

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

<p>MICHAEL LINDGREN,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>STATE OF IOWA, IOWA DEPARTMENT OF CORRECTIONS,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:18-cv-00404-RP-RAW</p> <p style="text-align: center;">INITIAL REVIEW ORDER</p>
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Plaintiff Michael Lindgren was part of 58 plaintiffs who filed a combined pro se complaint under 42 U.S.C. §1983. The Court determined each plaintiff was required to file an individual complaint and proceed separately. Prescreening Order, ECF No. 2. The Court also directed each plaintiff to either pay the filing fee or seek leave to proceed in forma pauperis. The Court directed each plaintiff to submit an amended complaint and financial information.

Lindgren has now filed this information, and the Court reviews his complaint. Lindgren also has made a jury demand.

I. STANDARD OF REVIEW

The Prison Litigation Reform Act (PLRA) requires federal courts to review all prisoner complaints filed against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). On review, the Court must identify the cognizable claims or dismiss the complaint, or any part of it, that it determines (a) is frivolous or malicious, (b) fails to state a claim upon which relief may be granted, or (c) seeks monetary relief from a defendant who is immune from such relief. *Id.* at § 1915A(b).

A claim is “frivolous” if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it does not plead “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). “The plausibility standard requires a plaintiff to show at the pleading stage that success on the merits is more than a ‘sheer

possibility.’” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

A pro se complaint in a proceeding without prepayment of fees must be construed liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The Court must weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (determination of what is “clearly baseless” is left to discretion of court ruling on *in forma pauperis* petition). Although Federal Rule of Civil Procedure 8(a)(2) does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citation omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678-79 (citations omitted).

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted). A complaint states a plausible claim for relief when its “factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

II. DISCUSSION OF CLAIMS

Lindgren alleges the Iowa Department of Corrections is denying to inmates all periodicals which contain any nudity, no matter the purpose. Lindgren states this change in policy is pursuant to a newly enacted state law. Lindgren asserts as currently implemented, the law violates his First Amendment rights.

This claim does not appear to be wholly frivolous and may proceed.

III. SUMMARY AND ORDERS

Permission to proceed without prepayment of fees, ECF No. 6, is **granted**. Based on the information provided, the Court assesses no initial partial filing fee. The \$350.00 filing fee, however, shall be paid to the Clerk of Court from the prisoner's account in accordance with 28 U.S.C. § 1915(b) as funds become available. A notice of this obligation shall be sent to the appropriate prison official.

In Lindgren's motion seeking additional time to submit his information, he stated he was not an attorney and had to research the process and ask for help to complete the papers. ECF No. 3. The Court construes this statement as a request for the assistance of counsel.

The Court may request an attorney to represent any litigant in a civil case who is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). A civil litigant has no constitutional or statutory right to be represented, and "[t]he court has a good deal of discretion to determine whether representation is warranted given the nature of the case and the litigants." *Chambers v. Pennycook*, 641 F.3d 898, 909 (8th Cir. 2011) (citing *Phillips v. Jasper County Jail*, 437 F.3d 791, 794 (8th Cir. 2006)). Criteria for district courts to consider in deciding whether to recruit counsel include "the factual and legal complexity of the underlying issues, the existence of conflicting testimony, and the ability of the indigent plaintiff to investigate the facts and present his claims." *Ward v. Smith*, 721 F.3d 940, 942 (8th Cir. 2013) (citing *Phillips*, 437 F.3d at 794). Given the legal complexity of the underlying issues, the Court finds it would be beneficial for Lindgren to be represented by counsel.

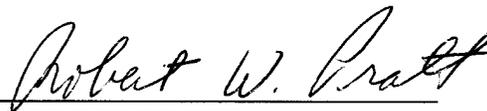
The Clerk of Court shall find counsel to represent Lindgren in this case.

Service of process to Defendants State of Iowa and the Iowa Department of Correction and to the Attorney General of the State of Iowa shall issue by the electronic filing of this order. The Attorney General is directed to notify this Court immediately if he lacks the consent of the Defendants to appear generally on their behalf and to submit to the

jurisdiction of the Court. Because the Court has found that a reply is necessary pursuant to 42 U.S.C. § 1997e(g)(2), **Defendants must reply to this Complaint within 60 days.**

IT IS SO ORDERED.

Dated this ___2nd___ day of January, 2019.



ROBERT W. PRATT
U.S. DISTRICT JUDGE