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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

LEWAYNE PATTERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 15-2002-SLD**
	)	
	)	
CPL. BROWN, *et al.*,	)	
	)	
Defendants.	)	

ORDER

This cause is before the Court on Defendants' motion for summary judgment. As explained more fully *infra*, Defendants are entitled to summary judgment. The undisputed facts establish that Defendant Correctional Officer Jeremy Most did not employ objectively unreasonable force when he used a Taser on Plaintiff Lewayne Patterson in order to obtain Patterson's compliance with the Correctional Officers' orders in September 2014. Moreover, because Officer Most did not violate Patterson's Due Process rights in using a Taser against him, Defendants Cpl. Alvon Brown, Correctional Officer Joseph Hernandez, Correctional Officer Zachary Tutt, Correctional Officer Chance Colbert, and Correctional Officer Alex Ramirez cannot be held liable for failing to protect Patterson from Officer Most's alleged assault. Finally, the short delay between Patterson being tased and his receipt of medical attention is constitutionally insignificant. In any event, Patterson's injuries did not constitute a serious medical injury for purposes of invoking constitutional safeguards.

I.
MATERIAL FACTS

During the relevant time, Plaintiff Lewayne Patterson was a pre-trial detainee at the Jerome Combs Detention Center ("Jerome Combs") in Kankakee, Illinois. Defendants Alvon

Brown, Joseph Hernandez, Jeremy Most, Zachary Tutt, Chance Colbert, and Alex Ramirez are Correctional Officers who worked at Jerome Combs. Defendant Brent Huffines is a physician's assistant who worked at Jerome Combs.

When an inmate is booked into Jerome Combs, the inmate is provided a wristband that identifies the inmate by name. Jerome Combs' inmates are required to wear a wristband on their left wrists at all times as part of the facility's rules. These wristbands are important to the penological safety at Jerome Combs because the wristbands identify inmates as inmates and because the wristbands provide correctional officers with information regarding the inmates' proper housing unit and identification information.

On September 10, 2014, Officer Colbert noticed that Patterson's identification wristband was not on Patterson's left wrist. Officer Colbert asked Patterson about his wristband, and Patterson admitted to Officer Colbert that he had ripped his wristband off because it was too tight. Patterson advised Officer Colbert that the wristband was in his pocket, and so, Officer Colbert ordered Patterson to place the wristband back onto his wrist. Patterson advised Officer Colbert that he could not because his wristband was broken. Officer Colbert, then, asked for Patterson's first and last name and walked away from Patterson.

A few minutes later, Officer Colbert buzzed Patterson's cell and instructed Patterson to come to the officers' desk. Upon arrival, Officer Colbert asked Patterson to provide him with the old wristband and told Patterson that he had obtained a new wristband for Patterson to wear. Officer Colbert also told Patterson that he would be charged $5.00 for the new wristband. Patterson provided the old, broken wristband to Officer Colbert, but Patterson told Officer Colbert that he had not asked for a new wristband. Patterson said that Officer Colbert should, instead, punch a hole in his old wristband and allow him to wear that the old wristband.

Patterson, then, walked back to his cell and shut the door without awaiting a response from Officer Colbert and without putting on the new wristband.

Thereafter, Officer Colbert called over the radio and advised that he needed assistance because Patterson had refused to comply with his orders to put on a new wristband. A few minutes later, Officers Ramirez, Tutt, Hernandez, Most, and Cpl. Brown came to the officers' desk to assist Officer Colbert. After the others arrived, they buzzed Patterson's cell and told him to return to the officers' desk. Patterson complied.

Once back at the officers' desk, Cpl. Brown told Patterson that he had to put on his new wristband. Patterson, again, told the Officers that they should just punch a hole in his old wristband and allow him to wear that one because he did not want to pay for the new wristband even though he had funds in his account to pay the fee. Cpl. Brown responded that the old wristband was damaged and could not be re-used. At this point, Patterson noticed that Officer Most had his Taser out and pointed at him. Patterson asked Officer Most why he had his Taser out and pointed at him, and according to Patterson, Officer Most responded: "for safety reasons."

Patterson continued his conversation with Cpl. Brown and informed Cpl. Brown that he was going to take his wristband off again if placed back on his wrist because he believed that the wristband was too tight. Cpl. Brown, again, ordered Patterson to place the wristband on his left wrist. Eventually, Patterson complied and allowed Officer Hernandez to put the new wristband on his left wrist. Cpl. Brown instructed Patterson to return to his cell after the wristband was back on Patterson's wrist.

As he was returning to his cell, Patterson began to curse and to yell loudly towards Cpl. Brown, stating that he was going to remove his wristband. The Officers testified that they interpreted Patterson's behavior as aggressive and threatening. On his way back to his cell,

Patterson ripped off his new wristband and threw it onto the floor. After seeing Patterson remove his wristband, Cpl. Brown instructed the other Officers to take Patterson to segregation based upon Patterson's con-compliance with orders. The Officers, then, approached Patterson and ordered Patterson several times to get on the ground, but Patterson refused to comply. Instead, Patterson turned around and faced the Officers while still moving towards his cell, all the time ignoring the Officers' commands to get on the ground. Eventually, Officer Most deployed his Taser on Patterson, striking Patterson in his right upper arm and upper butt cheek with a single Taser cycle. Upon being tased, Patterson immediately fell to the ground, complied with the Officers' commands, was handcuffed, and was transported to segregation. Patterson continued to yell obscenities at the Officers as they transported him to segregation.

Sometime later, Patterson requested medical attention. A few hours later, two Correctional Officers, one of whom was a First Responder, came to Patterson's cell in order to provide medical attention to him. First Responders are members of the correctional staff who are medically trained to treat and to assess an inmate and to decide whether the inmate needs immediate emergency medical attention or whether the inmate can wait to see a nurse or physician's assistant when one is available. Patterson told these Officers that he wanted to see a nurse, not them.

The next day, PA Brent Huffines examined Patterson. Patterson complained to PA Huffines about a bump on his forehead and that he suffered from a headache after being tased the night before. PA Huffines noted that Patterson had minor swelling to his left forehead and that it was mildly tender to the touch. However, PA Huffines noted that Patterson was in no pain or distress and that Patterson denied any loss of strength or sensation. Accordingly, PA Huffines determined that Patterson had no significant injuries and that he needed no further medical

treatment or emergency care. PA Huffines provided Patterson with two ice-packs and a prescription for Ibuprofen. Nurse Heather Pasel provided Patterson with Motrin before he left. PA Huffines did not treat Patterson again.

On September 13, 2014, Nurse Dawn O'Dell provided Patterson with Motrin for pain. Patterson was charged $2.00 for the Motrin. Patterson was transferred to the Cook County Jail on September 18, 2014. Upon his return, Patterson received a one-day supply of Tylenol and an ice-pack from the medical staff at the Cook County Jail after Patterson complained of a "knot" on his forehead. Patterson did not receive any other medical treatment from the Cook County Jail's medical staff. Patterson admitted during his deposition that his knot and headaches eventually went away after being returned to the Cook County Jail.

On December 1, 2014, Patterson filed this suit under 42 U.S.C. § 1983 alleging that Defendants violated his constitutional rights on September 10 and 11, 2014. The Court conducted a merit review of Patterson's Complaint under 28 U.S.C. § 1915A and determined that Patterson's Complaint stated three claims: (1) a claim of excessive force against Officer Most for being tased without justification, (2) a claim against Officers Brown, Hernandez, Tutt, Colbert, and Ramirez for failure to protect or to intervene to stop Officer Most's attack; and (3) a deliberate indifference claim against all of the Correctional Officers involved for failing to obtain medical assistance for him and a deliberate indifference claim against PA Huffines for failing or refusing to treat him the next day. Defendants have now moved for summary judgment to on each of the claims asserted against them by Patterson.

II.
LEGAL STANDARDS GOVERNING SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) provides that summary judgment shall be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is

entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Ruiz-Rivera v. Moyer*, 70 F.3d 498, 500-01 (7th Cir. 1995). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials of the pleadings, which demonstrates that there is a genuine issue for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). "[A] party moving for summary judgment can prevail just by showing that the other party has no evidence on an issue on which that party has the burden of proof." *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1183 (7th Cir. 1993). "As with any summary judgment motion, we review cross-motions for summary judgment construing all facts, and drawing all reasonable inferences from those facts, in favor of the nonmoving party." *Laskin v. Siegel*, 728 F.3d 7314, 734 (7th Cir. 2013) (internal quotation marks omitted).

Accordingly, the non-movant cannot rest on the pleadings alone, but must designate specific facts in affidavits, depositions, answers to interrogatories or admissions that establish that there is a genuine triable issue; he must do more than simply show that there is some metaphysical doubt as to the material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 261 (Brennan, J., dissenting) (1986)(quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)); *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 818 (7th Cir. 1999). Finally, a scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252.

III.
DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT.

A. Officer Most did not employ objectively unreasonable force against Patterson.

Recently, the United States Supreme Court has clarified what a pre-trial detainee must show in order to prevail on a claim that a defendant exerted excessive force against him. In *Kinglsey v. Hendrickson*, ___ U.S. ___, 135 S. Ct. 2466 (2015), the Supreme Court held that such a claim should be asserted and evaluated under the Fourteenth Amendment's Due Process Clause. *Id*. at 2472-73. Specifically, the Supreme Court held that "courts must use an objective standard. . . . [A] pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." *Id*. at 2473. The Supreme Court went on to explain:

> A court (judge or jury) cannot apply this standard mechanically. Rather, objective reasonableness turns on the facts and circumstances of each particular case. A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight. A court must also account for the legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained, appropriately deferring to policies and practices that in the judgment of jail officials are needed to preserve internal order and discipline and to maintain institutional security.
>
> Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. We do not consider this list to be exclusive. We mention these factors only to illustrate the types of objective circumstances potentially relevant to a determination of excessive force.

Id. (internal quotations and citations omitted). The Supreme Court concluded by noting:

> We recognize that running a prison is an inordinately difficult undertaking, and that safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face. Officers facing disturbances are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving. For these reasons, we have stressed that a court must judge the

> reasonableness of the force used from the perspective and with the knowledge of the defendant officer. We have also explained that a court must take account of the legitimate interests in managing a jail, acknowledging as part of the objective reasonableness analysis that deference to policies and practices needed to maintain order and institutional security is appropriate. And we have limited liability for excessive force to situations in which the use of force was the result of an intentional and knowing act (though we leave open the possibility of including a "reckless" act as well).

Id. at 2475 (internal quotations and citations omitted).

In the instant case, the undisputed evidence establishes that Officer Most acted reasonably under the circumstances. Patterson understood that he was required to wear a wristband while he was a detainee at Jerome Combs. Nevertheless, Patterson removed his wristband and repeatedly refused to put on a new one. After refusing several orders to put on the wristband, Patterson eventually complied.

However, Patterson again removed his wristband and threw it onto the floor. Cpl. Brown, then, informed the other Officers to escort Patterson to segregation. Patterson refused several more commands to get on the ground so that the Officers could take him to segregation. Officer Most, then, tased Patterson on his upper arm and upper butt cheek. Patterson immediately complied after being tased, and the Officers were able to escort Patterson to segregation.

These undisputed facts demonstrate that Officer Most acted objectively reasonable under the circumstances. During the confrontation with the Officers, Patterson was belligerent, cursed at the Officers, refused their orders repeatedly, and moved toward the exit door. Officer Most acted reasonably in tasing Patterson because that was the only tactic that resulting in Patterson's compliance with the Officers' orders.

To the extent that Patterson attempts to create a factual dispute that would require a jury trial, his statement, affidavit, and evidence are belied by the evidence on the video tape of the

incident as the recording blatantly contradicts his testimony and supports Officer Most's version of the events. *Scott v. Harris*, 550 U.S. 372, 380 (2007)("when opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

Finally, Patterson claims that Officer Most continually pointed the Taser at him in order to install fear in him. Assuming that this is true, fear of what and to what end? According to Patterson's deposition testimony, Officer Most pointed his Taser at Patterson for "safety reasons." So, assuming that Patterson's understanding of Officer Most's position is correct, the only logical conclusion and the one that is supported by the undisputed evidence is that Officer Most pointed his Taser in order to install fear in Patterson so that Patterson would comply with the Officers' orders without any physical injury to the officers. Such an action is objectively reasonable under these circumstances. *Forrest v. Prine*, 2009 WL 2905928 (C.D. Ill. Sept. 4, 2009). Accordingly, Officer Most is entitled to summary judgment on Patterson's excessive force claim against him.

B. The other Correctional Officers did not violate Patterson's constitutional rights by failing to stop Officer Most from using a Taser on Patterson.

Officers Ramirez, Hernandez, Tutt, Colbert, and Cpl. Brown are also entitled to summary judgment on Patterson's claim that they failed to protect him from Officer Most's alleged attack because Officer Most's actions against Patterson did not violate Patterson's Due Process rights. Because Patterson was a pre-trial detainee at the relevant time, the Court considers this claim as one raised under the Fourteenth Amendment also, but this is a distinction without a difference "as the Seventh Circuit has consistently held in the context of deliberate indifference claims that the two standards are essentially the same." *Shultz v. Dart*, 2016 WL 212930, * 5 (N.D. Ill. Jan.

19, 2016)(citing cases).

Under certain circumstances, "a state actor's failure to intervene renders him or her culpable under § 1983." *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). "In failure to protect cases, a prisoner normally proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety." *Pope v. Shafer*, 86 F.3d 90, 92 (7th Cir. 1996). An inmate asserting a failure to intervene claim under § 1983 against officers who were present when the inmate's constitutional rights were violated by a different officer, must show that the officers had reason to know that excessive force was being used, and the officers had a "realistic opportunity to intervene to prevent the harm from occurring." *Abdullahi v. City of Madison*, 324 F.3d 763, 774 (7th Cir. 2005). "Once prison officials know about a serious risk of harm, they have an obligation to take reasonable measures to abate it." *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008)(internal quotation omitted). "If prison officials are aware of a serious threat and do nothing, that is deliberate indifference." *Gidarisingh v. Pollard*, 2014 WL 3511697, * 3 (7th Cir. July 17, 2014).

Here, Patterson's failure to protect or to intervene claim fails because his claim is not supported by an underlying constitutional violation. "'In order for there to be a failure to intervene, it logically follows that there must exist an underlying constitutional violation . . . .'" *Rosado v. Gonzalez*, 2016 WL 4207961, * 3 (7th Cir. Aug. 10, 2016)(quoting *Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005)). The alleged underlying constitutional violation for Patterson's failure to protect claim is his excessive force claim against Officer Most. Because Patterson's excessive force claim against Most fails as a matter of law, Officers Ramirez, Hernandez, Tutt, Colbert, and Cpl. Brown cannot be held liable for failing to protect or to

intervene on Patterson's behalf. Accordingly, these Defendants are entitled to summary judgment on this claim.

C. Defendants were not deliberately indifferent to Patterson's serious medical needs in violation of his Due Process rights.

Finally, Defendants were not deliberately indifferent to Patterson's serious medical needs. Initially, the Court notes that it agrees with the other courts that have held that the Supreme Court's holding in *Kingsley* did not alter the legal standard to be applied in a case where a pre-trial detainee claims that a defendant was deliberately indifferent to his serious medical needs. *Gilbert v. Rohana*, 2015 WL 6442289, * 4 (S.D. Ind. Oct. 23, 2015)(citing cases). Accordingly, "the court will follow well-settled Seventh Circuit precedent, which requires the court to analyze Plaintiff's claim under the deliberate indifference standard." *Id*

Patterson premises his deliberate indifference claim on three grounds. *First*, Patterson claims that the Defendant Correctional Officers delayed providing medical assistance to him after he was tased. *Second*, PA Brent Huffines treatment of his medical needs constituted deliberate indifference. *Third*, having to pay $2.00 co-payment for his medication violated his constitutional rights. None of these grounds create a genuine issue of material fact sufficient to preclude summary judgment in Defendants' favor.

"In order to prevail on a deliberate indifference claim, a plaintiff must show (1) that his condition was 'objectively, sufficiently serious' and (2) that the 'prison officials acted with a sufficiently culpable state of mind." *Lee v. Young*, 533 F.3d 505, 509 (7th Cir. 2008)(quoting *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005)); *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)(same). "A medical condition is serious if it 'has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention.'" *Lee*, 533 F.3d at 509 (quoting *Greeno*, 414 F.3d at 653). "With respect to

the culpable state of mind, negligence or even gross negligence is not enough; the conduct must be reckless in the criminal sense." *Id.*; *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994)("We hold . . . that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference.").

In other words, "[d]eliberate indifference is not medical malpractice; the Eighth Amendment does not codify common law torts. And although deliberate means more than negligent, it is something less than purposeful. The point between these two poles lies where the official knows of and disregards an excessive risk to inmate health or safety or where the official is both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he . . . draw the inference. A jury can infer deliberate indifference on the basis of a physician's treatment decision when the decision is so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment." *Duckworth*, 532 F.3d at 679 (internal quotations and citations omitted). The Seventh Circuit has cautioned, however, that "[a] prisoner [] need not prove that the prison officials intended, hoped for, or desired the harm that transpired. Nor does a prisoner need to show that he was literally ignored. That the prisoner received some treatment does not foreclose his deliberate indifference claim if the treatment received was so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition." *Arnett*, 658 F.3d at 751 (internal citations and quotations omitted).

Here, a First Responder came to Patterson's cell a few hours after he was tased. Patterson indicated that he wanted to see a nurse, not Correctional Officers, even though one of the officers was a First Responder. Regardless, the point is that Patterson was offered medical assistance within a few hours after being tased and after requesting medical assistance. Such a short delay in being offered medical assistance is constitutionally insignificant under the facts of this case. *E.g., Gutierrez v. Peters,* 111 F.3d 1364, 1374 (7th Cir. 1997)(holding that no valid claim existed for a six-day delay in treating a mild cyst infection).

"To show that a delay in providing treatment is actionable under the Eighth Amendment, a plaintiff must also provide independent evidence that the delay exacerbated the injury or unnecessarily prolonged pain." *Petties, v. Carter*, 2016 WL 4631679, * 5 (7th Cir. Aug. 23, 2016). Patterson has failed to offer any such evidence, and therefore, the correctional officers are entitled to summary judgment on Patterson's deliberate indifference claim against them.

Likewise, PA Huffines is entitled to summary judgment because Patterson has failed to offer any evidence that he suffered from a serious medical injury or need for purposes of the deliberate indifference standard. The undisputed evidence shows that, when PA Huffines examined Patterson, Patterson had a "knot" on his forehead and a headache. PA Huffines noticed minor swelling and that Patterson's forehead was mildly tender to the touch. As treatment, Huffines provided Patterson with two ice-packs and Ibuprofen. Patterson also received Motrin from a nurse immediately after his visit and examination with PA Huffines. Patterson's swelling subsided a few days later.

The duty to provide a certain level of health care to incarcerated offenders is a limited one because "[n]ot 'every ache and pain or medically recognized condition involving some discomfort can support an Eighth Amendment claim.'" *Sarah v. Thompson,* 109 F. App'x 770,

771 (6th Cir. 2004)(quoting *Gutierrez v. Peters*, 111 F.3d 1364, 1372 (7th Cir. 1997)). Only serious medical needs trigger Eighth Amendment protections. *Id.* A medical condition is deemed to be serious if it is "life threatening or pose[s] a risk of needless pain or lingering disability if not treated at once." *Davis v. Jones*, 936 F.2d 971, 972 (7th Cir. 1991). Maladies that most members of the general public treat at home with over-the-counter remedies generally are not considered to be serious medical needs under the Eighth Amendment. *Watson–El v. Wilson*, 2010 WL 3732127, * 13–14 (N.D. Ill. Sept. 15, 2010)(holding that acid reflex did not rise to the level of a serious medical need for purposes of Eighth Amendment analysis); *Latona v. Pollack*, 2010 WL 358526, * 8 (W.D. Pa. Jan. 25, 2010)(holding that a fever and a sore throat are not serious medical needs because of common recognition that doctors can do little to treat a cold virus). In short, prison officials need not treat prisoners at a level that "exceeds what the average reasonable person would expect or avail [him]self of in life outside the prison walls." *Dean v. Coughlin*, 804 F.2d 207, 215 (2d Cir. 1986).

In the instant case, Patterson's bump on the head and his headaches were successfully treated with over-the-counter medications. Patterson does not have any lingering side-effects from being tased. Accordingly, PA Huffines is entitled to summary judgment because there is no question of fact as to whether Patterson suffered from a serious medical need that PA Huffines failed to treat; he did not. Because Patterson did not suffer from a serious medical need for purposes of the Eighth or Fourteenth Amendment as a result of being tased, PA Huffines is entitled to the summary judgment that he seeks.

Finally, Patterson's constitutional rights were not violated when Jerome Combs' officials imposed a $2.00 co-payment for dispensing medication to him. "The Eighth Amendment does not compel prison administrators to provide cost-free medical services to inmates who are able to

contribute to the cost of their care." *Poole v. Isaacs*, 703 F.3d 1024, 1026 (7th Cir. 2012). As one district judge has succinctly noted: "If plaintiff is arguing that a county jail should not have charged him for medical care, he is wrong; jails and prisons may charge inmates a co-pay for their medical care and related expenses, so long as those institutional do not deny medical care to prisoners who lack the ability to pay." *Luse v. Wisconsin*, 2014 WL 2765810, * 2 (W.D. Wisc. June 18, 2014).

IT IS, THEREFORE, ORDERED:

1. Plaintiff's motion for status [39] is DENIED as moot in light of this Order.

2. Defendants' motion for leave to file [33] is GRANTED, and the Court considered the corrected affidavits and the corrected statement of uncontested facts in ruling on Defendants' motion for summary judgment.

3. Defendants' motion for summary judgment [31] is GRANTED.

4. The Clerk of the Court is directed to enter judgment in Defendants' favor and against Plaintiff. All other pending motions are denied as moot, and this case is terminated, with the Parties to bear their own costs. All deadlines and settings on the Court's calendar are vacated.

5. If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4).

6. If Plaintiff wishes to proceed in forma pauperis on appeal, his motion for leave to appeal in forma pauperis must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district

judge "can make a responsible assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff chooses to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

ENTERED this 13th day of September, 2016

_____/s Sara L. Darrow_____
SARA L. DARROW
UNITED STATES DISTRICT JUDGE