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

WARREN WILLIAMS,

Plaintiff,

v.

BERNDT, TABIOS, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, MALINDA, FOOD SERVICES, and DAVID J. MAHONEY,

Defendants.

OPINION AND ORDER

19-cv-1052-wmc

Pro se plaintiff Warren Williams, who is incarcerated at the Dane County Jail, brings this proposed action under 42 U.S.C. § 1983 alleging excessive force, failure to intervene and deliberate indifference claims against certain jail personnel and a retaliation claim again the jail's food services department. Williams proposes to sue Sheriff David J. Mahoney, Deputy Berndt, Deputy Tabios, five John Doe deputies, Nurse Malinda, and the jail's food services department. With his complaint, Williams also filed motions for assistance in recruiting counsel (dkt. #3) and for a temporary restraining order and preliminary injunction (dkt. #4). Williams has paid the filing fee, and his complaint is ready for screening as required by 28 U.S.C. § 1915A. For the reasons that follow, the court will grant Williams leave to proceed on his constitutional claims against some of the named defendants. The court will deny without prejudice Williams' motions for preliminary relief and for assistance in recruiting counsel.

ALLEGATIONS OF FACT[1]

A. The Handcuffing Incident

While doing an afternoon head count in Unit 620 on October 23, 2019, Deputy Berndt noticed graffiti on the dayroom ceiling and ordered Williams and the other inmates get up on a table and clean it off. Berndt then apparently left the inmates to their task. Upon his return, however, seeing that the graffiti had not been removed, Berndt allegedly threatened Williams and his fellow inmates, stating "let the writing still be on [the] ceiling tomorrow." Because Williams suffers from headaches, nausea and dizziness from a prior car accident and head injury, he alleges that standing on the table would have posed an "excessive risk to his health and safety."

After the afternoon head count the next day, with the graffiti still present, Deputy Berndt allegedly warned the Unit 620 inmates that if the graffiti was not removed from the ceiling soon, he would "have something for" them. Because the inmates apparently continued to ignore his order, Berndt returned with Deputy Tabios and the five defendant John Does, who executed "a retaliation shakedown" between 7:00 and 7:45 p.m. During this shakedown, Berndt found contraband in Williams' cell and instructed Williams to "lock down."

While Williams complied without resistance, once locked down in his cell, he acknowledges mocking Deputy Berndt in front of his rookie trainee, apparently for overreacting because none of the inmates would obey his order to climb on the table and

[1] For screening purposes, the court assumes the following facts based on the allegations in plaintiff's complaint and resolves all ambiguities and draws all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

clean the graffiti. When Williams then asked for a grievance, Berndt became angry and ordered Williams to "cuff up" because he would be "moving to lockdown block for causing a dangerous disturbance." Berndt then handcuffed Williams so tightly that he "screamed and begged him to loosen the handcuffs." Instead, Berndt dragged Williams down a hallway by a chain connected to the handcuffs, allegedly causing Williams unbearable pain and refusing to relent even after Williams explained that his right arm had a metal rod in it and showed the deputy the surgery marks. At that point, Williams alleges that Deputy Berndt became even more aggressive, stopping to loosen the handcuffs only after Williams' "hollering" had attracted the attention of inmates in another unit.

Nurse Malinda also allegedly heard Williams screaming from her nearby medical station, and she came out to inspect his hands. Although Malinda allegedly observed bruising and swelling, she concluded that nothing was wrong. In addition, according to Williams, Deputy Tabios and the five defendant Deputy John Does witnessed the incident and heard Williams' cries for help, but none of them intervened. Later that evening, after Williams had been secured in the lockdown block, a nurse gave him some Tylenol for his pain.

The next day, October 25, 2019, after Williams' girlfriend called the jail and spoke with Sergeants McPearson and Schorder about the incident, he was allowed to see a doctor, who ordered an x-ray taken of Williams' right wrist. The x-ray allegedly indicated a possible fracture. However, when Williams went to the emergency room on October 26, 2019, still reportedly suffering from pain and swelling, he was allegedly diagnosed with a sprain in his right wrist. When Williams asked why his wrist felt as though it were broken,

the attending physician explained that a wrist sprain can be as painful as a fracture. Williams was discharged that same day and returned to the jail with instructions for "RICE therapy," including wrapping his wrist with an Ace bandage.[2] Williams alleges further that Malinda was aware of his diagnosis and his aftercare instructions, but when he asked her about wrapping his wrist and for ice on three separate occasions, October 26, November 3 and November 7, 2019, she declined to treat him.

On October 26, 2019, Williams also filed a grievance about the handcuffing incident. However, this grievance was denied the next day, and Williams unsuccessfully appealed. On October 28, 2019, Williams wrote a request slip asking for someone to take photos of his hand injuries.[3] He then wrote to Dane County Sheriff Mahoney on November 4, 2019, about the incident, but received no response.

B. Food Services

Williams further alleges that the jail's food services department is now retaliating against him because he filed a grievance against Deputy Berndt. In support, Williams alleges that food services is sending him food trays containing beans even though food services, "Dane County officials," "jail officials," and "medical staff" are all aware of his

[2] Williams submitted a copy of his after-visit summary with the complaint, which explains that "RICE" is an acronym for rest, icing, compression, and elevation of the injured body part. (Dkt. #6-1 at 5.)

[3] On February 18, 2020, Williams filed with the court a photograph purporting to show injuries to his wrist from the handcuffs (dkt. #8), although it is unclear when the photograph was taken or by whom.

allergy to eggs and beans per his medical records.[4] Williams further alleges that he began receiving improper food trays right after he filed his grievance against Berndt, and as a result, he is being denied "adequate food."

OPINION

Plaintiff wishes to proceed against: (1) Deputy Berndt for using excessive force while restraining and escorting him to the lockdown unit in handcuffs; (2) Deputy Tabios and the five other Deputy John Does for failing to intervene, despite witnessing the use of excessive force;[5] (3) Nurse Malinda for refusing to treat plaintiff's injuries caused by the excessive force; and (4) against Sheriff Mahoney for his failure to correct Deputy Berndt's conduct. As noted, plaintiff also appears to be seeking leave to proceed against the "Dane County Jail's food services department" for retaliating against him for filing a grievance against Deputy Berndt.

Although plaintiff pleads his claims against jail personnel under the Eighth Amendment, it is unclear from plaintiff's allegations whether he was serving a sentence as

[4] The after-visit summary attached to the complaint lists Williams' allergies as bean pod extract, soybeans, egg yolk and chicken-derived products. (Dkt. #6-1 at 2.) Williams was apparently placed on the jail's special diet sheet for this allergy as a result of a grievance he filed about the issue on November 19, 2019.

[5] Plaintiff also alleges that the seven defendant deputies executed the retaliatory shakedown to harass and humiliate him after plaintiff failed to clean graffiti from the unit's dayroom ceiling. (Dkt. #2 at 2, 5.) To the extent plaintiff is also seeking leave to proceed on a standalone retaliation claim against these defendants, the court similarly cannot allow him to proceed absent allegations from which the court could reasonably infer that plaintiff was engaged in a protected activity that the alleged retaliatory search was meant to deter. *See Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) (explaining that to prove retaliation, a plaintiff must show: (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter future First Amendment activity; and (3) the First Amendment activity was at least a motivating factor in the defendant's decision to take the retaliatory action).

a convicted prisoner at the time of the handcuffing incident or whether he should be viewed as a pretrial detainee for purposes of a § 1983 claim. *See Currie v. Chhabra*, 728 F.3d 626, 630 (7th Cir. 2013) (noting that "different constitutional provisions, and thus different standards, govern depending on the relationship between the state and the person in the state's custody"). Because Williams does not allege that he was serving a sentence, the court will infer for purposes of this screening that Williams was a detainee at the time of the alleged events. Accordingly, his claims must be analyzed under the more generous standard of the Fourteenth Amendment's due process clause.

I. Excessive Force

To succeed on an excessive force claim under the Fourteenth Amendment, a plaintiff must show "that the force purposely or knowingly used against him was objectively unreasonable." *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). In determining whether plaintiff meets this burden on the pleadings, relevant factors to be considered include "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." *Id*.

Plaintiff's allegations are sufficient to support a claim that Deputy Berndt used excessive force in violation of plaintiff's Fourteenth Amendment rights. First, the circumstances plaintiff describes do not suggest a severe security threat, at least at the outset. Although plaintiff and his cellmates apparently did not obey the deputy's order to remove graffiti from the ceiling, and plaintiff admits to contraband being found in his cell,

as well as inappropriately mocking Berndt, plaintiff also specifically alleges that: (1) he was cooperative when the deputy ordered plaintiff to lock down and later to cuff up; and (2) Bendt had six other deputies backing him up. Second, a reasonable trier of fact *might* find Deputy Berndt's use of force disproportionate to the alleged circumstances. In particular, rather than loosen plaintiff's handcuffs after a compliant plaintiff screamed and begged for relief from pain, defendant Berndt allegedly escalated matters significantly by dragging plaintiff away via a chain connected to unnecessarily tight handcuffs while plaintiff continued "hollering" in pain. Moreover, the deputy allegedly continued undeterred even after plaintiff revealed that he had a metal rod in his right arm *and* showed the deputy the surgery scars, finally stopping to loosen the handcuffs only once plaintiff's cries had attracted attention from other inmates. Third, as a result of this incident, plaintiff suffered a severe right wrist sprain, if not a break. Because a jury could reasonably conclude from these factual allegations that defendant Berndt purposefully used objectively unreasonable force while taking plaintiff to the lockdown unit, he may proceed on this claim.[6]

[6] Plaintiff also alleges that Deputy Berndt put plaintiff's health and safety at risk by ordering him to stand on a table, even though plaintiff suffers from headaches and dizziness. (Dkt. #2 at 1.) To the extent plaintiff wishes to proceed on this as a standalone claim that Berndt ignored a serious risk of harm, or trumped up a violation to abuse him, the court cannot grant him leave without alleging facts the court could reasonably infer that Berndt was aware of this risk. *See Miranda v. County of Lake*, 900 F.3d 335, 353 (7th Cir. 2018) (asking whether the defendants "acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [plaintiff's] case"). However, plaintiff could seek leave to amend his complaint should those facts exist, or at least he has a good faith basis to believe they exist.

II. Failure to Intervene

Plaintiff does not allege that any of the other defendants involved in the unit inspection (or, as alleged, "shakedown") -- Deputy Tabios and the five Deputy John Does -- played a direct role in his handcuffing and removal from Unit 620. Still, even as a bystander, "a state actor's failure to intervene renders him or her culpable under § 1983" under certain circumstances. *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). An inmate asserting a claim based on an officer's failure to intervene when his constitutional rights were being violated by another officer must prove: (1) the officer had reason to know that excessive force was being used; and (2) the officer "had a realistic opportunity to intervene to prevent the harm from occurring." *Lewis v. Downey*, 581 F.3d 467, 472 (7th Cir. 2009); *see also Gill v. City of Milwaukee*, 850 F.3d 335, 342 (7th Cir. 2017).

Here, plaintiff alleges that the other deputies participating in the "shakedown" were (1) present while Deputy Berndt used excessive force during plaintiff's handcuffing and escorting, and (2) ignored plaintiff's cries for help. From these allegations, a trier of fact could reasonably infer that each of these six defendants was aware of defendant Berndt's conduct as alleged, heard plaintiff's cries and, because the handcuffing incident was not over instantaneously, could have realistically stopped defendant Berndt had they chosen to intervene. Accordingly, plaintiff may proceed against the six deputies on a failure to

intervene claim.[7]

III. Medical Care Claim

As for plaintiff's allegation that Nurse Malinda repeatedly refused to treat his injuries sustained during the handcuffing incident, the Fourteenth Amendment standard governing medical care claims is whether the defendant's actions were objectively unreasonable given the circumstances. *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018). Therefore, the failure to provide medical care violates the Due Process Clause if: (1) the defendant acted with purposeful, knowing, or reckless disregard of the consequences of their actions; and (2) the defendant's conduct was objectively unreasonable. *Id.* While it is not enough to show negligence, or even gross negligence, neither is plaintiff required to prove the defendant's *subjective* awareness that the conduct was unreasonable. *Id.* at 353.

Reading plaintiff's allegations in the light most favorable to him, he repeatedly presented to defendant Malinda with a need for medical care related to his hands and wrists, which he claimed resulted from the alleged use of excessive force. Defendant Malinda's decision to do nothing after allegedly hearing plaintiff's cries of pain *and* observing his bruised and swollen hands -- and her alleged decisions in October and November to decline plaintiff's requests for ice or to have his injured wrist wrapped as

[7] At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain to plaintiff how to use discovery requests to identify the John Doe defendants and to amend the complaint to identify them by name. Plaintiff need not wait for the pretrial conference to amend, however, should he learn the name(s) of any Doe defendants on his own before that conference. Regardless, he should work with defense counsel to assign actual names to the appropriate defendants as soon as practical.

recommended by plaintiff's doctor -- were at least arguably objectively unreasonable. Accordingly, plaintiff will be allowed to proceed on this medical care claim against this defendant as well.

IV. Supervisor Liability

In contrast, plaintiff cannot proceed against Sheriff Mahoney at this time. Plaintiff neither claims that Mahoney was present during the handcuffing incident nor that he participated in the proceedings or decision surrounding that incident. Rather, plaintiff claims that Mahoney, as the jail's "head boss," *should* have been aware of Deputy Berndt's conduct based on his reports, and he *would fault* Mahoney for failing to act in response to plaintiff's November letter about the incident after it occurred. Plaintiff further alleges that Sheriff Mahoney "maintains policies that interfere with adequate medical care and the liberty and protection of inmates throughout the jail." (Dkt. #2 at 14-15.)

At most, from these allegations, plaintiff seeks to proceed against Sheriff Mahoney in a *supervisory* capacity, but such a claim is unavailable here. As the Seventh Circuit has repeatedly explained, only those individuals "who cause or participate in the violations are responsible." *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). Accordingly, supervisors cannot be held liable under § 1983 on a theory of *respondeat superior,* unless the supervisor "directed the conduct causing the constitutional violation, or . . . it occurred with [his] knowledge or consent." *Sanville v. McCaughtry*, 266 F.3d 724, 739-40 (7th Cir. 2001) (internal citations omitted). A supervisor might also be held liable for flawed policies or deficient training over which the supervisor had control if the policies or training amount to deliberate indifference. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

Here, plaintiff has not alleged that any of the defendants were improperly trained and, with respect to whether the jail has constitutionally deficient policies, he goes no further than including a conclusory and general assertion that unspecified policies interfere with the inmates' medical care and protection. This assertion is too vague to permit a reasonable inference that Sheriff Mahoney was aware of constitutionally infirm policies or practices and failed to correct them. As for the handcuffing incident itself, plaintiff alleges that he grieved the issue through the official complaint process and independently notified defendant Mahoney of the apparently discrete incident, but only after it occurred. Sheriff Mahoney cannot, therefore, be said to have contributed to the alleged violation or disregarded an ongoing risk of harm, and even his one participatory act -- an alleged failure to respond to plaintiff's letter -- would at most support a finding of negligent handling of an informal complaint. *See Kingsley*, 135 S.Ct. at 2472 ("[L]iability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process"); *Miranda*, 900 F.3d at 353-54 (noting that a showing of negligence or even gross negligence is not sufficient under either the Eighth or Fourteenth Amendment). Accordingly, plaintiff cannot proceed against Sheriff Mahoney on this basis either, and he will be dismissed from this lawsuit. *Cf. Smith*, 507 F.3d at 609-10 (noting that a prison official who rejects an administrative complaint about a completed act of misconduct does not violate prisoner's constitutional rights); *Soderbeck v. Burnett County*, 752 F.2d 285, 293 (7th Cir. 1985) ("Failure to take corrective action cannot in and of itself violate section 1983. Otherwise the action of an inferior officer would automatically be attributed up the line to his highest superior . . .").

V. Retaliation Claim against Food Services

As for the last named defendant, the jail's food services department, plaintiff alleges that it is sending him food trays with beans, despite his documented allergy to beans and eggs, in retaliation for his filing a grievance against defendant Deputy Berndt. However, plaintiff may not proceed against food services because it is not a "person" that may be sued under § 1983. *See Smith v. Knox County Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012) ("A prison or department in a prison cannot be sued because it cannot accept service of the complaint."). Moreover, even if plaintiff had identified a proper defendant in his complaint, his retaliation claim as currently pled is underdeveloped. True, prisoners are entitled to use available grievance procedures without threat of recrimination. *Walker v. Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002). But there are no allegations here from which a trier of fact could reasonably infer that anyone in food services could or would have been aware of plaintiff's handcuffing grievance against Deputy Berndt, much less be sufficiently motivated by his grievance to retaliate against him directly. *See Bridges*, 557 F.3d at 546 (explaining that to prove retaliation, a plaintiff must show that the First Amendment activity he engaged in was *at least a motivating factor* in the defendant's decision to take the retaliatory action).

If plaintiff wants to proceed on this claim, he will need to file an amended complaint that (1) identifies a proper defendant (or defendants) and (2) includes factual allegations from which this court could reasonably infer that the defendant (or those defendants) was aware of the grievance and motivated to retaliate. A "proper defendant" would include any jail employee that was personally involved in the claim he is pursuing. *See Minix v.*

Canarecci, 597 F.3d 824, 833-34 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional deprivation."). If plaintiff does not know the specific identity of such person or persons, he may amend his complaint and identify the defendant or defendant by the name "Jane Doe" or "John Doe" as appropriate. Should plaintiff take that approach, however, the court will promptly screen his complaint and, if granted leave to proceed, plaintiff will then be afforded the opportunity to conduct discovery that will help him identify and substitute the proper defendants.

VI. Motions for Preliminary Injunction for Assistance in Recruiting Counsel

Finally, plaintiff has filed motions for preliminary injunctive relief related to his food services retaliation claim and for assistance in recruiting counsel. (Dkt. ##3, 4.) The court will deny both without prejudice. To succeed on his motion for preliminary injunction, plaintiff must show: (1) a likelihood of success on the merits of his case; (2) a lack of an adequate remedy at law; and (3) an irreparable harm that will result if the injunction is not granted. *See Lambert v. Buss*, 498 F.3d 446, 451 (7th Cir. 2007). Furthermore, the Prison Litigation Reform Act ("PLRA"), which governs this lawsuit, narrows the available relief to an even greater extent in cases involving prison conditions. Specifically, the PLRA states that any injunctive relief to remedy prison conditions must be "narrowly drawn to extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2); *see also Westefer v. Neal*, 682 F.3d 679, 681 (7th Cir. 2012) (vacating overbroad injunction related to the procedures for transferring prisoners to a supermax prison). The PLRA also

requires this court to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief." *Id*.

Plaintiff's injunctive filings emphasize the risk of harm should his special diet order not be followed, and he asks the court to order food services to stop serving him eggs and beans. As for the merits of his case, plaintiff asserts that he "will likely prove" that "food services" has and will continue to violate his constitutional rights. (Dkt. #4 at 2.) He attaches in support a copy of a 2015 preliminary injunction order issued in the Southern District of Illinois, which directs the defendants in that case to place plaintiff on a restrictive diet, inspect his meal trays to ensure they do not contain eggs or beans, and to replace plaintiff's entire meal tray should either food be present. (Dkt. #6-2.)

For obvious reasons, the court must deny without prejudice plaintiff's motion for injunctive relief. As noted above, plaintiff cannot proceed on his food services retaliation claim at this time because he has not named a proper defendant, nor has he stated sufficient allegations to support that claim. Both defects undermine *any* chance of success on the merits of this claim, as well as the court's authority to order injunctive relief related to his food service in this lawsuit. Although plaintiff's alleged food allergies are certainly concerning, and his claim may have merit if in fact he has been placed those in charge of special diet needs on notice of the jail's failure to follow its own rules. Indeed, plaintiff claims to have been granted injunctive relief in a previous case involving a different institution and different factual allegations, but this does not automatically entitle him to that same relief in this case. Should plaintiff decide to cure his defects in his complaint and pursue his retaliation claim, he may renew this motion in compliance with the court's

procedures for obtaining preliminary injunctive relief, a copy of which will be provided with this order.

The court will also deny without prejudice plaintiff's motion for assistance in recruiting counsel. 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, 866-67 (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.[8] *See* 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent any person unable to afford 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). Because plaintiff asserts that he has written to several lawyers without success, 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). To that end, plaintiff claims that: (1) he has no legal expertise; (2) he has a limited education; (3) he is unable to possess "certain documents" because he is not a lawyer; (4) his complaint is "complex"; and (5) he needs a lawyer to help him secure a preliminary injunction to prevent food services from serving him eggs and beans.

[8] Because plaintiff has paid the filing fee and is therefore not proceeding *in forma pauperis*, it is unclear whether he qualifies for the court's assistance. The court will address the merits of his motion, however, because there is no indication that plaintiff is not actually indigent.

So far, only screening has been completed in this case. At this point, plaintiff's only obligations in the near future will include (1) possibly amending his complaint and renewing his motion for preliminary relief, (2) participating in the preliminary pretrial conference, and (3) preparing and responding to discovery requests. Although plaintiff notes that his education is limited and he lacks legal training, this is true of many pro se litigants. Moreover, plaintiff's filings indicate he *can* complete the tasks at hand. To date, he has articulated the factual bases for his claims in a thorough manner, submitted understandable filings, and even gathered and filed exhibits and affidavits in support.

Williams also makes a conclusory statement about the complexity of the complaint, but does not explain why this is so. If anything, his case does not appear to be particularly complex as alleged. Nor does plaintiff clarify what information or documents he needs but is unable to access or possess because he is not a lawyer. The court notes that during and after the preliminary pretrial conference in this case, plaintiff will receive guidance from the court regarding how to gather evidence to prove his claims. With respect to plaintiff's general request for help preparing a preliminary injunction motion in particular, as noted above, he is receiving relevant guidance with this order.

Overall, plaintiff has not yet demonstrated that this case exceeds his abilities to litigate it, and so the court will deny his motion without prejudice. Should he decide to renew his motion later, plaintiff should be aware that the court receives many more requests for counsel than the small pool of available volunteers can accommodate. Only those cases presenting exceptional circumstances can be considered for court assistance in recruiting a volunteer. If plaintiff has more to offer in explaining why this case exceeds his

capabilities, he may do so, but he should include specific details explaining the tasks he is unable to perform on his own, as well as any extraordinary circumstances surrounding the facts of this particular case.

ORDER

IT IS ORDERED that:

1) Plaintiff Warren Williams is GRANTED leave to proceed on Fourteenth Amendment claims against defendant Berndt for excessive use of force, against defendant Tabios and defendants John Doe #1-#5 for failure to intervene, and against defendant Malinda for refusing to provide adequate medical care.

2) Plaintiff is DENIED leave to proceed against defendants food services and David J. Mahoney, who are DISMISSED from this lawsuit.

3) Plaintiff's motion for assistance in recruiting counsel (dkt. #3) is DENIED without prejudice.

4) Plaintiff's motion for a preliminary injunction (dkt. #4) is DENIED without prejudice.

5) The clerk of court is directed to forward a copy of the complaint, a completed summons form, and this order to the United States Marshals Service for service on defendants.

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

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

8) 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 are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 29th day of June, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge