The court addresses each proposed claim in turn.

I. Eighth Amendment

A. Conditions of Confinement

The court infers plaintiff to be pursuing Eighth Amendment conditions of confinement claims against defendants Rewey, Strahota, Bortez, Goldsmith, Julsen, Miller,

Dr. Frish, Roeker and Morgan. "The Constitution does not mandate comfortable prisons, . . . but neither does it permit inhumane ones, and it is now settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal citation and quotation omitted). In that respect, the Eighth Amendment imposes a duty on prison officials to provide "humane conditions of confinement," such as "adequate food, shelter, clothing, and medical care," and must take "reasonable measures" to guarantee inmate safety. *Id.* at 832-33 (citations omitted).

To state a claim under the Eighth Amendment challenging conditions of confinement, however, a plaintiff's allegations must satisfy objective and subjective components. In particular, that (1) the conditions of confinement were objectively serious, such that they deprive inmates of the minimal civilized measure of life's necessities, and (2) the defendant knew about, but failed to take reasonable measure to prevent the potential harm of that condition. *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999) (citing *Farmer*, 511 U.S. at 834).

As for the objective inquiry, because routine discomfort is "part of the penalty that criminal offenders pay for their offenses against society," *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), "only those deprivations denying 'the minimal civilized measure of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quotation omitted)). In other words, only "extreme deprivations" will support an Eighth Amendment claim concerning conditions of confinement. *Delaney v. DeTella*, 256 F.3d

679, 683 (7th Cir. 2001) (citing *Hudson*, 503 U.S. at 9). For example, the following conditions have been found to rise to the level of unsanitary conditions: (1) being housed in a cell with broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and a broken heating system, *Budd v. Motley*, 711 F.3d 840, 841-42 (7th Cir. 2013); (2) being required to sleep on a moldy and wet mattress for 59 days, *Townsend v. Fuchs*, 522 F.3d 765, 773-74 (7th Cir. 2008); (3) being subjected to a lack of sanitary conditions, including clean bedding, *Gillis v. Litscher*, 468 F.3d 488, 493-94 (7th Cir. 2006); (4) having to live for 16 months in a cell infested with cockroaches that crawled over the prisoner's body, *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996); and (5) living in a cell in which with mold and fiberglass in the ventilation ducts caused the plaintiff severe nosebleeds and respiratory problems, *Board v. Farnham*, 394 F. 3d 469, 486 (7th Cir. 2005).

Plaintiff's allegations do not fall into any of the categories noted above, and he has not specifically detailed whether or for how long he was completely denied access to the items he lists (access the law library, indoor or outdoor recreation, showers, grievance forms, cold running water), or the pervasiveness of the unpleasant conditions he notes ("excessive" heat, bugs and the smell of chemicals). Moreover, none of these conditions, alone, suggests that plaintiff was being denied one of life's necessities. Instead, plaintiff's allegations suggest that he was dealing with the discomforts and inconveniences associated with his placement under more restrictive confinement. In fairness, the combination of multiple, adverse conditions of confinement may satisfy the objective requirement "when the deprivations have a mutually enforcing effect which produces the deprivation of a

single, identifiable human need." *Gillis*, 468 F.3d at 493 (citation omitted). Still, plaintiff has not alleged whether any or all these conditions endured during the entirety of the time he spent in isolation in the R&O building, or whether he experienced all of these conditions at different points in time when he was in that building.

More problematic, even if the court were to infer that plaintiff's allegations met the objective element, his allegations as to each proposed defendant's response do not support an inference of deliberate indifference. Plaintiff claims that he alerted Rewey, Strahota, Bortez, Goldsmith, Julsen, Miller, Frish, Roeker and Morgan to these various conditions of his confinement and that each of them failed to take corrective action. However, plaintiff has not alleged *when* he told any of these defendants about his conditions, nor *what* he told them, beyond his blanket concerns about these various conditions. This is a problem, since to support an inference of deliberate indifference, a plaintiff must allege more than that a defendant acted negligently or should have known of the risk. *Pierson v. Hartley*, 391 F.3d 898 (7th Cir. 2004). He must allege facts that give rise to a reasonable inference that the official received information from which he or she could deduce that a substantial risk existed, *and* that the official actually drew that conclusion. *Id*. at 902. Accordingly, the court will not grant plaintiff leave to proceed against any defendants on Eighth Amendment claims related solely to his conditions of confinement. To the extent plaintiff can allege more specific facts that might satisfy the objective element of this claim *and* that defendants were aware of these constitutionally infirm conditions and ignored them, he may seek leave to amend his complaint again.

B. Serious medical need

However, plaintiff's allegations do support Eighth Amendment medical care deliberate indifference claims against multiple defendants. A prison official who violates the Eighth Amendment in the context of a prisoner's medical treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). "Serious medical needs" include: (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated; (2) withholding of medical care that results in needless pain and suffering; or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). "Deliberate indifference" encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures. *Forbes*, 112 F.3d at 266. Thus, a plaintiff's deliberate indifference claim will succeed if the answer to the following three questions is "yes."

1. Did plaintiff objectively need medical treatment?
2. Did defendants know that plaintiff needed treatment?
3. Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Plaintiff's medical care claims fall into two categories: (1) his alleged inability to obtain medical care while he was in isolation in the R&O building between January and May of 2016, and (2) his placement in a non-wheelchair accessible unit starting in June 2016.

Plaintiff claims that in February of 2016, when he was in the R&O building, he got sick from something he ate. His allegations that defendants Bortez, Goldsmith and Goodwin were each aware that he was very ill but refused to contact the HSU on his behalf are sufficient for him to proceed against these three defendants. However, plaintiff may not proceed on his allegations that: (1) Dr. Syed did not take corrective action when plaintiff reported his "uncomfortable" conditions of confinement; (2) Dr. Syed and DeYoung conspired to permit Goldsmith and Bortez to put a medicine in his food; or (3) Nurse DeYoung responded to his fall by taking his vitals and then bringing him back to his cell. Plaintiff alleges nothing more than his speculative belief that Dr. Syed and DeYoung were involved in allowing something harmful to be put in his food; absent factual underpinning supporting his belief, it would be unreasonable to infer that either defendant was personally responsible for plaintiff's sickness. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the alleged misconduct.") (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Furthermore, plaintiff's vague reference to Dr. Syed ignoring his complaints does not give rise to an inference that this defendant consciously disregarded plaintiff's need for medical treatment due to his conditions of confinement. The same is true with respect to DeYoung's handling of his medical care after a fall; plaintiff has not alleged that DeYoung ignored any obvious injuries or symptoms that needed more attention. Accordingly, these two defendants will be dismissed.

As for defendants Morgan, Pifzl and Gerry, it appears that plaintiff complained to them not only about the conditions of confinement generally, but also about his need for a wheelchair. This allegation gives rise to a reasonable inference that he alerted these defendants that his serious medical needs were not being met, which should have prompted them to follow-up with HSU staff about whether he needed access to a wheelchair while was in the R&O building. Of course, if fact-finding reveals that HSU staff had determined that plaintiff should *not* have access to a wheelchair and these defendants deferred to that judgment call, then these defendants could not be held liable for deliberate indifference. *See King v. Kramer*, 680 F.3d 1013, 1018 (7th Cir. 2012) (nonmedical officers may be found deliberately indifferent if "they have a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner") (citation omitted). Yet at the screening phase, when the court must resolve every ambiguity in plaintiff's favor, since it may be reasonable to infer that Morgan, Pifzl and Gerry simply ignored plaintiff's requests for a wheelchair, plaintiff's allegations support an inference of deliberate indifference.

As for the defendants involved in his medical care when he was moved to general population in June of 2016, the court will grant plaintiff leave to proceed against Schmidtknecht, Gohde, Peters, Mitchell, Ziggler, Procknow and Gambaro. Plaintiff alleges that once he was moved onto Unit #5 of the general population unit, each of these defendants was aware that he needed to be placed in a wheelchair accessible unit and failed to take corrective action. Taking plaintiff's assertion that he needed access to a wheelchair or walker as true, these allegations are sufficient to permit an inference that each defendant

responded to that need with deliberate indifference, so the court will allow plaintiff to proceed on this claim against them.

However, the court will not grant plaintiff leave to proceed against defendant CO Bates, who allegedly consulted with HSU about plaintiff's placement and was told that plaintiff was appropriately placed. Although ultimately the HSU's response could be faulted, as a correctional officer Bates was entitled to defer to their decision, so long as he did not outright ignore plaintiff's complaint. *See Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010) (jail administrator, who consulted with medical staff, forwarded inmate's concerns to medical staff, and timely responded to inmate's complaints was entitled to defer to jail health professionals "so long as he did not ignore" the inmate). Since Bates did not ignore plaintiff's stated need to be in a wheelchair accessible unit, plaintiff may not proceed on a deliberate indifference claim against him.

Nor may plaintiff proceed against defendant Leiser, who allegedly processed plaintiff's inmate complaints. ICE Leiser cannot be held liable under § 1983 because plaintiff disagrees with how she processed his inmate complaints about his medical care. Indeed, ruling against a prisoner on an inmate complaint does not qualify as personal involvement in a constitutional violation, and it is not sufficient to state a claim. *McGee v. Adams*, 721 F.3d 474, 485 (7th Cir. 2013); *George v. Smith*, 507 F.3d 605, 609-10 (7th Cir. 2007) ("Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation."); *see also Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) ("Prison grievances procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged

mishandling of Owen's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim.").

In summary, the court will grant plaintiff leave to proceed on Eighth Amendment deliberate indifference claims against defendants Bortez, Goldsmith, Goodwin, Morgan, Pifzl, Gerry, Schmidtknecht, Gohde, Peters, Mitchell, Ziggler, Procknow and Gambaro, as provided above, but the court is denying him leave to proceed against defendants Bates and Leiser. Although plaintiff's allegations were sufficient to survive screening, plaintiff should be aware that he faces an uphill battle at summary judgment or trial. For example, at summary judgment or trial, it will be plaintiff's burden to show that a reasonable jury could find in his favor on each element of his claim. *Henderson v. Sheahan*, 196 F.3d 839, 848 (7th Cir. 1999). This may even require his introducing expert opinions that only a medical doctor can provide. *See Ledford v. Sullivan*, 105 F.3d 354, 358-59 (7th Cir. 1997) (distinguishing between deliberate indifference cases where an expert is unnecessary and those where the jury must consider "complex questions concerning medical diagnosis and judgment").

II. Americans with Disabilities Act

The court understands plaintiff to be pursuing a claim under the ADA, 42 U.S.C. §§ 12131-12134, and Rehabilitation Act, 29 U.S.C. § 701 *et seq. See Norfleet v. Walker,* 684 F.3d 688, 690 (7th Cir. 2012) (noting uncertainty as to whether ADA violations that do not implicate constitutional rights may be brought in federal court and suggesting district courts read in a Rehabilitation Act claim). The ADA prohibits discrimination

against qualified persons with disabilities. To establish a violation of Title II of the ADA, a plaintiff "must prove that he is a 'qualified individual with a disability,' that he was denied 'the benefits of the services, programs, or activities of a public entity' or otherwise subjected to discrimination by such an entity, and that the denial or discrimination was 'by reason of' his disability." *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015) (citing *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 560 (7th Cir. 1996) (citing 42 U.S.C. § 12132)). The Rehabilitation Act is substantially identical to the ADA; it provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). A claim under § 504 of the Act has four elements: (1) an individual with a disability; (2) who was otherwise qualified to participate; (3) but who was denied access solely by reason of disability; (4) in a program or activity receiving federal financial assistance. *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 671 (7th Cir. 2012).

For purposes of screening, the court assumes that plaintiff's need for a wheelchair rendered him a qualified individual with a disability, as defined by the ADA and Rehabilitation Act. The court will also accept that Columbia accepts federal financial assistance. Finally, it is reasonable to infer, at least at this stage, that plaintiff was denied access to the same measure of resources as other Columbia inmates because he was not placed in an ADA-compliant unit. Although fact-finding may reveal that plaintiff's condition was not so debilitating to render him disabled under these statutes, the court is satisfied that plaintiff's allegations satisfy the pleading standard of an ADA/Rehabilitation

Act claim. Accordingly, plaintiff may proceed on this claim against defendant Warden Dittman in his official capacity, since the only appropriate defendant for an ADA/Rehabilitation Act claim is the agency responsible for the regulation in question or its director in his official capacity. *See Jaros v. Ill. Dep't of Corr.*, 684 F.3d 667, 671-72 (7th Cir. 2012) (citing 29 U.S.C. § 794(b); 42 U.S.C. § 12131; *Foley v. City of Lafayette*, 359 F.3d 925, 928 (7th Cir. 2004)).

III. State Law Claims

Finally, plaintiff seeks to proceed on Wisconsin negligence claims against defendants. The court may exercise supplemental jurisdiction over these claims. 28 U.S.C. § 1367(a) ("[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). As an initial matter, the court will decline to exercise jurisdiction over the state law tort claims against Rewey, Strahota, Julsen, Miller, Dr. Frish, Roeker, Syed, DeYoung, Leiser and Bates, since the Eighth Amendment claims against them have been dismissed. *See Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) (affirming trial court's dismissal of plaintiff's state law claims for lack of jurisdiction after parallel federal claims had been dismissed). These defendants will be dismissed from this lawsuit.

However, having screened the remaining Eighth Amendment claims to proceed, the court will also exercise its supplemental jurisdiction over plaintiff's negligence claims against defendants Bortez, Goldsmith, Goodwin, Morgan, Pifzl, Gerry, Schmidtknecht, Gohde, Peters, Mitchell, Ziggler, Procknow and Gambaro. Under Wisconsin law, the

elements of a cause of action in negligence are: (1) a duty of care or a voluntary assumption of a duty on the part of the defendant; (2) a breach of the duty, which involves a failure to exercise ordinary care in making a representation or in ascertaining the facts; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 307 (1987). At least for screening purposes, plaintiff's allegations outlined above support a reasonable inference that the remaining defendants' failure to respond to plaintiff's complaints of pain and need for a wheelchair constituted a breach of their respective duty of care *and* caused him prolonged, unnecessary pain. Accordingly, the court will grant plaintiff leave to proceed on negligence claims against these defendants as well.

IV. Moffett's Motions (dkt. ##24, 31)

In his first motion, Moffett seeks clarification of the court's previous order in this lawsuit. Moffett notes a clerical error in the court's prior order, and he asks that the court clarify the statute of limitations that the court noted on page 7 of the October 11, 2019, order. The court acknowledges the clerical error and corrects the case number in the caption. However, the court cannot provide more information to Moffett about the statute of limitations that might apply to lawsuits he voluntarily dismisses; the court's prior order was simply advising him to consider the applicable statutes of limitation with respect to any lawsuits that he voluntarily dismisses and seeks to refile.

Moffett also objects to the court's conclusion that his prior complaint in this lawsuit violated Rule 20, since it would be difficult for him to craft additional complaints. The court notes his objection but overrules it. Although it might be difficult for Moffett to

draft new complaints to pursue the lawsuits he outlined in his prior complaint, the Federal Rules of Civil Procedure simply do not permit him to group all his grievances against 48 defendants into one lawsuit. Finally, Moffett raises a concern that prison officials are attempting to prevent him from litigating other lawsuits by taking money from his prison trust account. However, Moffett has not alleged that he is unable to file any other lawsuits, and the court notes that Moffett has successfully filed three other lawsuits in this court since he filed this motion. *See Moffett v. Dittmann*, No. 20-cv-9-wmc; *Moffett v. Haag*, No. 20-cv-16-wmc; *Moffett v. Dittman*, No. 20-cv-21-wmc. Accordingly, the court grants this motion insofar as it clarifies that the case number of this lawsuit is 18-cv-656-wmc, but denies all his other requests for relief.

In his second motion, Moffett raises concerns about the current conditions of his confinement at WSPF. (Dkt. #31.) Moffett believes that he has been retaliated against for filing several lawsuits related to his conditions of confinement, alleges that the psychological toll of the COVID-19 pandemic has rendered incapable of litigating any of his lawsuits and that staff at WSPF have been preventing him from litigating his cases in this court and in the Eastern District of Wisconsin. Due to this confluence of events, Moffett says that he is no longer capable of litigating any of his lawsuits. However, he does not seek dismissal of this or any other lawsuit, and instead appears to be asking this court to recruit counsel for him, as well as to order his transfer to a correctional institution outside the State of Wisconsin. The court is denying both requests.

As to his former request, civil litigants have no constitutional or statutory right to the appointment of counsel. *E.g., Ray v. Wexford Health Sources, Inc.,* 706 F.3d 864, 866

(7th Cir. 2013); *Luttrell v. Nickel,* 129 F.3d 933, 936 (7th Cir. 1997). The court may, however, use its discretion to determine whether to help recruit counsel to assist an eligible plaintiff who proceeds under the federal in forma pauperis statute. *See* 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent an indigent civil litigant *pro bono* publico.") Moffett is proceeding *in forma pauperis*, so he is eligible for recruitment of counsel.

Before deciding whether to recruit counsel, a court must find that the plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). Moffett has not submitted such evidence, and this court typically requires *pro se* litigants to contact at least three attorneys about representation. Therefore, the court will deny this request for that reason, and because recruitment of counsel is not warranted at this stage in the lawsuit.

The central question is "whether the difficulty of the case -- factually and legally -- exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). So far, only screening has been completed in this case. The court will schedule a telephonic preliminary pretrial conference soon, at which point Magistrate Judge Stephen Crocker will set this lawsuit for trial and provide an outline for how this lawsuit will proceed. Shortly after that hearing, Moffett will receive an order that memorializes the trial schedule and provides further details about how the parties will litigate this case. Moffett should use that order -- as well as the materials attached to that order providing additional guidance -- as a guide going forward. At this point in this lawsuit, when Moffett has shown his ability to

understandably outline his claims in his complaint, the court is not persuaded that the demands of this lawsuit exceed his abilities. Accordingly, the court is denying this motion. The denial will be without prejudice to Moffett's ability to review it, provided that any renewed motion details the specific challenges he is facing that he believes warrants recruitment of counsel.

As for his request for a transfer to another institution, Moffett's claims in this lawsuit do not relate to his current conditions of confinement. In the highly unlikely event that Moffett could show entitlement to such an extraordinary form of relief, it would not be proper for this court to take up any request for preliminary injunctive relief in this lawsuit.

ORDER

IT IS ORDERED that:

1) Plaintiff Walter J.D. Moffett is GRANTED leave to proceed on:

    (a) Eighth Amendment deliberate indifference and Wisconsin negligence claims against Bortez, Goldsmith, Goodwin, Morgan, Pifzl, Gerry, Schmidtknecht, Gohde, Peters, Mitchell, Ziggler, Procknow and Gambaro, as provided above.

    (b) An ADA/Rehabilitation Act claim against defendant Warden Dittman, in his official capacity.

2) Plaintiff is DENIED leave to proceed on any other claims, and defendants Rewey, Strahota, Julsen, Miller, Dr. Frish, Roeker, Syed, DeYoung, Leiser and Bates are DISMISSED.

3) 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 the defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

4) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendants or to defendants' attorney.

5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6) If plaintiff is transferred or released from custody while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

7) Plaintiff's motion for clarification (dkt. #24) is GRANTED in part and DENIED in part, as provided above.

8) Plaintiff's motion regarding lawsuits and issues at the institution (dkt. #31) is DENIED.

Entered this 30th day of March, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge