IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:22-CT-3354-FL

JOSEPH E. GARGAN, Plaintiff, v. VICKY MOSER, KIM SWINDELL, DONALD EPPLEY, THOMAS SCARANTINO, MARTIN TINDEL, and RON ALLISON, Defendants.	)	ORDER

Plaintiff, a former federal inmate proceeding pro se, commenced this action by filing complaint asserting claims for violations of his civil rights pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).[1] The matter is before the court for initial review of the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), and on plaintiff's motion for extension of time to pay filing fee (DE 6).

COURT'S DISCUSSION

Where plaintiff has paid the filing fee in this case, plaintiff's motion for extension of time to pay the fee is denied as moot.

Turning to the initial review, § 1915A provides that courts shall review complaints filed by prisoners seeking redress from a governmental entity or officer and dismiss such complaints when they are frivolous, malicious, fail to state a claim on which relief may be granted, or if they

[1] Plaintiff sought to bring this action pursuant to 42 U.S.C. § 1983. (Compl. (DE 1) at 1). However, defendants are federal actors. (Id. at 2). Therefore, the court will construe plaintiff's claims as being brought pursuant to Bivens.

seek monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A. To state a claim on which relief may be granted, the complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to 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)). "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. In evaluating whether a claim is stated, "[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff," but does not consider "legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments." Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted).

In addition, pro se pleadings should be "liberally construed" and they are "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007); Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). Erickson, however, does not undermine the "requirement that a pleading contain more than labels and conclusions." Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quotation omitted).

In Bivens, the Supreme Court recognized an implied cause of action for damages against federal officers where the officers searched a residence and arrested the plaintiff without a warrant or probable cause. 403 U.S. 388, 397 (1971). Since Bivens was decided in 1971, the Supreme Court has authorized a damages remedy against federal officers for constitutional violations in only two additional contexts: 1) a Fifth Amendment equal protection claim alleging gender

discrimination in congressional employment, see Davis v. Passman, 442 U.S. 228 (1979); and 2) an Eighth Amendment claim by a federal prisoner alleging prison officials were deliberately indifferent to his serious medical needs by failing to treat his asthma, see Carlson v. Green, 446 U.S. 14 (1980). See also Earle v. Shreves, 990 F.3d 774, 778 (4th Cir. 2021). The Court, however, "has declined to countenance Bivens actions in any additional context." See Tun-Cos v. Perrotte, 922 F.3d 514, 521 (4th Cir. 2019) (collecting cases). And extending Bivens beyond these three contexts has become a "disfavored" judicial action. See Ziglar v. Abbasi, 582, U.S. 120, 135 (2017). Indeed, "the Supreme Court [has] all but closed the door on Bivens [actions]" that do not correspond to one of the three prior cases. Dyer v. Smith, 56 F.4th 271, 277 (4th Cir. 2022).

Here, plaintiff's claims alleging defendants were deliberately indifferent to unconstitutional conditions of confinement and violated his procedural due process rights are not proper extensions of the Bivens remedy and must be dismissed. See Mays v. Smith, 70 F.4th 198, 200–01, 203–06 (4th Cir. 2023) (holding Bivens remedy not authorized for claims alleging denial of procedural due process and equal protection arising from prison disciplinary actions and termination from prison employment); Tate v. Harmon, 54 F.4th 839, 841–42 (4th Cir. 2022) (holding Bivens remedy not authorized for Eighth Amendment conditions of confinement claim); Earle, 990 F.3d at 777, 780–81 (holding Bivens remedy not authorized for claims alleging improper placement in disciplinary housing); see also Vega v. United States, 881 F.3d 1146, 1153-55 (9th Cir. 2018) (holding Bivens remedy not authorized for procedural due process claim asserting improper prison disciplinary procedures).

Similarly, the claim that defendants failed to provide adequate healthcare for plaintiff's cancer diagnoses and failed to treat other ailments cannot proceed. These claims present new Bivens contexts where they do not correspond to the three recognized contexts set forth above. See Bulger, 62 F.4th at 137. While the claim that defendants failed to adequately treat plaintiff's cancer and failed to provide treatment arguably are similar to the denial of medical care in Carlson, that similarity is insufficient for purposes of the new context analysis. See id. at 138 ("[C]ourts should not interpret Carlson outside of the precise context at issue in that case."). The alleged failure to adequately treat plaintiff's cancers and the failure to treat plaintiff's other ailments is meaningfully different than Carlson where it involved a failure to treat an inmate's asthma, resulting in death, and raises issues about whether such providers can discuss disciplinary matters with inmates.

Because the claims of failure to provide adequate healthcare and failure to treat certain ailments, involve new contexts, the court next considers whether special factors counsel hesitation in creating a damages remedy. Tate, 54 F.4th at 844–45. The Fourth Circuit has held that numerous special factors counsel against extending Bivens to new claims involving federal prison officials. See Mays, 70 F.4th at 205–06 (declining to expand Bivens given the availability of the FBOP's administrative remedy program, Congress's decision not to create a damages remedy for federal prisoners in the Prison Litigation Reform Act, where the claims involved new categories of conduct and new defendants, concerns regarding interference with prison administration, and related factors); Bulger, 62 F.4th at 140–42 (providing similar analysis on the special factors prong to claims brought by federal inmate). Accordingly, the court will not extend Bivens to the claims against defendants.

Lastly, the court addresses plaintiff's state law claims. The court "may decline to exercise supplemental jurisdiction over a pendent state law claim if . . . the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). Accordingly, plaintiff's state law claims are dismissed without prejudice to bringing such claims in state court.

CONCLUSION

Based on the foregoing, plaintiff's motion for extension of time to pay filing fee (DE 6) is DENIED as moot. Plaintiff's claims are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii). The clerk is DIRECTED to close this case.

SO ORDERED, this the 25th day of September, 2023.

LOUISE W. FLANAGAN
United States District Judge