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

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SONNIEL R. GIDARISINGH,

Plaintiff,

v.

TRAVIS BITTELMAN, SGT. MILLONIG, COII RICKY, COII WITTERHOLT, SGT. HOOPER, NURSE KIM CAMPBELL, CAPT. BRIAN FRANSON, SGT. JULSON, SGT. CASIANO, NURSE DENISE VALERIUS, COII B. NEUMAIER, SANDRA HAUTAMAKI, ANTHONY ASHWORTH, JANEL NICKEL, MR. ZIEGLER, TIM DOUMA, and LT. BOODRY,

Defendants.

OPINION AND ORDER

12-cv-916-wmc

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In this proposed civil action, plaintiff Sonniel R. Gidarisingh alleges that various correctional officers, nurses and other employees of Columbia Correctional Institution ("CCI"), violated his rights under the First, Eighth and Fourteenth Amendments of the United States Constitution by acting with deliberately indifference to his medical needs, retaliating against him after he lodged complaints about their failure to provide treatment, using excessive force against him either as part of his retaliation claim or as a stand-alone claim, and denying him due process as part of the prison disciplinary system. Gidarisingh requested leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Gidarisingh has provided, the court concluded that he was unable to prepay the full fee for filing this lawsuit. Gidarisingh has since made the initial partial payment of $81.10 required of him under § 1915(b)(1).

Because Gidarisingh was incarcerated at the time he filed the complaint, this court must screen the merits of his complaint and dismiss any aspect of the complaint that is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. The court finds Gidarisingh meets this step as to certain defendants and claims, and therefore he will be allowed to proceed and the state required to respond.[1]

## ALLEGATIONS OF FACT

In addressing 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). In his complaint, Gidarisingh alleges, and the court assumes for purposes of this screening order, the following facts:

### A. Events of June 23, 2012: Initial and Continued Denial of Medical Treatment and Assault

- On June 21, 2012, Gidarisingh was seen by Dr. Suliene, who restored his medication for Gastroesophageal reflux disease ("GERD"). (Compl. (dkt. #1) ¶ 2.) GERD is a chronic "digestive disease that occurs when stomach acid or, occasionally, bile flows back (refluxes) into your food pipe (esophagus). The backwash of acid irritates the lining of your esophagus and causes GERD signs and symptoms." Mayo Clinic GERD Definition, available at http://www.mayoclinic.com/health/gerd/DS00967 (last visited Oct. 16, 2013).

- Plaintiff claims that on or about June 22 and 23, 2012, he began experiencing severe heart and chest pain.

- On the morning of June 23, 2012, Gidarisingh alerted COII Travis Bittelman, COII Witterholt, and Sgt. Millonig that he was experiencing severe heart and

[1] Also before the court is Gidarisingh's motion for the court's assistance in recruitment of counsel (dkt. #5), which the court will deny at this time for the reasons provided at the end of this opinion.

chest pain and asked to be seen by the prison health services unit ("HSU") staff. Plaintiff alleges that all three "intentionally ignored [his] repeated request[s] for medical attention." (Compl. (dkt. #1) ¶ 7.)

- That same day, plaintiff also alleges that he saw Nurse Kim Campbell walking around the DS-1 Segregation Unit, where he was housed, but that she too refused to see him to conduct a medical assessment or provide treatment.

- Around 1:00 p.m. that same day, Gidarisingh again requested medical treatment from Bittelman, who responded that "you seem alright to me, cause you are talking to me" and also said that he "doesn't care" about plaintiff's medical concerns. (*Id.* at ¶¶ 11, 13.)

- At that time, plaintiff alleges that he informed Bittelman that he was going to file a complaint against him, Witterholt, Millonig and Campbell for denying him medical attention. Gidarisingh alleges that Bittelman responded, "Go ahead you piece of shit." (*Id.* at ¶ 15.) In response, Gidarisingh called Bittelman a "racist honkey." (*Id.* at ¶ 16.) Bittelman allegedly responded, "I am going to show you who is a honkey," and walked away from plaintiff's cell. (*Id.* ¶ 17.)

- Approximately 40 minutes later, at about 1:40 p.m., Bittelman approached plaintiff's cell and asked plaintiff if he wanted a shower. Plaintiff also alleges that Bittelman skipped other inmates' cells before approaching his.

- After plaintiff was handcuffed and backed out of his cell in accordance with policy, Bittelman allegedly took hold of Gidarisingh's left bicep, asked him "whose a honkey now?" and then punched him repeatedly in the face. (*Id.* at ¶ 24.) Bittelman then allegedly slammed plaintiff into the floor. While Bittelman had Gidarisingh in a headlock, he jammed his right thumb into plaintiff's left eye, gouging his eye and causing significant pain. Plaintiff also alleges that Bittelman squeezed his neck causing pain and cutting off airflow.

- Gidarisingh alleges that Witterholt -- who unlocked plaintiff's cell door and was present for the alleged assault -- then joined in the assault by grabbing Gidarisingh's legs and punching plaintiff in the testicles.

- COII Ricky then arrived and allegedly struck plaintiff with his knee in plaintiff's right side and then knelt down and jammed his fist in the middle of his back causing significant pain.

- Plaintiff alleges that Capt. B. Franson watched the assault and did not intervene to protect Gidarisingh.

- Plaintiff alleges that at some point he lost consciousness and was awakened by guards yelling at him to walk and by being pulled up and shaken by guards. Plaintiff contends that he was then escorted to the observation shower, while blood was leaking from his left eye onto his check. At this point, he was chained with a bullstrap to the shower door with both leg shackles and handcuffs on.

- Plaintiff alleges that Ricky then pulled off his clothes, leaving him naked outside of the shower area in sight of other guards and inmates. Gidarisingh also alleges that Ricky provided him no opportunity to comply with the strip search procedure.

- While in this location, plaintiff attempted to tell Franson that he could not see out of his eye, at which point Franson "sadistically and maliciously pushed plaintiff['s] head," causing his face to strike the door and yelled at him to "shut up." (Compl. (dkt. #1) ¶ 32.)

- Plaintiff alleges that he also asked for medical attention, but was left in the observation shower naked, chained to the shower door, with handcuffs and shackles for about thirty minutes.

- After thirty minutes, Nurse Campbell and Franson entered the shower observation area. Gidarisingh alleges that "Campbell looked at plaintiff['s] nakedness, smirked and walked away without assessing plaintiff['s] left eye." (*Id.* at ¶ 34.)

**B. Events of June 23-24, 2012: Placement on "Control Status," Continued Denial of Medical Treatment, and Cruel Conditions**

- Plaintiff alleges that he was then escorted by Ricky and Franson -- still naked, after having been denied a cover-up -- past other inmates and guards to cell #45 in DS-1. Plaintiff was also placed on "control status," which he contends was an attempt to make it seem like he had resisted during the attack or otherwise exhibited destructive behavior.

- Once in cell #45, plaintiff alleges that he repeatedly made requests for medical attention to Capt. Casiano, Franson, Lt. Boodry,[2] COII Julson, Sgt. Millonig, COII Witterholt, and Sgt. Hooper, which were denied.

[2] Boodry is not listed as a defendant in the caption of plaintiff's complaint, though from the allegations in the complaint it appears plaintiff intended to list him as a defendant in

- Plaintiff also repeatedly asked Casiano, Franson, Julson, Sgt. Hooper, and Boodry for a blanket because of the "extreme cold air coming out the air condition vent," which was denied. Plaintiff alleges that he suffered from extreme pain in his left eye, neck and back pain and excess cold throughout the night.

- Plaintiff was released from control status around 4:00 p.m. the next day, June 24, 2012.

**C. Filing of Complaints**

- Plaintiff alleges that on June 25, 2012, he filed complaints about the excessive force, denial of medical treatment and cruel conditions while on control status with Warden Michael Meisner, Security Director Janel Nickel, Segregation Unit Manager Anthony Ashworth, and HSU Manager Karen Anderson.

- Also on June 25, 2012, plaintiff allegedly submitted a complaint to the Wisconsin Department of Corrections, Division of Adult Institution Administrator, Cathy Jess, complaining of excess force, denial of medical treatment, and subjecting plaintiff to unnecessary pain, including the denial of a blanket while on controlled status.

- Plaintiff alleges in his complaint that Bittelman has a propensity to use excessive force and Campbell has a propensity to be deliberately indifferent, and that higher level officials at Columbia Correctional Institution were aware of this history.

- On June 28, 2012, plaintiff received a response from Warden Meisner, advising him that he must submit a "SPN request" to Nickel against Bittelman, Witterholt and Ricky, but that the incident Gidarisingh described was under review.

**D. Subsequent Requests for Medical Care**

- On June 25, 2012, Gidarisingh alleges that he also filed an HSU request, Doc-3055 form, for medical treatment for his left eye. That same day, he filed an HSU request for treatment of his heart and chest pains as well.

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the caption. Accordingly, the court will amend the caption to include Lt. Boodry as a defendant.

- The next day, on June 26, 2012, Gidarisingh received a pink copy response from Nurse Thorne, indicating that plaintiff was scheduled to be seen for his left eye, back and neck pain, and heart and chest pain.

- On July 3, 2012, plaintiff submitted two additional HSU requests, asking why he had not been seen yet.

- On July 5, 2012, plaintiff received a pink form from an unknown nurse which stated that he had refused an appointment on June 27, 2012. Plaintiff contends that he never refused an appointment. After filing a complaint about this alleged false statement, plaintiff learned that Nurse Denise Valerius was the individual who documented his supposed refusal of an appointment.

- Plaintiff alleges that Campbell, Bittelman, and Neumaier conspired with Valerius to deny him medical treatment on June 27, 2012, in order to cover up plaintiff's injuries.

- On July 9, 2012, plaintiff finally received medical treatment, including eye drops. He contends that he still suffers pain in his eye, back and neck from the alleged June 23, 2012, assault.

**E. Conduct Reports against Gidarisingh**

- On June 23, 2012, Bittelman submitted a conduct report #2159939 charging plaintiff with battery, threats and disobedience. Plaintiff contends that the report and charges were false and a further effort to cover up Bittelman's attack of plaintiff.

- On July 13, 2012, Capt. D. Morgan and Mr. Ziegler found plaintiff guilty of all charges in conduct report #2159939, and punished him with 300 days in segregation. Plaintiff contends that the finding of guilt was also in retaliation for his prior complaints.

- On July 15, 2012, plaintiff appealed the charges and disposition to Warden Meisner.

- On August 30, 2012, Deputy Warden Timothy Douma affirmed the charges and disposition. Plaintiff also alleges that Douma retaliated against him in rendering this decision.

- On September 5, 2012, a second conduct report, #2250976, was brought against Gidarisingh for lying about staff. Plaintiff alleges that this report was also false. Plaintiff further alleges that Casiano, Franson, Millonig, Bittelman,

Campbell, Nickel, Morgan and Sandra Hautamaki were all involved in this conduct report, having conspired in retaliation for his prior complaints.

- Plaintiff alleges that Nickel allowed Casiano to conduct the investigation into the September 5, 2012, conduct report, despite his involvement in the June 2012 incidents.

- Plaintiff also complains about procedural issues with the disciplinary hearing, which appears to have been conducted by Hautamaki and Morgan.

- For this second conduct report, plaintiff received 210 days in segregation. Deputy Warden Douma also affirmed this finding and punishment on appeal.

OPINION

## I. Screening Order

### A. Failure to Provide Medical Treatment

Plaintiff complains first that certain defendants violated his Eighth Amendment rights and acted negligently in violation of state law by denying him medical treatment. As the court understands it, this claim covers three time periods: (1) June 23rd requests for medical attention due to chest and heart pain, which preceded an attack on his person; (2) June 23rd and 24th requests for treatment of an injured eye and for neck and back pain caused by the alleged attack; and (3) subsequent requests for medical treatment of eye, neck and back, and chest and heart.

#### i. Eighth Amendment Claim

The Eighth Amendment prohibits prison officials from showing deliberate indifference to prisoners' serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To state a deliberate indifference claim, a plaintiff must allege facts from which it may be inferred that he had a serious medical need and that prison officials were deliberately indifferent to that need. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th

Cir. 1997). Here, Gidarisingh claims that defendants Bittelman, Witterholt, Millonig, Campbell, Casiano, Franson, Boodry, Julson, Hooper, and Valerius were deliberately indifferent in their treatment of his heart and chest pain, as well as an injured eye, neck and back.

"Serious medical needs" include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated, (2) those in which the deliberately indifferent withholding of medical care results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez*, 111 F.3d at 1371-73. A prison official has acted with deliberate indifference when the official "knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk." *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006) (citing *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002)).

The court will allow Gidarisingh to proceed on his Eighth Amendment claim against the nine defendants identified above. Plaintiff alleges that on the morning of June 23, 2012, plaintiff asked the correctional officer defendants Bittelman, Witterholt, and Millonig to be seen by HSU because of severe heart and chest pains he was experiencing, and they refused to allow him to be seen. Plaintiff also alleges that defendant Nurse Campbell refused him treatment for his GERD, while she was in the segregation unit where Gidarisingh was housed.

After the attack, which also occurred on June 23, 2012, Gidarisingh alleges that he requested medical treatment. Campbell entered the shower observation area where Gidarisingh was being held but did not assess his eye. Later that day and into the next,

plaintiff alleges that he made multiple requests for medical attention for his eye, neck and back to defendants Casiano, Franson, Boodry, Julson, Millonig, Witterholdt and Hooper, and all ignored his requests.

Lastly, plaintiff alleges that on June 25, 2012, he completed an HSU request for medical treatment of his eye and a separate request for treatment of his heart and chest pains. Plaintiff was not seen until July 9, 2012. Gidarisingh further alleges that Nurse Valerius denied him a scheduled appointment on June 26, 2012. (This claim is also part of plaintiff's broader retaliation claim that he was denied medical treatment in order to cover up his injuries from the alleged assault or as further retaliation for his statement that he was going to file a complaint about the initial denial of medical treatment for his GERD on June 23, 2012.)

While Gidarisingh's allegations against defendants Bittelman, Witterholt, Millonig, Campbell, Casiano, Franson, Boodry, Julson, and Hooper pass muster under the court's lower standard for screening, he should be aware that to be successful on his claim, he will have to prove defendants' deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Gidarisingh's burden to prove: (1) his medical conditions constituted serious medical needs, which may well require expert testimony rebutting medical evidence to the contrary; and (2) perhaps even more daunting, that the defendants knew his condition was serious and deliberately ignored his condition and related pain.

### ii. Negligence Claim

Plaintiff also asserts state law negligence claims against the same defendants for their failure to provide medical treatment.[3] Except for Nurses Campbell and Valerius, the defendants are not medical professionals. As such, the claim against the correctional officer defendants is simply a standard negligence claim. Under Wisconsin law, "a claim of negligence has four elements: (1) the existence of a duty of care on the part of the defendant; (2) a breach of that duty of care; (3) a causal connection between the defendant's breach of the duty of care and the plaintiff's injury; and (4) actual loss or damage resulting from the injury." *Lees v. Carthage College*, 714 F.3d 516, 522 (7th Cir. 2013) (citing *Hornback v. Archdiocese of Milwaukee*, 313 Wis. 2d 294, 752 N.W.2d 862, 867 (2008)). As for the two nurse defendants, "[u]nder Wisconsin law, medical malpractice has the same ingredients as garden-variety negligence claims: the plaintiff must prove that there was a breach of a duty owed that results in an injury." *Gil v. Reed*, 535 F.3d 551, 557 (7th Cir. 2008) (citing *Paul v. Skemp*, 242 Wis. 2d 507, 625 N.W.2d 860, 865 (2001)).

The allegations in support of plaintiff's Eighth Amendment denial of medical treatment claims as described above are adequate to support plaintiff's negligence claim. In pursuing a medical malpractice claim, Gidarisingh should be aware that "[i]n the medical malpractice setting, Wisconsin requires *expert* testimony to establish medical

[3] Plaintiff alleges that he filed a timely notice of claim with the Wisconsin Attorney General Office within the 120-day time limit, preserving this negligence claim and his other state tort claims.

negligence except in situations where the errors were of such a nature that a layperson could conclude from common experience that such mistakes do not happen if the physician had exercised proper skill and care." *Gil v. Reed*, 381 F.3d 649, 658-59 (7th Cir. 2004).

**B. June 23rd Alleged Attack**

**i. Excessive Force**

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force "was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. *Whitley v. Albers*, 475 U.S. 312, 321 (1986); *Outlaw v. Newkirk*, 259 F.3d 833, 837 (7th Cir. 2001).

Here, Gidarisingh alleges that Bittelman, Witterholt, and Ricky were unprovoked and used sufficient force during the alleged assault on June 23, 2012, to injure his eye, neck and back. At this early stage of the proceedings, Gidarisingh's allegations are sufficient to state a claim of excessive force under the Eighth Amendment against these

three defendants. Gidarisingh should be aware, however, that to be successful on this claim he will have to prove that defendants used force maliciously and sadistically to cause him harm. *See Hudson*, 503 U.S. at 6-7.

**ii. Battery**

Plaintiff also seeks to bring a tort claim of battery against the same defendants based on the June 23, 2012, alleged assault. Under Wisconsin law, "to establish that a battery has occurred a plaintiff must establish the following three elements: (1) an unlawful use of force or violence upon another; (2) the intentional direction of such force or violence at the person of another; and (3) bodily harm sustained on the part of the person against whom such force or violence is directed." *Vandervelden v. Victoria*, 177 Wis. 2d 243, 249, 502 N.W.2d 276, 278 (Ct. App. 1993) (citing Wis J I-Civil 2005). The court finds Gidarisingh's allegations that Bittelman, Witterholt, and Ricky physically assaulted him without provocation on June 23, 2012, sufficient to make out a battery claim under Wisconsin law.

**C. Failure to Protect**

Next, Gidarisingh alleges that CCI Captain Franson watched the assault and did nothing to protect Gidarisingh. Plaintiff also alleges that defendants Ashworth, Nickel and Morgan knew about Bittelman's propensity toward violence and Campbell's propensity toward ignoring prisoner's serious medical needs, yet failed to protect him from both. In a case alleging an official's failure to protect a prisoner from harm, "[t]he inmate must prove a sufficiently serious deprivation, *i.e.*, conditions which objectively

'pos[e] a substantial risk of serious harm.'" *Pope v. Shafer*, 86 F.3d 90, 92 (7th Cir. 1996). In addition, the inmate must prove that the prison official acted with deliberate indifference to the inmate's safety, "effectively condon[ing] the attack by allowing it to happen." *Langston v. Peters*, 100 F.3d 1235, 1237 (7th Cir. 1996) (quoting *Haley v. Gross*, 86 F. 3d 630, 640 (7th Cir. 1996)). Plaintiff's allegations -- that Franson watched the assault and failed to intervene and that Ashworth, Nickel and Morgan were aware of Bittelman and Campbell's history of inmate complaints and failed to protect him -- are sufficient to state a claim against all four defendants, at least at the screening stage.

**D. Conditions of Confinement**

To state a conditions of confinement claim under the Eighth Amendment, a plaintiff must satisfy a test that involves both a subjective and objective component. *Farmer*, 511 U.S. at 834. Gidarisingh alleges two such claims. First, Gidarisingh alleges that certain defendants violated his Eighth Amendment rights by holding him naked outside of the shower facility. Second, Gidarisingh alleges that certain defendants violated his Eighth Amendment rights by denying him a blanket. The court addresses each claim in turn.

**i. Being Held Naked**

After the assault, Gidarisingh alleges (1) defendant Ricky pulled off his clothes and left him naked, handcuffed and shackled, outside of the shower area in sight of other guards, inmates, and Nurse Campbell for approximately thirty minutes; and (2) Ricky and Franson then escorted him naked past other guards and inmates to the control status cell. In *Johnson v. Phelan*, 69 F.3d 144, 146 (7th Cir. 1995), the Court of Appeals for the

Seventh Circuit left no room for future challenges to a prison official observing inmates nude. *See also Bell v. Wolfish*, 441 U.S. 520, 537 (1979) ("Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility."). Still, removing an inmate's clothing and leaving him exposed for an extended period of time in view of other inmates for the purpose of shaming or humiliating him may form the basis of a conditions of confinement claim. *See Mays v. Springborn*, 575 F.3d 643, 649-50 (7th Cir. 2009) (explaining that strip searches can form the basis of a constitutional challenge if "conducted in a harassing manner intended to humiliate and cause psychological pain"). As such, the court will grant plaintiff leave to proceed against defendants Ricky and Franson on a claim that these defendants violated his Eighth Amendment rights.

**ii. Denial of a Blanket**

Gidarisingh alleges that defendants Casiano, Franson, Julson, Hooper, and Boodry violated his Eighth Amendment rights by denying his repeated requests for a blanket, subjecting him to the "extreme cold air coming out the air condition vent" for the night that he was held in control status. The Eighth Amendment requires prison officials to "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994). This includes the right to adequate shelter and protection from "extreme" cold. *Dixon v. Godinez*, 114 F.3d 640, 642 (7th Cir. 1997). For Eighth Amendment claims based on low cell temperature, courts examine a variety of factors, including "the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as

whether he must endure other uncomfortable conditions as well as cold." *Dixon*, 114 F.3d at 644.

Plaintiff alleges that he was held in a cell with an over-productive air conditioning vent for one night. On its face, this allegation is insufficient to satisfy the objective component of an Eighth Amendment claim, which requires plaintiff to allege that "the conditions at issue were sufficiently serious so that a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities." *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008) (internal quotations omitted). Cases where the courts have found a conditions of confinement claim premised on being subjected to cold temperatures typically involve significantly harsher conditions than those alleged here. *See generally Johnson v. Lappin*, 264 Fed. Appx. 520, 523-24, No. 07-1465, 2008 WL 397575, at *2 (7th Cir. Feb. 13, 2008) (describing several cases where conditions involved freezing temperatures and/or long periods of time housed in extreme cold). While the court will, therefore, deny Gidarisingh leave to proceed on his conditions of confinement claim premised on the denial of a blanket, this holding does not foreclose plaintiff from arguing that defendants' actions in allegedly leaving him beaten and naked in a cold cell without even a blanket may constitute adverse actions in support of Gidarisingh's retaliation claim.

**E. First Amendment Retaliation**

Finally, Gidarisingh alleges a First Amendment retaliation claim against a number of defendants for retaliating against him after threatening to file a complaint about their

denial of medical treatment on June 23rd and after his subsequent written complaints about the continued denial of medical care and the June 23rd attack. Gidarisingh alleges that (1) defendants Bittelman, Witterholt and Franson attacked him on June 23rd; (2) defendants Valerius, Campbell, Neumaier, and Bittelman denied him medical treatment; and (3) defendants Bittelman, Morgan, Ziegler, Douma, Casiano, Franson, and Hautamaki issued and adjudicated conduct reports all in retaliation for his complaining about this denial of medical care and attack.

"An act taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000). To state a claim for retaliation under the First Amendment, Gidarisingh must allege that: (1) he was engaged in a constitutionally protected activity; (2) he suffered a deprivation that would likely deter a person from engaging in the protected activity in the future; and (3) the protected activity was a motivating factor in defendants' decision to take retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) (citing *Woodruff v. Mason*, 542 F.3d 545, 551 (7th Cir. 2008)). The court finds that plaintiff's allegations of retaliation are sufficient to make out this claim as well.

A prisoner's right to use available grievance procedures has been recognized as a constitutionally protected activity. *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005). Gidarisingh alleges that he submitted written complaints about the denial of medical treatment. Moreover, Gidarisingh alleges that he verbally complained to Bittelman about the lack of care and his plans to file a written grievance. These allegations are sufficient to find Gidarisingh's June 23, 2013, verbal complaint sufficient to find it protected

speech because it is "in a manner consistent with legitimate penological interests." *Watkins v. Kasper*, 599 F.3d 791, 794-95 (7th Cir. 2010) (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987) (prison regulation restricting speech is valid if "reasonably related to legitimate penological interests")).[4] Plaintiff further alleges adverse actions -- the June 23rd assault, continued denial of medical care, and being subjected to disciplinary proceedings -- sufficient to support a finding that a reasonable person would be deterred from engaging in protected speech going forward. Lastly, plaintiff adequately alleges that defendants were motivated by his complaints about a lack of medical care and the attack in retaliating against him. Accordingly, the court will also grant plaintiff leave to proceed on a First Amendment retaliation claim against the defendants listed above.

[4] Gidarisingh's calling Bittelman a "racist honkey" (Compl. (dkt. #1) ¶ 16), however, is not protected and cannot form the basis of Gidarisingh's retaliation claim. *See Lockett v. Suardini*, 526 F.3d 866, 874 (6th Cir. 2008) (prisoner's foul comment to prison official that was "insulting, derogatory, and questioned her authority" was unprotected speech); *Freeman v. Texas Dept. of Criminal Justice*, 369 F.3d 854, 864 (5th Cir. 2004) (public rebuke of prison chaplain that incited fifty prisoners to walk out of church service was inconsistent with prison discipline); *Ustrak v. Fairman*, 781 F.2d 573, 580 (7th Cir. 1986) (punishing an inmate for calling prison officers "stupid lazy assholes" did not violate the First Amendment).

In sum, plaintiff will be allowed to proceed against the following defendants as to the following causes of action:

| Claim | Defendants |
|---|---|
| Deliberate indifference to serious medical needs under the Eighth Amendment | Bittelman, Witterholt, Millonig, Campbell, Casiano, Franson, Boodry, Julson, Hooper, and Valerius |
| Negligence with respect to denial of medical treatment | Bittelman, Witterholt, Millonig, Campbell, Casiano, Franson, Boodry, Julson, Hooper, and Valerius |
| Excessive force in violation of the Eighth Amendment | Bittelman, Witterholt, and Ricky |
| Battery with respect to June 23rd attack | Bittelman, Witterholt, and Ricky |
| Failure to protect in violation of the Eighth Amendment | Franson, Ashworth, Nickel and Morgan |
| Conditions of confinement based on being held naked in violation of the Eighth Amendment | Ricky and Franson |
| First Amendment retaliation | Bittelman, Witterholt, Valerius, Campbell, Neumaier, Morgan, Ziegler, Douma, Casiano, Franson, and Hautamaki |

**II. Motion to Assist in Recruiting Counsel**

Litigants in civil cases do not have a constitutional right to a lawyer. Federal judges have discretion to determine whether assistance in the recruitment of counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). In determining whether to assist Gidarisingh, the court must first find that plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful, or that he has been prevented from making such efforts. *Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1073 (7th Cir. 1992). To prove that assistance in recruiting counsel is necessary, Gidarisingh must (1) give the court the names and addresses of at least three lawyers who

declined to represent him in this case, and (2) demonstrate his is one of those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Pruitt*, 503 F.3d at 655.

Gidarisingh has failed to meet the first prerequisite. Even if Gidarisingh had attempted to retain counsel, his reasons for seeking assistance in recruiting counsel -- that he has limited knowledge of the law, limited access to the law library, is indigent, and suffers from mental health issues -- are fairly standard among *pro se* litigants, and not an adequate basis for the relief sought. With respect to the complexity of the case, plaintiff asserts a number of claims against a number of defendants, but Gidarisingh's complaint adequately plead sufficient facts for the court to grant him leave to proceed as to virtually all of his claims and against virtually all defendants. The court has also explained the basic law and required factual proof for each claim. Moreover, plaintiff has personal knowledge of the circumstances surrounding his lawsuit. Accordingly, Gidarisingh's motion to assist in retaining counsel will be denied. The denial, however, is without prejudice to plaintiff renewing his motion at a later stage of these proceedings.

ORDER

IT IS ORDERED that:

1) Plaintiff Sonniel Gidarisingh's request to proceed on the claims listed in the table provided above is GRANTED.

2) Plaintiff's motion for assistance of the court in recruiting counsel (dkt. #5) is DENIED.

3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will

be representing defendants, he should serve the lawyer directly rather than 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 defendants or to defendants' attorney.

4) 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.

5) 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 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.

Entered this 16th day of October, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge