

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

**JAMES A. LOVE,**  
Plaintiff,

v.

Case No. 20-cv-1000

**MD PRAPTI P. KUBER, et al.,**  
Defendants.

---

**SCREENING ORDER**

On December 8, 2020, I reopened this case, screened the plaintiff's complaint, dismissed it because it failed to state a claim, and ordered the plaintiff to file an amended complaint by January 8, 2021. ECF No. 24. The plaintiff did not submit an amended complaint. But on December 30, 2020, he submitted a letter in which he appears to allege harm by officials at his prison. I will construe this letter as the plaintiff's amended complaint, which is before me for screening.

**I. SCREENING THE COMPLAINT**

**A. Federal Screening Standard**

As explained in the previous order, I must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint if it raises claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the amended complaint states a claim, I apply the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). See *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, the amended

complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The amended complaint must contain enough facts, accepted as true, to “state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

To state a claim for relief under 42 U.S.C. § 1983, the plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States, and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). I construe *pro se* complaints liberally and hold them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

## **B. Plaintiff’s Allegations**

In the original complaint, the plaintiff sued medical officials and unspecified medical staff at his prison, Racine Correctional Institution (RCI). The amended complaint does not reiterate any of the previous allegations and does not name any of the same defendants. The amended complaint names Unit Supervisor Christina Ettinger, ADA Coordinator Ms. Belis, and Ms. Baraniak.

The plaintiff alleges that Ettinger was on quarantine from the prison because of COVID-19 but returned to the prison five days early. The plaintiff alleges Ettinger was positive for COVID-19 when she returned to the prison, causing the inmates to have to isolate because the prison could not test everyone for the virus. But the plaintiff says he was tested and was awaiting his results at the time he submitted the amended complaint. He alleges that Ettinger “told them not to help me” with reading mail or the plaintiff’s “everyday living” needs. ECF No. 25 at 1.

The plaintiff alleges that ADA Coordinator Belis received “the papers that I sign t[w]o months going on three months now.” *Id.* He does not say what these papers are but alleges that Belis held onto the papers, causing him to suffer and ask others for help.

The plaintiff alleges that Baraniak in her position as a “swoker” was supposed to help him “get home” but has instead “let all this happen to me.” *Id.* at 1–2. The plaintiff alleges that Baraniak allowed correctional officers to swear at him and mistreat him to the point that he has had suicidal thoughts.

The plaintiff also alleges that Ms. T. Serras and Ms. Schults at the RCI business office have taken money from his account, so he is unable to purchase basic items like deodorant. He appears to allege that RCI has disallowed him from filing papers. The plaintiff attached an Interview/Information Request form he sent to the business office asking about money that was taken from his account. He explains that his “fee was wa[i]ved” and requests that the money be returned to him, otherwise he will “file[] a 1983 on b[uis]ness office.” ECF No. 25-1 at 1. T. Serrano (who likely is the person he refers to as “T. Serras”) responded, “Obligations are deducted according to policy.” *Id.*

### **C. Analysis**

To state a claim, the plaintiff’s allegations must provide adequate notice of what the defendants did (or failed to do) that violated his rights. The plaintiff’s amended complaint does not adequately allege what any defendant did or failed to do or what harm resulted. It does not provide the requisite notice for any of his putative claims.

The plaintiff does not state a claim against Ettinger for returning to the prison before her quarantine ended. He alleges that he had to isolate after she returned to the prison and tested positive for COVID-19, but he does not allege that he tested positive after contact with her. That the plaintiff had to isolate for a period of time did not violate his constitutional

rights. Prisons must be afforded latitude to safely house inmates during the pandemic. See *Stevens v. Carr*, No. 20-C-1735, 2021 WL 39542, at \*4–5 (E.D. Wis. Jan. 5, 2021) (describing protective measures at another Wisconsin prison to prevent the spread of COVID-19 between inmates, including lockdowns and isolation). In his motion for emergency release, the plaintiff stated that he tested positive for COVID-19 on December 23, 2020. ECF No. 27 at 2. But he did not then, and does not now, allege that he contracted COVID-19 from Ettinger or because of her early return to the prison, and it would be impossible to know for sure whether her return to the prison was the source of his infection.

The plaintiff alleges Ettinger told unspecified persons not to help him with his mail or other daily activities. Although Ettinger could be liable if she instructed staff not to perform designated duties to assist the plaintiff in the prison without a legitimate reason, the plaintiff's allegations are too general and vague to state a claim against her. He does not specify who Ettinger told not to assist the plaintiff, her reasons (if any) for so instructing, what assistance she told those persons not to provide, or whether those persons were (or should have been) providing assistance before her instructions not to.

The plaintiff alleges Belis withheld papers from him that caused him to suffer and ask others for help. But he does not explain what those papers are, why not receiving them caused him harm, or what harm it caused. Simply stating that he was left to “suffer” does not provide enough information about what Belis did that violated his rights.

The plaintiff alleges Baraniak is a “swoker” and in that role should have helped him get home. It is possible he means to allege Baraniak is his assigned *social worker*, who he believes has not adequately assisted him at RCI or prepared him to leave. The Wisconsin Department of Corrections website shows the plaintiff's mandatory release/supervision date as April 29, 2023. See <https://appsdoc.wi.gov/lop/home.do> (DOC# 00177408). The most I

can infer is that he is dissatisfied with the assistance Baraniak has provided. But again, his allegations are so vague that it is not at all clear what she did that he believes was inadequate or violated his rights.

The plaintiff alleges that T. Serras and Ms. Schults at the business office wrongly withheld or took money from his trust account. But the response he received from the business office suggests the money was taken to pay his current financial obligations. The plaintiff has filed three civil cases under § 1983 in this court. See Case Nos. 19-C-1184 and 20-C-525. Although I granted his requests not to *prepay* the full \$350 filing fee, he remains obligated to pay the *full \$350 eventually*, over time. See ECF No. 24 at 2, 8–9. He is not excused from ever paying those fees. It is possible, even likely, that money was withdrawn from his account to pay down those financial obligations, as I ordered. It is impossible to tell from the plaintiff's sparse allegations whether his money was improperly taken. As alleged, the plaintiff does not state a claim against T. Serras or Schults about his trust account.

Finally, the plaintiff does not state a claim against the unnamed officers who he says harassed him. Although any harassment by prison officials is unprofessional, it is well settled that their verbal abuse or harassment does not violate the Constitution. See *DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir. 2000), *abrogated in part on different grounds by Savory v. Cannon*, 947 F.3d 409, 423–24 (7th Cir. 2020) (en banc). He also alleges that RCI does not allow “filing,” but the court has continually received papers from him over the last several months in all three of his cases. As with his other claims, it is not clear what he is alleging.

The plaintiff's filings in this case (as in the two others before me) make clear that he is not able to litigate this lawsuit on his own. But his allegations suggest (albeit too vaguely at this point) that he has not received proper medical treatment, has been mistreated because of his injuries or mental difficulties, has been exposed to COVID-19 because of

improper precautions, and/or is being taken advantage of by officials at RCI. In his other two cases before me, I recruited counsel to assist him in presenting and litigating his claims. I will reconsider my previous ruling denying his request to recruit counsel (ECF No. 24), and on reconsideration the request is **GRANTED**. I will stay this case until counsel is recruited to assist the plaintiff in amending his complaint and proceeding with this litigation. The plaintiff is reminded that he may not proceed in this case on any claims dismissed or being litigated in his other lawsuits. After I have recruited counsel to represent the plaintiff, I will set a new deadline for counsel to file an amended complaint. Until then, no amended pleading or other filings are due. This case is closed for administrative purposes only and will be reopened once counsel is recruited.

### **III. CONCLUSION**

For the reasons stated, **IT IS ORDERED** that the plaintiff's letter, construed as his amended complaint (ECF No. 25) is **DISMISSED** for failure to state a claim.

**IT IS FURTHER ORDERED** that the plaintiff's request to recruit counsel (ECF No. 23) is reconsidered and, on reconsideration, is **GRANTED**.

**IT IS FURTHER ORDERED** that this case is **STAYED** pending recruitment of counsel for the plaintiff. **No amended complaint is due at this time.** The court will attempt to recruit counsel to file an amended complaint on behalf of the plaintiff and proceed with litigation in this case. **Until counsel is recruited, the Clerk of Court shall close the file administratively.**

Dated at Milwaukee, Wisconsin, this 29th day of January, 2021.

s/Lynn Adelman  
LYNN ADELMAN  
United States District Judge