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

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HUMBERTO LAGAR,

Plaintiff,

v.

LIZZIE A. TEGELS, S. BARTON and EILENE MILLER,

Defendants.

OPINION & ORDER

14-cv-036-wmc

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In this *pro se* prisoner litigation, plaintiff Humberto Lagar challenges the policy of Jackson Correctional Institution ("JCI") that requires inmates to record all "talking letters" in English.[1] After the court granted him leave to proceed on claims under the First and Fourteenth Amendments (dkt. #8), Lagar filed a motion for preliminary injunction, asking the court to order JCI to permit Spanish-language talking letters. (Dkt. #11.) Shortly thereafter, Lagar filed a motion to amend his complaint. (Dkt. #12.) The court then set briefing on the motion for preliminary injunction, requiring defendants to respond by March 11, 2015.

Defendants have now moved for an extension of time, asking the court to move their response deadline to April 28, 2015. (Dkt. #16.) Defendants indicate that they require this additional time to "adequately investigate and prepare a response" to Lagar's allegations. They also suggest that this extension will avoid cumulative and redundant filings (although their statement that they plan to file a motion for summary judgment "pursuant to the deadline that will be set by the Court" at the yet-to-occur scheduling

[1] "Talking letters" are a form of correspondence at JCI. Inmates are permitted to use a DVD player to record a message, which they can then mail to someone outside the institution.

conference suggests that they will not actually be combining the two filings, leaving it unclear what cumulative filings they anticipate being able to avoid).

While the court credits defendants' statement that they require additional time to investigate and respond to Lagar's motion for preliminary injunction, the extension defendants request would leave Lagar's preliminary injunction motion undecided for an unreasonably long period. To avoid protracted delay in resolving Lagar's request for immediate relief, the court will, therefore, extend defendants' response deadline to Tuesday, March 31, with no reply unless invited by the court. No hearing will take place unless the court determines it to be necessary.

As for Lagar's motion to amend his complaint, Lagar essentially seeks to add First and Fourteenth Amendment claims against an institution complaint examiner ("ICE"), Jodi Dougherty, who received Lagar's formal complaint regarding the talking letter program and recommended its dismissal. (*See* Mot. Amend Compl. (dkt. #12) ¶ 2.) The court is directed to "freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a)(2). This means that the court will allow amendments in the absence of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962). An amendment is considered "futile" if the complaint, as amended, still fails to state a claim on which relief could be granted. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1085 (7th Cir. 1997) (citations omitted).

Here, Lagar alleges that on August 6, 2012, Dougherty acknowledged his complaint, which provided an overview of Miller and Barton's decision to preclude him from sending a

Spanish-language talking letter to his mother. On August 7, Dougherty allegedly recommended dismissal of the complaint, reasoning that Lagar was free to send a talking letter in English, which he speaks fluently, and that his mother could have someone interpret on her end. (Am. Compl. (dkt. #13) ¶ 505.) Lagar goes on to allege that Dougherty inadequately investigated the complaint and acted negligently in failing to review the talking letter rules, which do not explicitly include an English-language requirement. (*Id.* at ¶ 608.)

The Seventh Circuit has recognized that ICEs like Dougherty may theoretically be liable under 42 U.S.C. § 1983. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) ("One can imagine a complaint examiner doing her appointed tasks with deliberate indifference to the risks imposed on prisoners. If, for example, a complaint examiner routinely sent each grievance to the shredder without reading it, that might be a ground of liability."). However, Lagar has not alleged that sort of misconduct by Dougherty. Rather, he alleges only that Dougherty contributed to others' alleged First and Fourteenth Amendment violations by recommending that his grievance against Miller and Barton be dismissed. This is not enough to proceed against Dougherty, particularly where her written recommendation reflects reasoned decisionmaking. "Ruling against a prisoner on an administrative complaint does not cause or contribute to [a Constitutional] violation." *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). Absent any other allegations of involvement on Dougherty's part, Lagar has failed to state a viable claim against her under 42 U.S.C. § 1983, and so his motion to amend his complaint to add her as a defendant will be denied as futile.

ORDER

IT IS ORDERED that:

1) Plaintiff Humberto Lagar's motion to amend his complaint (dkt. #12) is DENIED.

2) Defendant Lizzie A. Tegels, S. Barton and Eilene Miller's miotion for an extension of time (dkt. #16) is GRANTED IN PART and DENIED IN PART, consistent with the opinion above.

Entered this 6th day of March, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge