

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL W. KLINE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:23-cv-01171-RLY-KMB
)	
M. HACKER, et al.,)	
)	
Defendants.)	
)	

**Order Granting *In Forma Pauperis* Status, Reopening Case,
Screening Amended Complaint, and Directing Service of Process**

After the plaintiff Michael Kline failed to comply with Court orders to either pay the filing fee or move for leave to proceed *in forma pauperis*, the Court dismissed this action for failure to prosecute. Dkt. 7. Approximately two weeks later, Mr. Kline filed a notice of his updated address and moved for leave to proceed *in forma pauperis*.

I. *In Forma Pauperis* Status

Mr. Kline's motion for leave to proceed *in forma pauperis*, dkt. [11], is **granted**. Although the plaintiff is excused from *pre*-paying the full filing fee, he still must pay the three hundred and fifty dollar (\$350.00) filing fee pursuant to the statutory formula set forth in 28 U.S.C. § 1915(b)(2) when able. *See* 28 U.S.C. § 1915(b)(1) (“the prisoner shall be required to pay the full amount of a filing fee.”). The assessment of even an initial partial filing fee is waived because the plaintiff has no assets and no means by which to pay a partial filing fee. 28 U.S.C. § 1915(b)(4). Accordingly, no initial partial filing fee is due at this time.

II. Motions to Refile and Amend Complaint

Mr. Kline's motion to re-file his complaint, *dk.* [13], is construed as a motion to reopen this action and is **granted**. **The clerk is directed** to reopen the case on the docket.

Mr. Kline's motion to amend his complaint, *dk.* [14], is **granted**. The motion itself appears to be the proposed amended complaint. Thus, the **clerk is directed** to redocket the motion at *dk.* 14 as the Amended Complaint which the Court now screens pursuant to 28 U.S.C. § 1915A(a), (c).

III. 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).

IV. The Amended Complaint

The amended complaint names two defendants: New Castle Correctional Facility Counselors M. Hacker and K. Smith. The plaintiff makes the following allegations. Mr. Kline told

both Counselors Hacker and Smith that he suffers from a seizure disorder and needed to be housed on a bottom bunk on a bottom range, but they did nothing to accommodate his need. On the evening of December 16, 2021, he had a seizure, fell out of his bunk, and suffered a head injury. He seeks compensatory and punitive damages.

V. Discussion of Claims

Mr. Kline's Eighth Amendment deliberate indifference claims shall proceed against both defendants as pleaded in his complaint. This summary of claims includes all the viable claims identified by the Court. If the plaintiff believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through February 1, 2024**, in which to identify those claims. The **clerk is directed** to terminate Page, Jones, Sevier, French, Nwannunu, Schillings, and Mitcheff as defendants on the docket because they were not named in the Amended Complaint.


VI. Service of Process

The **clerk is directed** pursuant to *Fed. R. Civ. P.* 4(c)(3) to issue process to defendants Hacker and Smith in the manner specified by Rule 4(d). Process shall consist of the Amended Complaint filed on November 16, 2023, dkt. [14], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Date: 1/02/2024



RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distribution:

MICHAEL W. KLINE
197970
PUTNAMVILLE - CF
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Electronic Service Participant – Court Only

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