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

DESHAWN STATEN,

Plaintiff,

v.

BRAIN GUSKE, SUSAN NOVAK, OLSON, LUCAS WEBER, K. WENDT,[1] JULIA PERSIKE, KELSEY D. STANGE, C. SCHELLINGER, KARLA SOUCEK, LINDSEY WALKER, L. BUCHANAN, TERRY, and TERESA GAIER,

Defendants.

OPINION AND ORDER

20-cv-228-wmc

Invoking 42 U.S.C. § 1983, *pro se* plaintiff Deshaun Staten filed this lawsuit against the above-captioned defendants, all employees at Columbia Correctional Institution ("Columbia"). Staten claims that defendants have violated, and continue to violate, his constitutional and state law rights, as well as the Americans with Disabilities Act and the Rehabilitation Act, in their treatment of his mental health needs. Staten's complaint is ready for screening under 28 U.S.C. § 1915A. For the reasons that follow, the court will grant Staten leave to proceed against one defendant on Eight Amendment and Wisconsin negligence claims, and will deny without prejudice Staten's request for immediate medical care related to his reported hunger strike.[2]

[1] Plaintiff does not list K. Wendt as a defendant in his own case caption, but refers to this individual as a defendant in the complaint, so the court has amended the caption of this lawsuit to include Wendt as a defendant.

[2] In one of Staten's other lawsuits before this court, Staten recently submitted a letter representing that he currently is engaging in a hunger strike, for which he is also not receiving proper medical attention. *See Staten v. Hoem*, No. 20-cv-219-wmc, dkt. #11 (W.D. Wis. May 11, 2020). At the

ALLEGATIONS OF FACT[3]

Plaintiff Deshawn Staten suffers from depression and schizophrenia. On November 26, 2019, Staten was transferred to Columbia, where all twelve defendants were working during the time period comprising his claims. The proposed defendants and their positions at Columbia during the relevant time period are as follows: Brain Gustke, the security director; Susan Novak, the warden; Olson, a unit manager; K. Wendt; Lucas Weber, the deputy warden; Julia Persike, a psychologist; Kelsey D. Stange, the psychological services supervisor; C. Schellinger, a business office employee; Karla Soucek, the business officer supervisor; Lindsay Walker, a unit manager; L. Buchanan, the Health Services Unit ("HSU") manager; "Terry," a nurse; and Teresa Gaier, a nurse.

Since his transfer, Staten claims that defendants have been retaliating against him for his assault on a Columbia guard back in 2016. The retaliation have allegedly taken various forms, including: inappropriately placing him in a mechanical restraint chair and using O.C. spray on him; denying him property, time in the law library, and access to legal materials; and refusing to respond to his requests for medical and mental health care.

For example, in November 2019, Staten submitted a Health Services Request ("HSR"), asking about a medical ice bag restriction. Defendant Terry responded in writing on November 30, 2019, that Staten would be scheduled for a medical appointment. After

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court's direction, the clerk of court filed that submission in this case as well (dkt. #16), which will be construed as a request for a preliminary injunction.

[3] In addressing any pro se litigant's complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

getting no appointment, Staten claims that defendant Gaeier responded similarly to another HSR submitted on November 30. Staten claims he has still not been provided any response to these two HSRs, nor been provided any details about his underlying medical condition requiring an ice bag in the first place.

With respect to his claim involving a restraint chair, Staten alleges that he had to appear for a conduct report hearing on December 16, 2019, and Unit Manager Olson transported him in a restraint chair. When Staten asked why, Olson responded that Security Director Gustke approved use of a restraint chair any time Staten was transported within Columbia. Staten further claims that the restraint chair had remnants of O.C. spray used on another prisoner, which got on his clothes and arms. Moreover, Staten had to remain in the restraint chair from about 10:30 a.m. until 11:46 a.m., which caused him extreme chronic lower back pain. He further alleges that even though he submitted an HSR about that back pain, he never received any treatment for it. Since January 27, 2020, Staten has also been on administrative confinement status under conditions that he claims violate his rights, including being isolated in restrictive housing, rather than with other prisoners on administrative confinement status.

Staten next claims that defendants Gustke, Olson, Novak and Weber all have the authority to establish the restrictions to his movement and property on administrative status, and they have gone "too far" in requiring his placement in restrictive housing and use of the restraint chair, unlike other prisoners on administrative status. Staten further claims that the staff's use of the restraint chair has been inconsistent, including on February 3, 2020, when Olson himself chose *not* to use the restraint chair to transport him for a call

with his attorney.

Further, Staten claims that on February 10, Security Director Gustke removed some of the restrictions on his confinement, but did not move him out of restrictive housing until February 27, 2020, when Unit Manager Walker asked for him to be moved. Staten does not describe the restrictions Gustke removed on the 10th, but it appears that he still was not allowed access to certain property items that other prisoners on administrative confinement status could possess, including his television, radio, legal documents and other paperwork. In particular, Staten claims that his inability to access his legal documents prevented him from filing lawsuits and dealing with ongoing criminal matters.

Even after his return to administrative confinement on the 27th, Staten allegedly continued to have difficulties that he attributes to defendants' ongoing retaliation. Specifically, defendant Walker denied Staten access to his television, radio, and legal documents for his criminal case and a civil lawsuit, all of which caused Staten severe mental and emotional distress. His distress became so severe that on February 28, he was placed on clinical observation status, where he remained until March 2, 2020. Staten claims that defendant Walker was responsible for this placement, and that during his time on clinical observation status, Walker continued to deny him all of this property. Staten further claims that Warden Novak knew about this incident because he wrote to her, and she never responded. However, Staten does not allege when he wrote to Novak about his specific conditions.

While Staten was on observation status, defendant Persike allegedly visited with him at his cell door. Nevertheless, psychologist Persike allegedly denied Staten any mental

healthcare treatment or programming, telling Staten "I don't like people that assault staff" and thus, Staten would not be receiving any mental health care treatment. (Compl. (dkt. #1) at 6-7.) Persike also denied Staten soap, a washcloth, and a blanket for three days, which made it very difficult for him to sleep or eat.

Finally, Staten also claims that individuals in the business office denied him access to the courts. Specifically, on January 15, 2020, defendant Schellinger approved Staten's request for a legal loan, but then allegedly, repeatedly denied Staten's request to use that loan for purposes related to his criminal proceeding and civil lawsuit. Only after Staten wrote to Schellinger's supervisor, however, was Schellinger apparently prompted to allow Staten to make copies to file a lawsuit. Staten similarly claims that Schellinger's supervisor, Soucek, allowed Schellinger to violate his rights, and when he requested to go to the law library multiple times, his requests were denied. Staten does not provide any details about when he submitted those requests, or who was involved in denying them, nor whether those denials became the subject of any formal HSU.

OPINION

Staten seeks to proceed against defendants on claims of denial of access to courts, Eighth Amendment deliberate indifference, First Amendment retaliation, Wisconsin negligence, and violations of the Americans with Disabilities/Rehabilitation Act ("ADRA") claims. The court addresses each claim in turn below.

I. Access to Courts

To succeed on an access-to-courts claim, a plaintiff must show that he was, or is,

suffering an "actual injury" by being "frustrated" or "impeded" in bringing a non-frivolous claim regarding his criminal conviction, sentence or conditions of confinement. *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). Moreover, the injury must be a *specific* hinderance related to a lawsuit, *Owens v. Evans*, 878 F.3d 559, 565 (7th Cir. 2017), and cannot be a speculative, future harm, *Marshall v. Knight*, 445 F.3d 965, 969-70 (7th Cir. 2006).

Specifically, Staten appears to be pursuing access-to-courts claims against: defendants Gustke and Walker, for their respective restrictions on Staten's access to his legal materials; defendant Novak for her failure to intervene after he wrote to her about being unable to obtain his property; and defendants Schellinger and Soucek for their handling of his requests related to his legal loans. He also appears to claim denial of his requests to access the law library, but does not allege who was involved in denying those requests.

To start, Staten may not proceed on a claim related to his inability to access the law library because personal involvement in the denial of in any alleged constitutional violation is a prerequisite for liability under 42 U.S.C. § 1983. *Estate of Perry v. Wenzel*, 872 F.3d 439, 459 (7th Cir. 2017). This makes Staten's vague claim about denied requests for law library time a non-starter.

Nor may Staten proceed against defendants Gustke, Walker, Novak, Schellinger or Soucek, because he has not pleaded sufficient facts to reasonably infer that any of these defendant's actions prevented him from accessing courts or litigating a non-frivolous case. Indeed, although Staten references a "criminal proceeding" and "preparations for a civil lawsuit," Staten has not alleged that he was *prevented* from participating in any criminal

proceeding or initiating a civil lawsuit *because* he could not access his legal materials temporarily or had problems getting approval to use his legal loans for certain purposes. Given that Staten has initiated this and multiple other lawsuits in this court, the contrary appears to be the case. Since Staten has failed to plead facts permitting a reasonable inference that he suffered an actual injury as a result of his inability to access his legal materials, the court will not grant Staten leave to proceed on an access-to-courts claim against any of the named defendants.[4]

II. Eighth Amendment

As noted, plaintiff Staten would also like to proceed on Eighth Amendment claims -- apparently against all of the defendants -- for (1) subjecting him to inhumane conditions of confinement when he was allegedly on observation (really, restrictive) status, and (2) for refusing to provide him mental health or medical care from November 2019 to the present.[5]

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[4] Were plaintiff capable of pleading individual involvement in a denial of access to a court by any defendant that caused actual injury, he could seek leave to amend his complaint to add those details.

[5] Staten also references defendants' use of "excessive force," but beyond allegations of use of the restraint chair during transport and at his December 16, 2019, conduct report hearing, Staten's complaint does not reference any incident involving a defendant's use of any degree of physical force against him. Moreover, to the extent Staten would like to pursue an excessive force claim related to use of the restraint chair, the allegations in his complaint do not support such a claim. Indeed, Staten does not allege that he alerted *any* of the named defendants to the pain he was in, nor that any of the defendants used the restraint chair in an effort to inflict pain. Rather, Staten affirmatively alleges that defendants used the chair to transport him and secure his compliance during his conduct report hearing and transports. *See Harper v. Albert*, 400 F.3d 1052, 1065 (7th Cir. 2005) (to succeed on an excessive force claim, a plaintiff must show that the prison official acted "wantonly or, stated another way, 'maliciously and sadistically for the very purpose of causing harm'") (quoting *Wilson v. Seiter*, 501 U.S. 294, 296 (1991)). If Staten omitted allegations permitting a reasonable inference that any defendant actually restrained him in a manner *intended*

A. Conditions of Confinement

The Eighth Amendment imposes a duty on prison officials to provide "humane conditions of confinement," meaning that "prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of inmates.'" *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). As such, conditions of confinement that expose prisoners to a substantial risk of serious harm implicate their Eighth Amendment rights. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

Here, Staten alleges that during his February 28 to March 2, 2020, stay in observation status, he was denied access to various items, and his cell was so cold that he could not sleep and had difficulty eating. Although Staten's short-term inability to access his personal items of property do not implicate his Eighth Amendment rights, however, prisoners do have a right to "protection from extreme cold." *Dixon v. Godinez*, 114 F.3d 640, 642 (7th Cir. 1997). To determine whether a cell temperature implicates a prisoner's Eighth Amendment rights, however, courts must consider a number of factors, including: "the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; [and] the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold." *Id.* at 644. Under this test, Staten's allegations about the temperature of his cell are also insufficient to suggest he was being denied one of life's necessities or faced a substantial risk of harm.

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to injure him, rather than transport or secure him, he may seek leave of court to amend his complaint to include that claim.

For example, Staten alleges generally that his cell was cold enough that he had "trouble eating and sleeping," but provides no details, not even an estimate of the temperature of his cell. Likewise, Staten alleges that he did not have access to his blanket during this four-day period of time, but alleges nothing about his access to adequate clothing or other means to stay warm, if any. Finally, although Staten complains that he did not have his legal materials, television and radio, he has not alleged that he was subjected to any other conditions that made him physically uncomfortable. As such, the court cannot reasonably infer that Staten was subjected to sufficiently serious conditions of confinement to implicate his Eighth Amendment rights, and he may not proceed on that claim in this lawsuit.

B. Deliberate Indifference

The Eighth Amendment also gives prisoners the right to receive adequate medical care, *Estelle v. Gamble*, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. *See Rice ex. Rel. Rice v. Correctional Medical Servs.*, 675 F.3d 650, 665 (7th Cir. 2012). To establish an Eighth Amendment violation based on the denial of mental health treatment, the plaintiff must prove defendant's "deliberate indifference"; more specifically, plaintiff must prove that: (1) he had a serious medical need; (2) defendant knew that plaintiff needed medical treatment; and (3) defendant consciously failed to take reasonable measures to provide the necessary treatment. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Starting with Staten's attempts to obtain mental health care, the court will allow

him to proceed against defendant Persike. As an initial matter, the court must accept at screening Staten's allegations that he suffers from severe mental and emotional distress, permitting a reasonable inference that his mental health constitutes a serious medical condition, *and* his allegation that he discussed his need for mental health treatment with Persike, permitting a reasonable inference that she knew about that need. Finally, Persike's apparently retaliatory (and unjustified) decision to tell Staten that he would "never" receive mental health care at Columbia could amount to conscious disregard for Staten's need for treatment. Accordingly, the court will allow Staten to proceed against Persike on an Eighth Amendment deliberate indifference claim.

Staten also appears to assert similar claims against other named defendants based on his unsuccessful efforts to obtain mental health care, but plaintiff may not do so on the facts alleged. Indeed, Staten alleges *no* interactions or communications with any other defendant even suggesting, much less permitting a reasonable inference, that they were aware he was *seeking* mental health treatment, nor that they denied it to him. For example, Staten names Stange, the psychological services supervisor, as a defendant, but he does not allege Stange either knew about, or was involved in, any of his attempts to obtain treatment for his mental health needs. Moreover, a plaintiff may not proceed against an official *solely* by virtue of his or her supervisory authority, *Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000), so Staten may not proceed against Stange simply because of this defendant's position as a supervisor of psychological services. Nor may Staten proceed against any other defendant on his deliberate indifference claim absent allegations of personal involvement. *See Estate of Perry*, 872 F.3d at 459.

Finally, Staten's allegations about his attempts to obtain an ice bag suggest that he would like to proceed on Eighth Amendment claims against Nurses Terry and Geier, who responded to his November 2019 HSRs, and HSU manager Buchanan, who supervised them. First, Staten does not allege that he directed any HSRs to Buchanan's attention, nor that Buchanan became aware of his requests for an ice bag restriction or was otherwise involved in handling of his medical care. Accordingly, for the same reason Staten may not proceed against Stange, he also may not proceed against Buchanan on an Eighth Amendment claim.

Second, as for defendants Terry and Geier, Staten has not provided sufficient allegations about his back condition to support a reasonable inference that he was suffering from a serious medical condition when he submitted HSRs in November 2019. More importantly, in his HSR's asking for an ice bag, Staten does *not* claim to have alerted any HSU staff that he was suffering from a chronic condition or extreme pain. In particular, while Staten alleges that his time spent in the restraint chair on December 16, 2019, caused him extreme lower back pain, he has not alleged that he subsequently submitted HSR's *about that pain*, nor that Nurses Terry and/or Geier failed to respond adequately. Accordingly, their apparent failure to ensure that Staten's request to be seen was actually fulfilled does not support a reasonable inference of deliberate indifference.[6]

[6] Again, to the extent Staten may have reported in his HSRs that he suffered from a specific medical condition or was experiencing severe pain requiring an ice bag, Staten may still seek leave to amend or supplement his complaint to include such allegations. As currently pled, however, Staten's complaint supports an Eighth Amendment deliberate indifference claim against defendant Persike only.

III. Negligence

Under Wisconsin law, the elements of a negligence claim are: (1) a duty of care 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 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).

For the same reason Staten may proceed against Persike on an Eighth Amendment deliberate indifference claim related to his mental health treatment, he may also proceed against her under this lower standard for a negligence claim. *See* 28 U.S.C. § 1367(a); *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 936 (7th Cir. 2008). Specifically, it is reasonable to infer that Persike owed Staten a duty of care, and that his refusal to provide mental health treatment breached that duty and caused Staten harm. However, since the court is not allowing Staten to proceed against any other defendants on a similar federal claim, the court will decline to exercise supplemental jurisdiction over proposed negligence claims as to any other defendant. *See Wright v. Associated Ins. Cos., Inc.*, 29 F.3d 1244, 1251 (7th Cir. 1994) (in determining whether to exercise supplemental jurisdiction over state law claims, "a district court should consider and weigh the factors of judicial economy, convenience, fairness and comity in deciding whether to exercise jurisdiction over pendent state-law claims").

IV. First Amendment Retaliation

Next, to state a claim for retaliation, a plaintiff must allege that: (1) he engaged in

activity protected by the Constitution; (2) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity; and (3) the treatment was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future. *Gomez v. Randle*, 680 F.3d 859, 866-67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir. 2009). Staten's retaliation claims against all defendants fail at the first element. Staten claims that all of the defendants were punishing because he assaulted a Columbia guard in 2016. However, Staten's acknowledged assault of a prison guard is *not* constitutionally protected activity. *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993) ("[A] physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.") While Staten *may* have some claim under state law for unjustified action by defendants based on his assaulting a prison guard, Staten does not suggest that defendants' alleged mistreatment was motivated by any federal constitutionally-protected activity -- such as bringing a lawsuit or grievance -- and, therefore, he may not proceed on a constitutional retaliation claim in federal court.

V. ADA and Rehabilitation Act

Finally, 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, except that 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. *See Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 671-72 (7th Cir. 2012).

The court will construe this claim as one arising under the Rehabilitation Act, since it remains an open question in the Seventh Circuit whether ADA violations not implicating constitutional rights belong in federal court. *See Norfleet v. Walker,* 684 F.3d 688, 690 (7th Cir. 2012). Moreover, "[r]efusing to make reasonable accommodations is tantamount to denying access; although the Rehabilitation Act does not expressly require accommodation, 'the Supreme Court has located a duty to accommodate in the statute generally.'" *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 671 (7th Cir. 2012) (quoting *Wis. Cmt. Serv. v. City of Milwaukee*, 465 F.3d 737, 747 (7th Cir. 2006)).

At the pleading stage, the court will accept that Staten's mental illnesses might render him disabled as defined by the Rehabilitation Act, but his current allegations do not satisfy either the second or third elements of a *prima facie* case as set forth above. In particular, although Columbia is considered a "public entity," Staten does not claim to be excluded from any service, program, or activity offered to other prisoners because of his mental illness. 42 U.S.C.A. § 12132. Regardless, Staten's allegations do not suggest that he has been denied access to any resources or programming *because* of his mental illness. Accordingly, since Staten has provided no allegations suggesting that he is being denied

proper mental health treatment *because* of his mental illness, he may not proceed on a claim under the ADA or the Rehabilitation Act, at least as currently pleaded.

VI. Staten's Recent Submissions Related to Hunger Strikes (dkt. ##7, 16)

This leaves Staten's recent request for medical assistance related to his claimed hunger strike. On March 30, 2020, shortly after filing his complaint in this lawsuit, Staten submitted a "Declaration for Emergency Injunctive Relief," in which he averred that he informed Columbia staff he was going on a hunger strike, but staff failed to check on him despite his vomiting, having blood in his feces and urine, and being in extreme pain. (Dkt. #7.) Given the severity of his assertions, Magistrate Judge Steven Crocker directed the Attorney General's Office to reach out to Columbia officials about Staten's claims and provide a status report regarding his mental health treatment. (Dkt. #8.) On April 6, 2020, the Attorney General's office provided a status report, two declarations and excerpts of Staten's HSU record, which suggested the following with respect to Staten's requests for health care:

- On March 29, 2020, Staten submitted an HSR in which he alleged that he showed an officer that his toilet had vomit, blood and feces in it; and the officer told him to submit an HSR. Staff responded to the HSR on April 1, writing that he would be seen for his symptoms, and that he should report the officer's actions to his unit manager.

- On March 31, Staten submitted another HSR complaining that he had submitted an HSRs over the previous few days about vomiting and blood in his urine and feces, and a nurse named "Mary" had seen his toilet. He received a response on April 2, advising that there was no nurse "Mary" at Columbia, and that he was going to be seen that week.

- Staten was seen on nursing rounds that same day, March 31, and in his chart a

nurse wrote that he had no concerns.

- Columbia Nurse Fitzpatrick also met with Staten on April 6, 2020, about his complaints, but Staten refused to have his vital signs taken or undergo any assessment.

- At that time, Staten told Fitzpatrick that he was refusing liquids, not food, and that he had not consumed water for a couple of days.

- Staten further reported his symptoms as dry mouth and back pain.

- Fitzpatrick noted that Staten was alert, oriented, had moist mucus membranes, no visible signs of dehydration, and no signs of lightheadedness. Fitzpatrick also noted that the area of back pain Staten reported to does not correlate with kidney dysfunction.

- Fitzpatrick does not believe that Staten presented with the extreme health concerns he reported.

- Sergeant Fosshage also reports that he was working on March 28-30, 2020, and observed that Staten took a meal tray at every meal over the weekend, and the meal trays were empty upon return.

- Staten has been on and off hunger strikes in the past (his last documented strike taking place in November 2019), but he is not currently on a meal monitor.

(*See* dkt. ##11, 12, 13, 13-1.)

Staten has not submitted any subsequent writing or documentation suggesting that the information provided by Columbia in the status report (or his HSU records) is inaccurate, much less purporting to dispute it. Instead, on May 11, 2020, Staten submitted a letter in Case No. 20-cv-219, representing that he started another hunger strike on May 6, 2020, but had not undergone a medical health assessment as required by DAI Policy and Procedures #300.000.57. Staten's representations indicate that he may have restarted or begun a new hunger strike, and he is not receiving adequate health care, but beyond alleging that the HSU manager is denying him health care, Staten has provided

no details about his efforts to obtain medical care, including *whom* he requested treatment from; *what*, if any, response he received; *when* his requests for medical attention were denied or ignored; and *why* this federal court should interfere with the actions of Columbia to address his claimed hunger strike.

Moreover, based on the state's submissions thus far, and his failure to dispute them, it further appears that Staten has been receiving responses to his HSRs within a few days of his submissions, and HSU staff are aware of his history and prior need for meal monitoring. It is also unclear that the current hunger strike is closely enough related to the limited claims against defendant Persike that this court is screening to go forward. If it is, plaintiff will need to explain clearly and succinctly how, as well as file a formal motion for preliminary injunctive relief and supporting facts in the form of an affidavit, including all of the information currently missing from his submissions as just set forth above. In the more likely event that it not, plaintiff will need to bring a separate lawsuit seeking that relief.

ORDER

IT IS ORDERED that:

1. Plaintiff Deshaun Staten is GRANTED leave to proceed on Eighth Amendment deliberate indifference and Wisconsin negligence claims against defendant Persike as set forth above.

2. Plaintiff is DENIED leave to proceed on any other claims, and defendants Gustke, Novak, Olson, Weber, Wendt, Stange, Schellinger, Soucek, Walker, Buchanan, Terry, and Gaier are DISMISSED WITHOUT PREJUDICE from this lawsuit.

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 state 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 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 the 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 while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 12th day of June, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge