

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AUGUSTUS HEBREW EVANS, JR., :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 20-1208-RGA
 :
 CATHERINE MCKAY, et al., :
 :
 Defendants. :

MEMORANDUM

1. **Introduction.** Plaintiff Augustus Hebrew Evans, Jr., an inmate at the James T. Vaughn Correctional Center in Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983. (D.I. 1). Plaintiff appears *pro se* and has paid the filing fee. He has filed two motions for injunctive relief. (D.I. 64, 69). He also requests a hearing and counsel. (D.I. 75, 76, 81, 82). The Court ordered the JTVCC Warden to respond to the first motion for injunctive relief.

2. **Motion for Injunctive Relief.** A preliminary injunction is “an extraordinary remedy that should be granted only if (1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest.” *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999). “[F]ailure to establish any element in [a plaintiff’s] favor renders a preliminary injunction inappropriate.” *Id* Furthermore, because of the intractable problems of prison administration, a request for injunctive relief in the prison

context must be viewed with considerable caution. *Rush v. Correctional Med. Services, Inc.*, 287 F. App'x 142, 144 (3d Cir. 2008) (citing *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995)).

3. **Discussion.** This case raises medical needs claims against the remaining defendants Catherine McKay, Matthew Wofford, and Christopher Moen, none of whom have been served. Plaintiff's first motion for injunctive relief (D.I. 64) seeks medical care and his second motion for injunctive relief (D.I. 69) demands injunctive relief on the grounds that party and non-party litigants failed to timely respond or request an extension of time to respond to the motion.

4. In opposition to Plaintiff's motion, Warden May produced Plaintiff's medical records that indicate Plaintiff received, and continues to receive, adequate medical care, albeit not to Plaintiff's liking. (See D.I. 68 at Exs. A-C). In light of Plaintiff's medical records, the Court concludes that Plaintiff has not met the requirements for injunctive relief. Medical care has been provided and Plaintiff continues to receive medical care. Plaintiff has failed to show a likelihood of success on the merits, and he has failed to demonstrate irreparable harm. Therefore, the Court will deny the motions.

5. **Request for Counsel.** Plaintiff asks that counsel be recruited for his injunction motion (D.I. 75), and he seeks limited recruitment of counsel to serve the complaint on the unserved defendants (D.I. 81, 82). Pursuant to 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person unable to afford counsel. Section 1915(e)(1) confers the district court with the power to request that

counsel represent a litigant who is proceeding *in forma pauperis*. Plaintiff has not sought *in forma pauperis* status in this case. He paid the filing fee. Therefore, the request will be denied. The Court will order that the three unserved defendants be personally served.

6. **Request for Hearing.** Plaintiff asks the Court to schedule a hearing so that he may question Defendants and non-party litigants about his medical treatment. (D.I. 76). Plaintiff may employ the Federal Rules of Civil Procedure to obtain discovery.

7. **Conclusion.** For the above reasons, the Court will: deny the motions for injunctive relief (D.I. 64, 69); (2) deny the requests for counsel (D.I. 75, 81, 82); (3) deny the request for hearing (D.I. 76); and (4) order the personal service of Defendants.

A separate order shall issue

/s/ Richard G. Andrews
UNITED STATES DISTRICT JUDGE

November 7, 2022
Wilmington, Delaware

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 Plaintiff, :
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ORDER

At Wilmington this 7th day of November, 2022, consistent with the memorandum issued this date,

IT IS HEREBY ORDERED that:

1. Plaintiff's motions for injunctive relief (D.I. 64, 69) are **DENIED**.
2. Plaintiff requests for counsel (D.I. 75, 81, 82) are **DENIED**.
3. Plaintiff's request for a hearing (D.I. 76) is **DENIED**.

IT IS FURTHER ORDERED that:

1. Pursuant to Fed. R. Civ. P. 4(b), (c)(1), (c)(3), and (e) Plaintiff shall request the Clerk of Court to prepare summonses for Defendants Catherine McKay, Mathew Wofford, and Christopher Meon, all of whom failed to return the "Waiver of Service of Summons." (D.I. 70, 71, 72). **Plaintiff shall also complete and return to the Clerk of Court original, signed "U.S. Marshal-285" form(s) for personal service upon defendant(s) and copies of the of the Amended Complaint and its exhibits**

(D.I. 35, 35-1, 36) and the Second Amended Complaint and its exhibits (D.I. 55, 56) for service upon Defendants. Failure to request issuance of summonses and to provide complete signed "U.S. Marshal 285" forms and copies of the Amended Complaint and Second Amended Complaint with exhibits within 30 days from the date of this order may result in the dismissal of defendant(s) pursuant to Federal Rule of Civil Procedure 4(m).

2. The plaintiff has paid the filing fee and is responsible for the costs of service. The United States Marshals Service ("USMS") advises that the personal service fees for Defendants totals \$260.00 (\$65.00 per hour per defendant plus \$53.01 for mileage and tolls). **Therefore, Plaintiff shall remit payment in the sum of \$313.01, payable to the "U.S. Marshals Service"** for the costs of service of service of the remaining medical defendants. Plaintiff shall **submit the payment**, payable to the "U.S. Marshals Service" **to the Clerk of Court** at that same time he requests issuance of summonses and submits the required copies of the USM-285 forms and copies of the amended complaint and second amended complaint and exhibits

3. **The USMS will not serve the amended complaint and second amended complaint and exhibits until the Clerk of Court receives the USM-285 forms, copies of the amended complaint and second amended complaint and exhibits, and the \$313.01 payment to the USMS.**

4. Upon receipt of the request for issuance of summonses, the USM-285 form(s) required by paragraph 1 above, the amended complaint and second amended complaint and exhibits, and service payment to the USMS, the Clerk of Court shall issue

the summonses and transmit the summonses, USM-285 form(s), copies of the Amended Complaint and its exhibits (D.I. 35, 35-1, 36) and the Second Amended Complaint and its exhibits (D.I. 55, 56), the June 30, 2021 memorandum opinion and order (D.I. 40, 41), the January 11, 2022 memorandum opinion and order (D.I. 53, 54), this order, and service payment to USMS for immediate service pursuant to Fed. R. Civ. P. 4(c). The USMS shall personally serve process and a copy of this order upon the defendant(s) pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).

5. Within ten days after personal service is effected, the USMS shall file the return of service for each defendant.

/s/ Richard G. Andrews
UNITED STATES DISTRICT JUDGE