

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MATTHEW HERBERT FORGEY,)	
)	
Plaintiff,)	
)	
v.)	No. 1:24-cv-00610-SEB-TAB
)	
INDIANA DEPT. OF CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER SCREENING COMPLAINT AND DIRECTING FURTHER PROCEEDINGS

Matthew Forgey asserts claims for damages and injunctive relief based on his exposure to asbestos at Plainfield Correctional Facility (PCF). Because Mr. Forgey is a prisoner, the Court must screen his complaint. 28 U.S.C. § 1915A.

I. Screening Standard

When screening a complaint, the Court must dismiss any portion that is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). To determine whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Schillinger v. Kiley*, 954 F.3d 990, 993 (7th Cir. 2020). Under that standard, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court construes *pro se* complaints liberally and holds them to a "less stringent standard than formal pleadings drafted by lawyers." *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

II. The Complaint

Mr. Forgey asserts claims for damages and injunctive relief against eleven defendants based on the following allegations, which the Court accepts as true at the pleading stage. *See Lisby v. Henderson*, 74 F.4th 470, 472 (7th Cir. 2023).

In 2021, Mr. Forgey began work as a sanitation worker on the recreation staff at PCF. His duties included removing broken tiles from the gymnasium floor. On May 9, 2022, he and other inmates were ordered to remove all tiles from the gym floor. They broke, removed, and swept the tiles for at least two days, generating significant dust, without protective equipment.

Mr. Forgey and other inmates approached Recreation Director Chad Platt and Deputy Warden Keith Hartzell with concerns that they were unsafe removing the tiles without protective equipment. Deputy Warden Hartzell and Mr. Platt responded by threatening that inmates who did not remove the tiles as ordered would be fired, which could result in disciplinary sanctions, including the loss of credit time.

Two weeks later, an environmental safety company tested samples from the tiles and determined that they contained asbestos. The prison authorities did not complete this testing before ordering inmates to remove the tiles, even though there were reasons to suspect that they would contain asbestos, and even though they knew removing asbestos without protective equipment would be dangerous.

The gym was immediately shut down after testing confirmed that the tile contained asbestos. Inmates who were exposed were not given showers or clean clothing. Nothing has been done to monitor their condition.

In October 2022, Mr. Forgey and others were ordered to set up for a Veterans Day event in the gym. In doing so, they discovered more materials with asbestos. The prison staff went ahead with the event even though it exposed all participants to asbestos.

In May 2023, Mr. Forgey was again ordered to clean up materials in the gym. He quit his recreation job when he was denied protective equipment. The facility continues to expose inmates to asbestos.

Mr. Forgey seeks damages and an order that the defendants "clean and remove all asbestos contaminated material from the remaining areas that will cause risk of exposure, for the safety of staff and prisoners." Dkt. 2 at 26.

III. Discussion of Claims

This action **will proceed** with First Amendment claims for damages against Defendants Platt and Hartzell pursuant to 42 U.S.C. § 1983. These claims are based on allegations that the defendants retaliated against Mr. Forgey for engaging in conduct protected by the First Amendment or placed a prior restraint on protected expression by threatening to fire him after he raised safety concerns.

The action **will also proceed** with a claim for injunctive relief only, under the Eighth Amendment and Indiana tort law, against the Indiana Department of Correction. This claim is based on allegations that Mr. Forgey remains exposed to asbestos in a manner that endangers his health and safety and his request for injunction requiring the clean-up and removal of remaining asbestos.

All other claims arise from Mr. Forgey's allegations that the defendants violated his rights by exposing him to asbestos and its attendant health hazards through deliberate indifference or negligence. These claims must be **dismissed** pursuant to 42 U.S.C. § 1997e(e). These claims could

only be for damages to compensate Mr. Forgey for the defendants' completed acts of misconduct, but he does not allege that he has suffered a physical injury or symptoms of physical harm due to the defendants' acts or omissions. *See* 42 U.S.C. § 1997e(e) ("No Federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act."). It is well settled that prisoners' claims for damages based on asbestos exposure cannot proceed without a showing of physical harm. *Zehner v. Trigg*, 133 F.3d 459, 460 (7th Cir. 1997) ("During the two-year period prior to the filing of the complaint, plaintiffs were exposed to asbestos while working in the kitchen. They do not assert physical injuries . . . as a result of the exposure. The district court dismissed the action without prejudice because no plaintiff developed a physical illness caused by the exposure to asbestos and therefore their recovery was barred by § 1997e(e). . . . We affirm.").

IV. Conclusion and Further Proceedings

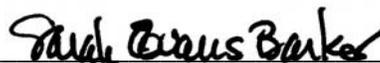
This action **will proceed** with the First Amendment and injunctive relief claims discussed in Part III. All other claims are dismissed.

The claims discussed in Part III are the only claims the Court identified in the complaint. If Mr. Forgey believes he asserted additional claims, he must notify the Court **no later than August 23, 2024**.

The **clerk is directed to terminate** all defendants from the docket **except** the IDOC, Keith Hartzell, and Chad Platt.

The **clerk is directed** to issue process to these defendants electronically in the manner specified by Rule 4(d). Process will consist of the complaint (dkt. [2]), applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this order.

IT IS SO ORDERED.



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Date: 7/26/2024

Distribution:

MATTHEW HERBERT FORGEY
175408
PLAINFIELD – CF
PLAINFIELD CORRECTIONAL FACILITY
Electronic Service Participant – Court Only

Electronic service to IDOC and employees at Plainfield Correctional Facility:

Recreation Director Chad Platt
Deputy Warden Keith Hartzell