

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

MARVIN KEITH SMITH

(Full Name of each Plaintiff)

Plaintiff(s).

2013 FEB 22 P 1:38

JG. A. J. FILIPPO
CLERK

13-C-0191

Case No.

(Supplied by Clerk)

v.

LIEUTENANT SCHNEIDER (SOMEDOE)

OFFICER ANDREW MOUNGEY (SOMEDOE)

(Full Name of each Defendant)

Defendant(s).

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

I. PLACE OF PRESENT CONFINEMENT (Provide full address)

WAUPUN CORRECTIONAL INSTITUTION, P.O. BOX 351,

WAUPUN, WISCONSIN 53963

A. Is there a grievance procedure in your prison/jail? YES ☒ NO ☐

B. Have you filed a grievance concerning the facts relating to this complaint?

YES ☒ NO ☐

II. PARTIES

A. Your name (Plaintiff) MARVIN KEITH SMITH

B. Prisoner I.D. Number 478078

C. Social Security Number (Last Four Digits Only) 2504

D. Your Address (City & State) WAUPUN, WISCONSIN
(For additional plaintiffs provide the same information in the same format on a separate page.)

E. DEFENDANT (name) LIEUTENANT . SCHNEIDER (JOHN DOE)
is employed as CORRECTIONS OFFICER
at WAUPUN CORRECTIONAL INSTITUTION

F. Additional DEFENDANTS (name, position, and place of employment):
ANDREW MOUNGEY (JOHN DOE) IS EMPLOYED AS CORRECTIONS
OFFICER AT WAUPUN CORRECTIONAL INSTITUTION.

III. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court relating to the same facts involved in this action? ☐ YES ☒ NO

B. Have you begun other lawsuits in state or federal court relating to your imprisonment? ☐ YES ☒ NO

C. If your answer is YES to either of the above questions, provide the following requested information.

1. Parties to the previous lawsuit

Plaintiff(s): _____

Defendant(s): _____

2. Date filed _____

3. Court where case filed (if federal court, name district: if state court, name the county) _____

4. Case number and citation _____

5. Nature of claim _____

6. Current status (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____

7. If resolved, date of disposition _____

8. If resolved, state whether for _____
(plaintiff or defendant)

(For additional cases, provide the above information in the same format on a separate page.)

IV. STATEMENT OF CLAIM

A. State as briefly as possible the facts of your case. Describe how each named defendant is involved. Include the name of other persons involved, dates, and places. Describe specifically the injuries incurred. Do not give legal arguments or cite cases or statutes. You may do that in Item "B" below. If you allege related claims, number and set forth each claim in a separate paragraph. Use as much space as you need to state the facts. Attach extra pages, if necessary. Unrelated separate claims should be raised in a separate civil action.

ON JANUARY 3, 2013 - 5:10 P.M. AFTER BEING PLACED BACK INTO CELL A17, DEFENDANT
MOUNGEY IMMEDIATELY STARTED FORCEFULLY PULLING ON THE TETHER-CUFF STRAP WHILE MY WRISTS
WERE CUFFED BEHIND MY BACK. I TOLD MOUNGEY "VAIRE MURTINAI MY ARMS" WHICH HE CONTINUED
TO PULL WITH MORE FORCE. MY ENTIRE RIGHT HAND WAS BLEEDING FROM MOUNGEY FORCING MY HANDS
OUT THE TRAP. THE RESTRAINTS WAS REMOVED. I KEPT MY HANDS OUT THE TRAP. MOUNGEY AND ANOTHER
OFFICER GRABBED MY WRISTS AGAIN. MOUNGEY BEGAN FORCING HIS WEIGHT DOWN ON MY LEFT ARM.
I TRIED TO PULL MY ARMS BACK INTO TRAP. MOUNGEY PRESSED DOWN HARDER. LT. SCHNEIDER
ARRIVED. CELL DOOR WAS REOPENED. LT. SCHNEIDER IMMEDIATELY GRABBED ME FROM BEHIND IN A

STATEMENT OF CLAIM continued

CHOKER-HOLE. FORCEFULLY CHOKING ME TO THE GROUND. LT. SCHNEIDER HIT THE RIGHT SIDE OF MY FACE
AGAINST DOOR FRAME. I WAS IN RESTRAINTS THE ENTIRE TIME WHICH I DID NOT RESIST STAFF. I RECEIVE
THE FOLLOWING INJURIES: 1) BLEEDING WOUNDS TO ALL FIVE RIGHT HAND KNUCKLES, 2) BLEEDING WOUNDS ON BOTH MY
WRISTS, 3) SEVERE BRUISES TO ^{BOTH} WRISTS, 4) BRUISE ON LEFT BICEP, 5) SWOLLENING TO BOTH WRISTS, 6) THREE
BLEEDING WOUNDS TO RIGHT SHIN, 7) BLOOD BLISTER ON RIGHT INDEX KNUCKLE, 8) BLOOD CLOG / BRUISE TO TIP OF
RIGHT INDEX FINGER-NAIL / SKIN, 9) SORENESS AROUND THE THROAT, 10) SORENESS TO RIGHT SIDE OF FACE
I WAS SEEN BY HSI STAFF 3 TIMES SEPARATELY WHICH I EXPERIENCED OVER (3) THREE WEEKS

OF PAIN, SUFFERING, AND INJURES. INCIDENT PHOTOS WERE NOT TAKEN OF ALL SAID INJURES BECAUSE LT. SCHNEIDER REFUSED TO AFTER I WAS PLACED CONTROL STATUS. I HAVE EXHAUSTED ALL ADMINISTRATIVE REMEDIES AVAILABLE AT WCI WHICH THE COMPLAINT WAS REJECTED AT ALL LEVELS. EXHIBIT-A (INCIDENT PHOTOS) AND EXHIBIT-B (MEDICAL REPORTS) ACCOMPANY THIS COMPLAINT AS EVIDENCE.

B. State briefly your legal theory or cite appropriate authority.

PLAINTIFF REALLEGE AND INCORPORATE BY REFERENCE OF SECTION ~~II~~ A OF THIS COMPLAINT. DEFENDANT MOUNCEY AND LT. SCHNEIDER USED EXCESSIVE FORCE AGAINST PLAINTIFF ~~WHILE CLIPPED BEHIND~~ WHILE CLIPPED BEHIND THE BACK, FRONT, AND WHILE HIS ARMS WERE OUT THE TRAP. DEFENDANT'S MOUNCEY AND SCHNEIDER ACTIONS VIOLATED PLAINTIFF SMITH'S RIGHTS UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND CAUSED PLAINTIFF SMITH PAIN, SUFFERING, PHYSICAL INJURES, AND EMOTIONAL DISTRESS. PLAINTIFF SMITH HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDY AT LAW TO REDRESS THE WRONGS DESCRIBED HEREIN. PLAINTIFF HAS BEEN AND WILL CONTINUE TO BE IRREPARABLY INJURED BY THE CONDUCT OF THE DEFENDANTS UNLESS THIS COURT GRANTS THE DECLARATORY AND INJUNCTIVE RELIEF WHICH PLAINTIFF SEEKS.

V. RELIEF YOU REQUEST

State briefly and exactly what you want the court to do for you. Make no legal arguments. Do not use this space to state the facts of your claim. Use it only to request remedies for the injuries you complain about.

- 1) GRANTING PLAINTIFF SMITH A DECLARATION THAT THE ACTS AND OMISSIONS DESCRIBED HEREIN VIOLATE HIS RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND
- 2) PERMANENT INJUNCTION ORDERING DEFENDANT MOUNCEY AND SCHNEIDER TO CEASE THEIR PHYSICAL VIOLENCE TOWARD PLAINTIFF SMITH, AND

3) COMPENSATORY DAMAGES IN THE AMOUNT OF \$ 500,000, AND
4) PUNITIVE DAMAGES IN THE ^{AMOUNT} ~~AMOUNT~~ OF \$ 500,000, AND 5) PLAINTIFF SEEKS A SURV
TRIAL ON ALL ISSUES TRIABLE BY SURV, AND 6) RECOVERY OF COSTS IN THIS SUIT, AND 7)
ANY ADDITIONAL RELIEF THIS COURT DEEMS JUST, PROPER, AND EQUITABLE.

I declare under penalty of perjury that the foregoing is true and correct.

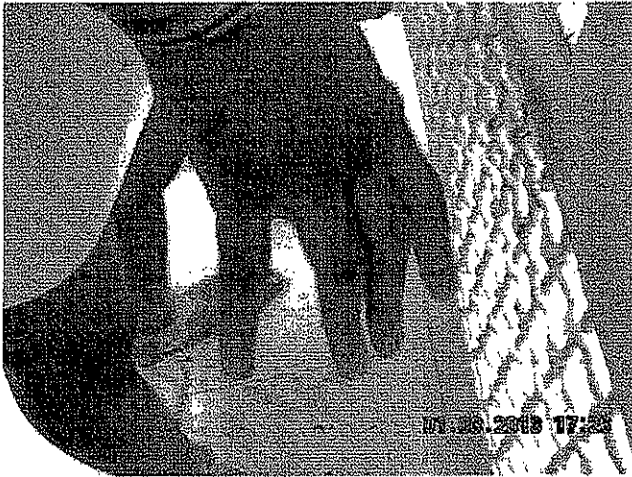
Complaint signed this 27 day of JANUARY, 2013.

Martin Keith Smith
Signature of Plaintiff(s)

(If there are multiple plaintiffs, each must sign the
complaint)

Prisoner I.D. Number(s) 478078

(EXHIBIT-A)



U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

2013 FEB 22 P 1:40

JON A. WILKINSON
CLERK



PATIENT NAME Last

First

MI

DOC NUMBER

Smith, Marvin

478078

DATE

TIME

PROGRESS NOTES - SUBJECT, OBJECTIVE, ASSESSMENT, PLAN

1-3-13 1735

pt seen on unit, p attention & returned staff
 pt ap pain/surgery to R hand. O) pt has
 small skin flap amputation and bruised
 fingernail. fed as diagnosed
 areas cleaned & H₂O. ^{Brace!}
 direct pressure applied. ^{wait bed}
 bleeding stopped and ^{small skin}
^{flap excisions}

Medication initiated applied. 1/3 143/80 P30

R16 T9² A) potential for infection. P) pt
 instructed to wash & soap/water daily, notify
 HSE of any swelling, redness, pus, like drainage,
 or fever. pt verbalized understanding.

1/4/13 0913

S) seen in Leg Exam room. Patient has
 concern he may have diabetes. He thinks mo
 said he may have Degenerative Diabetes.

He says it runs in his family. O) T. 97.6° P 84
 R16 BP 121/82 SpO₂ 100% Wt. 224#. Skin warm
 at dry. BS 103. Ate peanut butter for breakfast.
 Last Champarel 4/15/11 BS 78. A) Knowledge
 deficit R/T last MD visit and lack of knowledge
 about Diabetes. P) Informed pt that FBs
 done in 2001 was normal. Blood sugar today
 was good. Last MD visit, doctor made
 reference patient may have D-ID. Explained
 that to patient. He verbalized understanding
 of information. Eidinger

(EXHIBIT-B)

DISTRIBUTION: Original - Medical Chart, Progress Notes Section

(EXHIBIT-B)
**HEALTH SERVICE REQUEST
AND COPAYMENT DISBURSEMENT AUTHORIZATION**

→ NOTIFY ANY FACILITY STAFF IF YOUR HEALTH CARE NEED IS AN EMERGENCY ←

PRINT LAST NAME

PRINT FIRST NAME

DOC NUMBER

FACILITY NAME

HOUSING UNIT

TODAY'S DATE

COPAYMENT DISBURSEMENT REQUEST SECTION

AGREEMENT BY PATIENT:

I understand the following:

- The Department of Corrections shall charge a copayment of \$7.50 for a visit (face to face contact) initiated by a patient when a copayment is required.
- I will not be denied care if I am unable to pay the copayment.
- By signing below, I am initiating a request for disbursement of my funds for the copayment at the time of the visit when a copayment is required.
- Failure to sign below will NOT prevent the copayment from being withdrawn from my account following a visit when a copayment is required.

PATIENT SIGNATURE (Indicates request for disbursement of your funds to pay the \$7.50 co-payment at the time of the requested visit when a copayment is required.)

TO BE COMPLETED BY HSU ONLY

☐ MEDICAL (Nurse, Doctor/NP/PA)

☐ DENTAL

☐ OPTICAL

Charge Copayment: ☐ Yes ☐ No

AUTHORIZED STAFF SIGNATURE

DATE OF SERVICE

HEALTH SERVICE REQUEST SECTION

INSTRUCTIONS TO PATIENT: Be sure to include today's date on top of form. Check the appropriate box and explain your request on the lines provided. Use all 4 pages of the completed form in the sick call box. The HSU will send a copy back to you indicating that your request has been received.

☒ HEALTH SERVICES

☐ HEALTH CARE RECORD REVIEW

☐ COPIES FROM HEALTH CARE RECORD (List records below)

☒ PSYCHIATRIST

☐ INFORMATION

☐ OTHER:

Please provide a brief description below of the services you desire so that HSU can respond to your request appropriately.

FOLD THE BOTTOM OF THE FORM UP TO THE DOTTED LINE SO THAT INFORMATION REMAINS CONFIDENTIAL.

ONE INCIDENT W/ STAFF ON 1/3/13, I HAD A BLOOD CLOT BEHIND THE
TOOTH MY RIGHT LOWER JAW. I HAD A BLOOD BUSTER IN SAME JAW.
BLOOD BUSTERS AND STITCHES AROUND FROM MY INJURY AND SWELLING TO MY
JAW AND AROUND MY RIGHT EYE. I WAS SEEN BY D11 MARK BUT ALL
INJURIES WERE NOT ATTENDED TO. PLEASE SEE A S.A.P - THANKS

DATE RECEIVED
TO BE STAMPED BY HSU

PATIENT: DO NOT WRITE BELOW THIS LINE - TO BE COMPLETED BY HSU ONLY

RESPONSE: Check appropriate box below.

☒ Scheduled to be seen in HSU: ☐ MD/DO ☐ NP/PA ☒ RN/LPN

☐ Refer to Special Needs Nurse/Committee

☐ Treated Today ☐ Refer to Psychiatrist

☐ Refer to PSU

☐ Place on Optometric Waiting List

☐ Refer to MPAA for record review appointment or for copies only. (Must be within 30 days of request.)

☐ Non-Medical Problem ☐ Other:

WRITTEN RESPONSE:

PRINT STAFF NAME

DATE OF HSU RESPONSE

(EXHIBIT-B)
**HEALTH SERVICE REQUEST
AND COPAYMENT DISBURSEMENT AUTHORIZATION**

→ NOTIFY ANY FACILITY STAFF IF YOUR HEALTH CARE NEED IS AN EMERGENCY ←

PRINT LAST NAME <i>Smith</i>	PRINT FIRST NAME <i>MAURICE</i>	DOC NUMBER <i>47203</i>
FACILITY NAME <i>WCI</i>	HOUSING UNIT <i>115C A202</i>	TODAY'S DATE <i>1/22/13</i>

COPAYMENT DISBURSEMENT REQUEST SECTION

AGREEMENT BY PATIENT:

I understand the following:

- The Department of Corrections shall charge a copayment of \$7.50 for a visit (face-to-face contact) initiated by a patient when a copayment is required.
- I will not be denied care if I am unable to pay the copayment.
- By signing below, I am initiating a request for disbursement of my funds for the copayment at the time of the visit when a copayment is required.
- Failure to sign below will NOT prevent the copayment from being withdrawn from my account following a visit when a copayment is required.

PATIENT SIGNATURE (Indicates request for disbursement of your funds to pay the \$7.50 copayment at the time of the requested visit when a copayment is required.)

TO BE COMPLETED BY HSU ONLY

☐ MEDICAL (Nurse, Doctor/NP/PA) ☐ DENTAL ☐ OPTICAL

Charge Copayment: ☐ Yes ☐ No

AUTHORIZED STAFF SIGNATURE

DATE OF SERVICE

HEALTH SERVICE REQUEST SECTION

INSTRUCTIONS TO PATIENT: Be sure to include today's date on top of form. Check the appropriate box and explain your request on the lines provided. Place all 4 pages of the completed form in the sick call box. The HSU will send a copy back to you indicating that your request has been received.

- ☒ HEALTH SERVICES ☐ HEALTH CARE RECORD REVIEW ☐ COPIES FROM HEALTH CARE RECORD (List records below)
☐ PSYCHIATRIST ☐ INFORMATION
☐ OTHER:

Please provide a brief description below of the services you desire so that HSU can respond to your request appropriately.

<i>DUE TO INJURY, MY LEFT AND RIGHT HANDS STILL HAVE PAIN. ALSO THE TIP OF MY RIGHT MIDDLE FINGER AND LEFT AND RIGHT SHIN. WOULD LIKE TO BE SEEN THANK YOU</i>	DATE RECEIVED: TO BE STAMPED BY HSU
---	--

FOLD THE BOTTOM OF THE FORM UP TO THE DOTTED LINE SO THAT INFORMATION REMAINS CONFIDENTIAL.

PATIENT: DO NOT WRITE BELOW THIS LINE - TO BE COMPLETED BY HSU ONLY

RESPONSE Check appropriate box below.

- ☐ Scheduled to be seen in HSU: ☐ MD/DO ☐ NP/PA ☐ RN/LPN ☐ Refer to Special Needs Nurse/Committee
☐ Treated Today ☐ Refer to Psychiatrist ☐ Refer to PSU ☐ Place on Optometric Waiting List
☐ Refer to MPAA for record review appointment or for copies only. (Must be within 30 days of request.)
☐ Non-Medical Problem ☐ Other:

WRITTEN RESPONSE

*You have been seen by MD. Please follow the
plan of care.*

PRINT STAFF NAME

C. Maurice RN

DATE OF HSU RESPONSE

1/23/13

(EXHIBIT - B)
**HEALTH SERVICE REQUEST
AND COPAYMENT DISBURSEMENT AUTHORIZATION**

⇒ NOTIFY ANY FACILITY STAFF IF YOUR HEALTH CARE NEED IS AN EMERGENCY ⇒

PRINT LAST NAME

PRINT FIRST NAME

DOC NUMBER

FACILITY NAME

HOUSING UNIT

TODAY'S DATE

COPAYMENT DISBURSEMENT REQUEST SECTION

AGREEMENT BY PATIENT:

I understand the following:

- The Department of Corrections shall charge a copayment of \$7.50 for a visit (face to face contact) initiated by a patient when a copayment is required.
- I will not be denied care if I am unable to pay the copayment.
- By signing below, I am initiating a request for disbursement of my funds for the copayment at the time of the visit when a copayment is required.
- Failure to sign below will NOT prevent the copayment from being withdrawn from my account following a visit when a copayment is required.

PATIENT SIGNATURE (Indicates request for disbursement of your funds to pay the \$7.50 copayment at the time of the requested visit when a copayment is required)

TO BE COMPLETED BY HSU ONLY

☐ MEDICAL (Nurse, Doctor/NP/PA)

☐ DENTAL

☐ OPTICAL

Charge Copayment: ☐ Yes ☐ No

AUTHORIZED STAFF SIGNATURE

DATE OF SERVICE

HEALTH SERVICE REQUEST SECTION

INSTRUCTIONS TO PATIENT: Be sure to include today's date on top of form. Check the appropriate box and explain your request on the lines provided. Place all 4 pages of the completed form in the sick call box. The HSU will send a copy back to you indicating that your request has been received.

- ☒ HEALTH SERVICES ☐ HEALTH CARE RECORD REVIEW ☐ COPIES FROM HEALTH CARE RECORD (List records below)
- ☐ PSYCHIATRIST ☐ INFORMATION
- ☐ OTHER:

Please provide a brief description below of the services you desire so that HSU can respond to your request appropriately.

<p>TO INCIDENT ON 11/13 WITH STAFF. IT IS VERY DIFFICULT FOR ME TO WRITE PROPERLY DUE PRESSURE ON FINGER NAIL. ALSO I AM STILL FEELING SORENESS AND PAIN OF BOTH MY WRISTS. FROM INCIDENT ALSO. WOULD LIKE TO BE SEEN FOR</p>	<p>DATE RECEIVED: TO BE STAMPED BY HSU</p>
---	---

FOLD THE BOTTOM OF THE FORM UP TO THE DOTTED LINE SO THAT INFORMATION REMAINS CONFIDENTIAL.

PATIENT: DO NOT WRITE BELOW THIS LINE - TO BE COMPLETED BY HSU ONLY

RESPONSE Check appropriate box below.

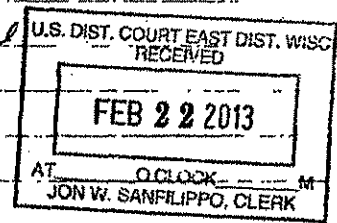
- ☐ Scheduled to be seen in HSU: ☐ MD/DO ☐ NP/PA ☒ RN/LPN ☐ Refer to Special Needs Nurse/Committee
- ☐ Treated Today ☐ Refer to Psychiatrist ☐ Refer to PSU ☐ Place on Optometric Waiting List
- ☐ Refer to MPAA for record review appointment or for copies only. (Must be within 30 days of request.)
- ☐ Non-Medical Problem ☐ Other:

WRITTEN RESPONSE

PRINT STAFF NAME

DATE OF HSU RESPONSE

MARVIN KEITH SMITH #478078
WAUPUN CORRECTIONAL INSTITUTION
P.O. BOX 351
WAUPUN, WISCONSIN 53963



FEBRUARY 19, 2013

CLERK, UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE, Room 362
517 E. WISCONSIN AVENUE
MILWAUKEE, WISCONSIN 53202

RE: 42 U.S.C. § 1983 CIVIL RIGHTS COMPLAINT

DEAR CLERK, UNITED STATES DISTRICT COURT,

ENCLOSED ARE THE

- FOLLOWING DOCUMENTS:
- 1) 1 - ORIGINAL 42 U.S.C. § 1983 COMPLAINT
 - 2) 2 - COPIES OF 42 U.S.C. § 1983 COMPLAINT FOR EACH DEFENDANT
 - 3) 1 - INCIDENT PHOTO COPY (COLOR); EXHIBIT - A
 - 4) 1 - MEDICAL PROGRESS NOTES; EXHIBIT - B
 - 5) 3 - DOC-3035 HEALTH SERVICE REQUEST RESPONSE COPIES; EXHIBIT - B
 - 6) 1 - ORIGINAL PETITION AND AFFIDAVIT TO PROCEED W/O PREPAYMENT OF FEES AND/OR COSTS
 - 7) 1 - ORIGINAL AUTHORIZATION FOR RELEASE OF INSTITUTIONAL ACCOUNT INFORMATION AND PAYMENT OF THE FILING FEE
 - 8) 1 - CERTIFIED TRUST ACCOUNT STATEMENT SIX MONTHS PRIOR
 - 9) 1 - ORIGINAL NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

PLEASE ACKNOWLEDGE IN RESPONSE THAT THE FOLLOWING DOCUMENTS WERE RECEIVED AT THE COURT'S CONVENIENCE.

Respectfully Submitted,

NOTE: COMPLAINT MAILED ON
2/19/13 - MB

Marvin Keith Smith
478078

C,C; FILE:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARVIN KEITH SMITH,

Plaintiff,

v.

LT. SCHNEIDER and
ANDREW MOUNGEY,

Defendants.

Case No. 13-CV-191-JPS

SCREENING ORDER

The plaintiff, a Wisconsin state prisoner, filed this civil rights action under 42 U.S.C. § 1983. This case is before the court on the plaintiff's petition for leave to proceed *in forma pauperis* and to screen the plaintiff's amended complaint, which he filed on June 26, 2012. The plaintiff has been assessed and paid an initial partial filing fee of \$2.92.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised 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).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hutchinson ex rel. Baker v. Spink*, 126 F.3d 895, 900 (7th Cir. 1997). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. "Malicious,"

although sometimes treated as a synonym for "frivolous," "is more usefully construed as intended to harass." *Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citations omitted).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a "short and plain statement of the claim showing that [he] is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). It is not necessary for the plaintiff to plead specific facts and his statement need only "give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, a complaint that offers "labels and conclusions" or "formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). To state a claim, a complaint must contain sufficient factual matter, accepted as true, "that is plausible on its face." *Id.* (quoting *Twombly*, 550 U.S. at 570). "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." *Id.* (citing *Twombly*, 550 U.S. at 556). The complaint allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citation omitted).

In considering whether a complaint states a claim, courts should follow the principles set forth in *Twombly* by first, "identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679. Legal conclusions must be supported by factual allegations. *Id.* If there are well-pleaded factual allegations, the court must, second, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.*

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that: 1) he was deprived of a right secured by the Constitution or laws of the United States; and 2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)); see also *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff's pro se allegations, "however inartfully pleaded," a liberal construction. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

The plaintiff was incarcerated at Waupun Correctional Institution at all times relevant. The defendants are Lieutenant Jessie J. Schneider and Correctional Officer Andrew Moungey.

According to the complaint, on January 3, 2013, the defendants used excessive force against the plaintiff causing physical injury. The plaintiff alleges that he was not resisting and that the force used was not applied in a good faith effort to maintain or restore discipline. Instead, he asserts that the defendants used force against him maliciously and sadistically to cause harm. The plaintiff seeks monetary damages, as well as injunctive and declaratory relief.

The court finds that the plaintiff may proceed on an Eighth Amendment excessive force claim. See *Gomez v. Randle*, 680 F.3d 859, 864-65 (7th Cir. 2012). Therefore,

IT IS ORDERED that the plaintiff's motion for leave to proceed in forma pauperis (Docket #2) be and the same is hereby **GRANTED**.

IT IS FURTHER ORDERED that pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's amended complaint (Docket #12) and this order are being

electronically sent today to the Wisconsin Department of Justice for service on the state defendants.

IT IS FURTHER ORDERED that, pursuant to the informal service agreement between the Wisconsin Department of Justice and this court, the defendants shall file a responsive pleading to the amended complaint within sixty (60) days of receiving electronic notice of this order.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the \$347.08 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that a copy of this order be sent to the warden of the institution where the inmate is confined.

IT IS FURTHER ORDERED that the plaintiff shall submit all correspondence and legal material to:

Honorable J.P. Stadtmueller
% Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

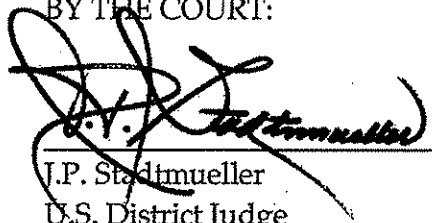
The plaintiff is notified that from now on, he is required under Federal Rule of Civil Procedure 5(a) to send a copy of every paper or document filed with the court to the opposing party or, if the opposing party is represented by counsel, to counsel for that party. Fed. R. Civ. P. 5(b). The plaintiff should also retain a personal copy of each document. If the plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to the opposing party or that party's attorney, if the party is represented by an attorney.

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute.

In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin, this 8th day of July, 2013.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge