U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION

BASIL MOHANDIE (M51372), Plaintiff, v. JOHN VARGA, *et al.*, Defendants.	No. 17-cv-50355 Hon. Judge Iain D. Johnston Magistrate Judge Margaret J. Schneider

WEXFORD HEALTH SOURCES, INC.'S REPLY TO ORDER TO SHOW CAUSE

NOW COMES the Defendant, WEXFORD HEALTH SOURCES, INC., by and through its attorneys, CASSIDAY SCHADE LLP, and for its Reply to the Court's Order for Rule to Show Cause [ECF #96], states as follows:

1. Plaintiff Lacks Standing to Sue Wexford or its Employees for "Negligence" As Plaintiff Does Not Allege an Injury in Fact

Plaintiff lacks standing to sue Wexford or its employees for "negligence." In response to the Court's Order to Show Cause, Plaintiff admits that he does not allege with specificity that he suffered an injury at the hands of Wexford or its "employee" for the alleged "negligence." [ECF #98 at p. 3]. To bring a claim based on a theory of state law negligence in Illinois, Plaintiff is *required* to plead (and eventually prove) an actual injury. *Dinkins v. Ebbersten*, 234 Ill. App. 3d 978, 983 (4th Dist. 1992); *Thompson v. County of Cook*, 154 Ill. 2d 374, 382 (Ill. 1993); Illinois Pattern Jury Instructions Civil 21.02. A plaintiff pursuing an Illinois state law claim for negligence must be based on an injury in fact, not a hypothetical possibility of an injury. *See Brucker v. Mercola*, 227 Ill. 2d 502, 543 (2007). Here, neither Plaintiff's Second Amended Complaint nor his response to the Order to Show Cause offer an explanation how he was injured by the purported "negligence" of an unnamed Wexford employee. Plaintiff completely disregards and makes no

response whatsoever to the issue of whether he has standing to bring a claim of state law negligence, and therefore, has waived any response. Because Plaintiff has not alleged an injury in fact caused by the purported negligence of a phantom Wexford employee, Plaintiff's cause of action should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing.

2. Plaintiff Lacks Standing to Sue Wexford or its Employees for Violations of His Constitutional Rights as Plaintiff Has Not Alleged a Physical Injury

As with his state law claim for negligence, Plaintiff has failed to allege an injury in fact related to his Section 1983 claims against Wexford. For an Article III court to have jurisdiction, Plaintiff is required to plead a particularized and concrete injury in fact. *Spokeo, Inc. v. Robins,* 136 S.Ct. 1540 (2020) (Standing under Article III jurisdiction requires a plaintiff to plead an injury that is both "particularized *and* concrete") (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000)) (emphasis in original); *see also Higgason v. Farley*, 83 F.3d 807, 810 (7th Cir. 1996) (prisoner "does not allege an injury to himself, and [therefore] does not have standing"); *Sierakowski v. Ryan,* 223 F.3 440, 444–45 (7th Cir. 2000) ("a plaintiff in search of prospective equitable relief must show a significant likelihood and immediacy of sustaining some direct injury"); *Payton v. County of Kane*, 308 F.3d 673, 677 (7th Cir. 2002) ("Article III requires that the plaintiff has suffered an 'injury in fact' which is fairly traceable to the challenged action of the defendant and 'likely,' as opposed to merely 'speculative,' to be 'redressed by a favorable decision.'") (citing *Dole v. County of Montgomery*, 41 F.3d 1156, 1159 (7th Cir. 1994)).

In his response, Plaintiff offers no explanation whatsoever how he was injured because someone determined that it was appropriate to place him in a double cell. On its face, Plaintiff's Second Amended Complaint contains no allegations of a "particularized and concrete" injury in fact. Neither Plaintiff's Second Amended Complaint nor his Response brief offer any insight into

how Plaintiff suffered an injury in fact, how it can be traced to Wexford's alleged conduct, or how such an "injury" would be redressed through litigation.

Tellingly, Plaintiff claims that he does not have to plead an injury in fact, as he intends to pursue nominal damages against Wexford. For this assertion, Plaintiff wrongly relied on *Carey v. Piphus*, 435 U.S. 247 (1978), wherein the plaintiff students alleged a violation of their Fourteenth Amendment constitutional rights when they were suspended from school without any sort of due process. In *Carey*, the Supreme Court remanded the plaintiffs' case back to the District Court for further proceedings on damages, as the Supreme Court found that, although the plaintiffs may not have had actual damages, the plaintiffs could seek nominal damages because their Fourteenth Amendment rights were concretely and particularly violated by being denied the benefits of schooling without due process. Ultimately, the *Carey* case says nothing about standing to pursue a cause of action in an Article III court.

Plaintiff's citation to *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) also does not support his assertion that he has standing to pursue the case *sub judice*. In *Uzuegbunam*, the Supreme Court specifically limited its review to the question of whether nominal damages provide redress for a completed violation of a legal right. *Id*. at 802. In fact, the Supreme Court specifically stated that a claim for nominal damages does not guarantee entry into an Article III court and that a plaintiff seeking nominal damages still has to show the other required elements of standing, such as a particularized injury. *Id*.

Also, Plaintiff's citation to *Wells v. Caudill* says nothing about the question of Article III standing, and because it is part of a dissent, is not controlling case law. 967 F.3d 598, 604–05 (7th Cir. 2020) (Ripple, J. dissenting).

In contrast with both *Carey* and *Uzuegbunam*, Plaintiff alleges that a double-cell housing assessment was completed, that the assessment concluded it was appropriate for him to be housed with another inmate, but that he disagrees with that assessment. Importantly, Plaintiff does not allege that his housing assignment was actually changed based on that cell placement; he does not allege that he was actually housed with another inmate with at the Dixon Correctional Center; and he does not allege that he suffered some sort of "particularized and concrete" harm as a result of the double-cell assessment. In short, Plaintiff's Second Amended Complaint is based entirely on hypothetical harms, not any harm in fact. The Prison Litigation Reform act also specifically requires that inmates who bring claims under Section 1983 for unconstitutional conditions of confinement allege a *physical* injury in fact, not theoretical injuries. 42 U.S.C. § 1997e(e). Moreover, given that Plaintiff is now housed at the Joliet Treatment Center, it appears that whatever concerns Plaintiff might have about his housing placement at the Dixon Correctional Center have passed without materializing into a concrete harm. At least the plaintiffs in *Carey* could allege (and show) they were deprived of access to an education—a particularized and concrete injury—because they were unjustly suspended from school without due process.

Plaintiff's failure to explain how he has standing to sue Wexford in an Article III court is especially troubling given that he waited to file his Second Amended Complaint naming Wexford as defendant until the very last possible moment. Plaintiff waited until the proverbial 12th hour to amend his complaint adding Wexford as a defendant—long after he had been deposed and after fact discovery had largely been completed. The fact that, after all these years, Plaintiff could not plead a specific, concrete injury that he suffered because of the double-cell assessment shows he has no standing to sue Wexford. Likewise, the fact that Plaintiff has responded to the Order to Show Cause without providing any sort of concrete explanation how he was injured because of

the double-cell assessment at issue only demonstrates that Plaintiff is both without standing to sue and prosecuting a frivolous lawsuit.

Of course, Plaintiff cannot allege an injury in-fact because there is no basis for liability. Not only does Wexford—a private vendor of medical services—have no ability to make housing decisions for inmates kept in the custody of the Illinois Department of Corrections, but Plaintiff has no right to demand otherwise since inmates have no protected constitutional right to challenge their housing assignments. *Meachum v. Fano,* 427 U.S. 215 (1976); *Shango v. Jurich,* 681 F.2d 1091, 1098 (7th Cir. 1982). Here, Plaintiff has failed to explain how he has any sort of particularized, concrete injury related to the double-cell assessment. As such, his cause of action should be dismissed for lack of standing.

WHEREFORE, the Defendant, WEXFORD HEALTH SOURCES, INC., respectfully requests that this Honorable Court enter an Order: (1) Dismissing Plaintiff's cause of action with prejudice; and (2) for any other relief deemed equitable and just.

Respectfully submitted,

CASSIDAY SCHADE LLP

By: /s/ Stephen J. Gorski

One of the Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2021, I electronically filed the foregoing document with the clerk of the court for Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of E-Filing" to the attorneys of record in this case.

___/s/ Stephen J. Gorski_____