

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

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JERRY SAENZ,

Plaintiff,

v.

JANEL NICKEL, NANCY WHITE,  
LON R. BECHER, KAREN ANDERSON,  
DAWN M. LAURENT, KURT SCHWEBKE,  
MICHAEL MEISNER, DONALD MORGAN,  
JESSICA HARRIS, NICHOLAS BUHR,  
SONNETTE M. CALDWELL-BARR  
and DALIA SULIENE,

Defendants.  
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ORDER

13-cv-697-bbc

Prisoner Jerry Saenz is proceeding on two claims in this case brought under 42 U.S.C. § 1983: (1) defendants Janel Nickel, Nancy White, Lon Becher, Karen Anderson, Dawn Laurent, Kurt Schwebke, Michael Meisner, Donald Morgan, Jessica Harris, Nicholas Buhr, Sonnette Caldwell-Barr and Dalia Suliene knew of a substantial risk that plaintiff would seriously harm himself in May 2012 by overdosing on “non-controlled” medications, but they failed to take reasonable steps to prevent the harm from occurring; and (2) defendants Nicholas Buhr, Jessica Harris, Dawn Laurent and Sonnette Caldwell-Barr subjected plaintiff to unconstitutional conditions of confinement for 21 days after he returned from the hospital. After I assisted plaintiff in finding counsel, Magistrate Judge Stephen Crocker set

a new schedule for the case, including a January 16, 2015 deadline for amending the pleadings without seeking leave of court. Dkt. #38. On January 16, plaintiff filed an amended complaint. Dkt. #40. Although plaintiff did not need to seek leave of court to file his amended complaint, because plaintiff is a prisoner, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915A.

Plaintiff did not accompany his amended complaint with a memorandum explaining the changes he made, but my review shows that the substance of the amended complaint closely resembles the original. For example, plaintiff retained the same two claims on which I allowed him to proceed. However, I uncovered three changes that plaintiff made to the scope of his claims.

First, plaintiff omitted allegations that defendants Kurt Schwebke, Donald Morgan, Michael Meisner and Sonnette Caldwell-Barr were personally aware of a substantial risk of serious harm to plaintiff. Although plaintiff alleged throughout his amended complaint that “defendants” knew about plaintiff’s risk of overdosing, the law is clear that a plaintiff must give each defendant notice of his or her alleged violations of the law, so those generalized allegations are not sufficient. Grieverson v. Anderson, 538 F.3d 763, 778 (7th Cir. 2008) (plaintiffs may not rely on “[v]ague references to a group of ‘defendants,’ without specific allegations tying the individual defendants to the alleged unconstitutional conduct”). See also Bank of America, N.A. v. Knight, 725 F.3d 815, 818 (7th Cir. 2013) (“The Rules of Civil Procedure set up a system of notice pleading. Each defendant is entitled to know what he or she did that is asserted to be wrongful. A complaint based on a theory of collective

responsibility must be dismissed.”). Accordingly, I am dismissing the amended complaint as to plaintiff’s claim that those four defendants violated the Eighth Amendment by failing to take reasonable measures to prevent plaintiff from harming himself.

Second, plaintiff added five named defendants (“Captain Lipinski,” “Officer Rataczak,” “Officer Witterholt,” “Officer Bussie” and “Officer Waltz”) and ten John Doe defendants. Again, however, plaintiff included no allegations in the amended complaint tying any of those defendants to unconstitutional conduct, so I am dismissing those defendants as well.

Finally, it seems that plaintiff added a claim for a violation of his rights under the due process clause, but it is not clear what the scope of that claim is. He included two references to that claim in his amended complaint. In paragraph 66, he stated that “[d]efendants’ act of restricting Saenz’s access to his property and other necessities in June 2012 without adequate due process constituted a violation of the Fourteenth Amendment to the United States Constitution.” And in paragraph 72, he stated that defendants subjected him to an “atypical and significant hardship” that violated the Fourteenth Amendment.

These paragraphs suggest two different due process claims, one that defendants deprived plaintiff of *property* without due process and one that defendants deprived plaintiff of *liberty* without due process (by subjecting him to an atypical and significant hardship). Regardless whether plaintiff intended to raise one or two due process claims, I conclude that plaintiff may not proceed on a theory under the due process clause at this time. With respect to a property claim, he did not include allegations identifying the particular acts that

qualify as deprivations of plaintiff's property (as opposed to restrictions on using property provided by the prison) or who was responsible for those deprivations. With respect to a liberty claim, he did not explain why he believes that his conditions were "atypical" within the meaning of the relevant case law applying the due process clause. Earl v. Racine County Jail, 718 F.3d 689, 691 (7th Cir. 2013) ("When an inmate is placed in conditions more restrictive than those in the general prison population, whether through protective segregation like suicide watch or discretionary administrative segregation, his liberty is affected only if the more restrictive conditions are particularly harsh compared to ordinary prison life or if he remains subject to those conditions for a significantly long time."). See also Townsend v. Fuchs, 522 F.3d 765, 772 (7th Cir. 2008) ("The issue of the cell conditions in [temporary segregation] is best analyzed as a claim brought under the Eighth Amendment."). With respect to either claim, he did not identify what process he believed he was due but did not receive. Although federal pleading standards are liberal, in light of the fact that this case has been proceeding for more than 15 months, I decline to allow plaintiff to proceed on a new claim that appears to have been included in the amended complaint as little more than an afterthought.

If plaintiff wishes to attempt to cure any of the deficiencies I have identified in the amended complaint, he is free to do so. However, now that the deadline has passed for amending the pleadings without leave of court, if plaintiff chooses to file another amended complaint, he will have to file a motion for leave to do so in accordance with Fed. R. Civ. P. 15, in which he identifies his proposed amendments and explains how they state a claim

upon which relief may be granted and why they do not unfairly prejudice defendants.

## ORDER

IT IS ORDERED that

1. Plaintiff Jerry Saenz is GRANTED leave to proceed on his Eighth Amendment claims that:

- (1) defendants Janel Nickel, Nancy White, Lon Becher, Karen Anderson, Dawn Laurent, Jessica Harris, Nicholas Buhr, and Dalia Suliene knew of a substantial risk that plaintiff would seriously harm himself in May 2012 by overdosing on “non-controlled” medications, but they failed to take reasonable steps to prevent the harm from occurring; and
- (2) defendants Nicholas Buhr, Jessica Harris, Dawn Laurent and Sonnette Caldwell-Barr subjected plaintiff to unconstitutional conditions of confinement in June 2012 after he returned from the hospital.

2. Plaintiff is DENIED leave to proceed on all other claims. The amended complaint is DISMISSED as to defendants Kurt Schwebke, Michael Meisner, Donald Morgan, "Captain Lipinski," "Officer Rataczak," "Officer Witterholt," "Officer Bussie" and "Officer Waltz" John Does 1-10.

Entered this 22d day of January, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge