

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHARLES RAINEY	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
COUNTY OF DELAWARE et al.	:	NO. 00-548
Defendant	:	

MEMORANDUM AND ORDER

YOHAN, J. August , 2000

Plaintiff Charles Rainey was a prisoner at Delaware County Prison [“DCP”] in Thornton, Pennsylvania, from December 1997 to March 1998. While an inmate, the plaintiff claims to have been discriminated against because he is an incomplete paraplegic, able to walk slowly and only with the aid of leg braces. Specifically, he alleges that he was denied food and medical treatment because the defendants allowed him only a limited amount of time—sometimes too limited—to travel to the dining room and the dispensary.

He filed this civil rights action against entity defendants Delaware County and Wackenhut Corp. [“Wackenhut”], which was under contract to run DCP, and individual defendants Godinez, the warden of DCP, Dooley, a captain at DCP, Ward, Carillo, and two unidentified corrections officers, all employees of Wackenhut who work at DCP.¹ In his complaint, the plaintiff seeks recovery from the entity defendants under the Americans with

¹Federal Rule of Civil Procedure 4(m) allows the court on its own initiative to dismiss an action without prejudice as it relates to defendants who have not been served within 120 days after the filing of the complaint. *See* Fed. R. Civ. P. 4(m). The plaintiff filed his complaint on January 31, 2000, and the 120-day period expired on May 30, 2000. *See* Compl. (Doc. No. 1) at 1. Therefore, the court will dismiss the complaint with respect to the unidentified corrections officers.

Disabilities Act of 1990 [“ADA”], 42 U.S.C. § 12101 *et seq.*, for discrimination and retaliation, from all defendants under 42 U.S.C. § 1983 for violations of his Eighth Amendment rights, and from the individual defendants under the state law tort of intentional infliction of emotional distress.

Pending before the court is the defendants’ motion to dismiss the plaintiff’s complaint for failure to state a claim upon which relief can be granted (Doc. No. 4). Because there is no indication that any of the individual defendants were personally involved in depriving the plaintiff of his rights, the court will grant the defendants’ motion to dismiss with respect to Count III as it relates to the individual defendants. Because the plaintiff withdraws his request for punitive damages, the court will also grant the defendants’ motion to dismiss with respect to the plaintiff’s punitive damages claim.² For reasons explained more fully herein, the court will deny the motion in all other respects.

I. Background

The complaint contains the following allegations.

From December 1997 to March 1998, the plaintiff was an inmate at DCP. *See* Compl. ¶ 13. During this time, Wackenhut operated DCP pursuant to a contract with Delaware County. *See id.* ¶ 6. Also during this time, Wackenhut employed the individual defendants. *See id.* ¶ 5.

²The plaintiff asks for punitive damages in his complaint. *See* Compl. at 8. In his response to the defendants’ motion, however, the plaintiff “withdraws the claim for punitive damages.” Pl.’s Mem. of Law in Opp’n to Defs.’ Mot. to Dismiss (Doc. No. 8) [“Pl. Resp.”] at 13 n.4. As a result, the court will grant the defendants’ motion with respect to the plaintiff’s punitive damages claim.

Shortly after arriving at DCP, the plaintiff was evaluated by Dr. Carillo, one of the individual defendants. *See id.* ¶ 16. During this evaluation, the plaintiff informed the doctor of his disability—that he was an incomplete paraplegic and could walk only with the aid of leg braces, and then only slowly. *See id.* ¶¶ 15, 17. Subsequently, the plaintiff advised each of the individual defendants of his disability and asked to be given additional time to move from place to place within the prison. *See id.* ¶ 18. He also submitted several official requests for accommodation on DCP’s inmate grievance forms. *See id.* ¶ 19. Despite the plaintiff’s requests, he was not given any extra time. *See id.* ¶ 20.

At mealtimes, inmates at DCP were required to travel from their cells to the dining room within a certain period of time. *See id.* ¶ 22. Similarly, inmates at DCP were required to travel to the dispensary for medical treatment within a certain period of time. *See id.* ¶ 29. Because of his disability, and because his cell was the farthest cell on the cellblock from the dining room, on at least fifteen occasions, the plaintiff did not make it to the dining room in the time allotted and was denied food. *See id.* ¶¶ 21, 23-24. The plaintiff was also denied medical treatment for a urinary tract infection on several occasions because he could not make it to the dispensary in the time allotted. *See id.* ¶¶ 27, 30.

This suit resulted.

II. Legal Standard

The defendants have filed a motion to dismiss for failure to state a claim upon which relief can be granted. *See Fed. R. Civ. P. 12(b)(6)*. The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir.

1987). In deciding a motion to dismiss, the court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant.” *Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). At this stage of the litigation, “[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). The court may consider a statute of limitations defect in a motion to dismiss “where the complaint facially shows noncompliance with the limitations period and the affirmative defense [of a statute of limitations defect] appears on the face of the pleading.” *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 n.1 (3d Cir. 1994).

The Federal Rules of Civil Procedure do not, however, require detailed pleading of the facts on which a claim is based. Instead, all that is required is “a short and plain statement of the claim showing that the pleader is entitled to relief,” enough to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Fed. R. Civ. P. 8(a)(2); *Rannels v. S.E. Nichols, Inc.*, 591 F.2d 242, 245 (3d Cir. 1979) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Indeed, the Appendix of Forms to the Federal Rules of Civil Procedure contains an example of a negligence complaint that satisfies Rule 8(a)(2) that includes only a statement of jurisdiction, a description of injuries, and an allegation that “defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.” App. of Forms to Fed. R. Civ. P., Form 9.

III. Discussion

A. Counts I-II: ADA Claims

In Count I of his complaint, the plaintiff claims that Wackenhut and Delaware County discriminated against him in violation of the ADA. *See* Compl. ¶¶ 37-41. In Count II, he asserts that they retaliated against him for exercising his rights under the ADA. *See id.* ¶¶ 43-44. The defendants put forth three reasons that these counts should be dismissed. The court does not find any of them persuasive. As a result, the court will deny the defendants' motion to dismiss with respect to Counts I and II.

1. Application of the ADA to the States

The defendants begin by arguing that Wackenhut and Delaware County are immune from suit under the ADA because Congress did not properly abrogate the states' Eleventh Amendment immunity when it enacted the ADA. *See* Mem. of Law in Supp. of Defs.' Mot. to Dismiss (Doc. No. 4) ["Defs. Mem."] at 2-3.³ As the defendants point out, in *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998), the U.S. Supreme Court pointedly declined to discuss the issue of whether the application of the ADA to the states is constitutional. *See* Defs. Mem. at 2 (citing *Yeskey*, 524 U.S. at 212-13). Because the Court declined to address this issue, the defendants claim that the application of the ADA to the states is unconstitutional. *See id.* The defendants do not, however, cite any case to support their assertion.

³Although the court is able to determine the page numbers of the defendants' brief by counting the number of pages, the court encourages the defendants to number the pages of their legal memoranda in the future.

It is clear that Congress intended to abrogate the states' Eleventh Amendment immunity when it passed the ADA. *See Yeskey v. Pennsylvania Dep't of Corrections*, 118 F.3d 168, 172-73 (3d Cir. 1997). It is unclear, however, whether Congress actually accomplished this abrogation. For example, although the Eleventh Circuit recently reiterated its holding in *Kimel v. State Bd. of Regents*, 139 F.3d 1426 (11th Cir. 1998), *aff'd on other grounds*, 120 S. Ct. 631 (2000), that Congress constitutionally abrogated the states' Eleventh Amendment immunity in enacting the ADA, *see Garrett v. University of Ala. at Birmingham Bd. of Trustees*, 193 F.3d 1214, 1218 (11th Cir. 1999), the Supreme Court has granted the defendant's petition for a writ of certiorari with respect to this issue. *See University of Ala. at Birmingham Bd. of Trustees v. Garrett* 120 S. Ct. 1669 (2000) (granting cert. with respect "to Question 1 presented by the petition"); Br. for Pet'r at i, *University of Ala. at Birmingham Bd. of Trustees v. Garrett* (99-1240) (recognizing that the issue before the Court is the constitutionality of applying the ADA to the states).

Considering the law's current state of flux with respect to the constitutionality of applying the ADA to the states, as well as the defendants' failure to make any real argument that such application is unconstitutional, the court concludes that the defendants do not make it "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of Counts I and II.⁴ *Hishon*, 467 U.S. at 73.

⁴None of the parties address the issue, but the court notes that the Supreme Court appears to have decided conclusively that the states' Eleventh Amendment immunity does not extend to counties. *See Mt. Health City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977). Thus, even if the Court concludes that Congress did not properly abrogate the states' Eleventh Amendment immunity when it enacted the ADA, Delaware County would not be able to claim immunity under the Eleventh Amendment.

2. Qualified Immunity

The defendants also contend that Wackenhut and Delaware County should be able to assert the defense of qualified immunity to the plaintiff's ADA claims. *See* Defs. Mem. at 3-5. The defense of qualified immunity is available to “*government officials* performing discretionary functions . . . insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (emphasis added).

As the defendants concede, and as cases reveal, the defense of qualified immunity is not available to either a corporate defendant like Wackenhut or a governmental defendant like Delaware County. *See Hammons v. Norfolk S. Corp.*, 156 F.3d 701, 706 n.9 (6th Cir. 1998) (noting that private corporations are not entitled to qualified immunity); *Good v. Dauphin County Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1096 (3d Cir. 1989) (recognizing that qualified immunity is inapplicable to county agencies); *Hynson v. City of Chester*, 827 F.2d 932, 934 (3d Cir. 1987) (acknowledging that the Delaware County Prison Board of Inspectors is a municipal corporation and, thus, cannot assert the defense of qualified immunity); Defs. Mem. at 4; *cf. Richardson v. McKnight*, 521 U.S. 399, 412 (1997) (holding that private prison guards working in a state prison may not assert the defense of qualified immunity); *Jordan*, 20 F.3d at 1276 (“The availability of qualified immunity to private persons who act under color of law is no longer an open question. It is settled. Private persons cannot assert it.”); *Sherman v. Four County Counseling Ctr.*, 987 F.2d 397, 403 n.4 (7th Cir. 1993) (stating that private corporations should be treated as private individuals for the purposes of a qualified immunity analysis). The defendants claim, without citing any case for support, that Wackenhut and Delaware County

should nonetheless be allowed to assert the defense of qualified immunity. *See* Defs. Mem. at 4-5. Because the defendants offer the court no persuasive reason for allowing Wackenhut and Delaware County to assert qualified immunity, the court will not do so.

3. Policy, Custom, or Practice

The defendants then assert that the plaintiff cannot recover on his ADA claims because he has not established the existence of a discriminatory policy, custom, or practice on the part of Wackenhut or Delaware County. *See id.* at 5-6. In support of their assertion, the defendants cite the following cases: *Tittle v. Jefferson County Comm'n*, 966 F.2d 606 (11th Cir. 1992), *reh'g granted and opinion vacated by* 986 F.2d 1384 (11th Cir. 1993); *Molton v. City of Cleveland*, 839 F.2d 240 (6th Cir. 1988); *Garcia v. Salt Lake County*, 768 F.2d 303 (10th Cir. 1985). *See* Defs. Mem. at 5-6. A cursory review of these cases, however, reveals that they were § 1983 actions, not ADA actions. Thus, these cases do not support the defendant's argument that the plaintiff must prove the existence of a discriminatory policy, custom, or practice to recover on his ADA claim.⁵ Indeed, the court has been unable to find any case in which a private ADA plaintiff was required to prove the existence of a discriminatory policy, custom, or practice. In looking for such a case, though, the court did discover that the Fourth Circuit has expressly rejected the idea that the ADA imposes such a requirement. *See Rosen v. Montgomery County Maryland*, 121 F.3d 154, 157 n.3 (4th Cir. 1997). Assuming that the plaintiff has failed to allege the existence of a discriminatory policy, custom, or practice on the part of Wackenhut and Delaware County, the defendants have not demonstrated that this failure is fatal to his ADA claims.

⁵*Molton* and *Garcia* were actually decided years before the ADA was passed in 1990.

B. Count III: § 1983

In Count III, the plaintiff claims that the defendants, acting under color of law, violated 42 U.S.C. § 1983 by depriving him of his Eighth Amendment right to be free from cruel and unusual punishment. *See* Compl. ¶ 46. The defendants make one generally applicable argument for the dismissal of Count III, as well as other arguments applicable only to either the entity defendants or the individual defendants. For the reasons explained below, the court finds persuasive only the defendants' argument for the dismissal of Count III with respect to the individual defendants. Therefore, the court will grant the defendants' motion with respect to Count III as it relates to the individual defendants. The court will deny the defendants' motion with respect to Count III as it relates to the entity defendants.

1. "Serious Handicap"

The defendants concede that the Eighth Amendment guarantees disabled prisoners a right to whatever care is required to treat a "serious handicap." Defs. Mem. at 7. They argue, however, that the plaintiff does not have a "serious handicap" and cite two cases in support of their argument: *Maclin v. Freake*, 650 F.2d 885 (7th Cir. 1981), and *Candelaria v. Coughlin*, 787 F. Supp. 368 (S.D.N.Y. 1992). *See* Defs. Mem. at 7. Assuming the defendants are correct that the plaintiff cannot recover on Count III unless he has a "serious handicap," the court is not persuaded that his disability is not a "serious handicap."

In each of the cases cited by the defendants, a paraplegic confined to a wheelchair was recognized to have a serious medical condition that warranted recognition under the Eighth Amendment. *See Maclin*, 650 F.2d at 889; *Candelaria*, 787 F. Supp. at 378. The defendants do

not explain why the plaintiff's disability is not a similarly serious medical condition.

Presumably, they would have the court conclude that the plaintiff does not have a "serious handicap" because he is only an incomplete paraplegic, as opposed to a complete paraplegic, and because he is only confined to leg braces, as opposed to a wheelchair.

It is unclear to the court that there are great qualitative differences between the disability suffered by the plaintiffs in *Maclin* and *Candelaria*—complete paraplegia—and the disability suffered by the plaintiff in this case—incomplete paraplegia. *See* Compl. ¶ 15. Taking as true the plaintiff's allegations about his disability and the reasonable inferences drawn therefrom, the court is unwilling to accept the defendants' argument and conclude that the plaintiff does not have a "serious handicap." *See Jordan*, 20 F.3d at 1261.

2. Legitimate Penological Interests

With respect to the entity defendants, the court is urged to dismiss Count III because the transit time policies complained of serve legitimate penological interests and, thus, are not actionable. *See* Defs. Mem. at 7-8 (referring to *id.* at 6). For his part, the plaintiff concedes that Wackenhut or Delaware County may be able to assert the defense of legitimate penological interests at some point, but he contends that the defendants' argument should be rejected at this time because they have not sufficiently demonstrated that the policies at issue serve any legitimate penological interests. *See* Pl. Resp. at 12. The court agrees with the plaintiff.

The U.S. Supreme Court has made it clear that if a prison regulation is claimed to violate a prisoner's constitutional rights, a court must inquire "whether the regulation is 'reasonably related to legitimate penological interests.'" *Washington v. Harper*, 494 U.S. 210, 223 (1990)

(quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). In performing that inquiry, a court should consider a variety of factors, such as whether there is “a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it,” whether “the impact [of] accommodation of the asserted constitutional right . . . on guards and other inmates, and on the allocation of prison resources generally” argues against the accommodation, and whether there is an “absence of ready alternatives.” *Id.* at 224-225 (internal quotation marks omitted).

Although the defendants claim that the transit time policies were instituted “for legitimate penological interests,” they do not explain what those interests are, what the impact of accommodation would be, or what alternatives exist. *See* Defs. Mem. at 6. As a result, the court cannot perform the inquiry required by *Harper*. Consequently, the court cannot accept the defendants’ argument and dismiss Count III with respect to the entity defendants.

3. Personal Involvement

With respect to the individual defendants, the court is urged to dismiss Count III because the complaint fails to even hint at their personal involvement in the alleged deprivation of the plaintiff’s rights. *See* Defs. Mem. at 9-10. The court agrees with the defendants’ characterization of the complaint and, thus, will dismiss Count III with respect to the individual defendants.

In order to be liable for a § 1983 violation, an individual defendant must have been personally involved in the deprivation of the plaintiff’s rights. *See Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1294 (3d Cir. 1997). A supervisor’s personal involvement may be

shown by establishing that the supervisor had actual knowledge of, and acquiesced in, the deprivation. *See id.* If actual supervisory authority does not exist, however, mere inaction does not give rise to liability. *See id.*

Other than the allegations concerning the plaintiff's initial medical evaluation at DCP, the complaint lacks any allegation dealing with specific individual defendants. The plaintiff claims to have informed "each of the Individual Defendants" of his disability and the problems that the transit time policies caused him, but it is unclear when they knew, whether they acquiesced, and who had actual supervisory authority over whom. Compl. ¶ 18. In his response to the defendants' motion, the plaintiff does not even address the issue of the individual defendants' personal involvement. *See Pl. Resp.* at 11-12.

Although the Federal Rules of Civil Procedure do not require a detailed pleading of a claim, a plaintiff must allege enough to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Rannels*, 591 F.2d at 245 (internal quotation marks omitted). The court agrees with the defendants that, at least with respect to the individual defendants, Count III does not meet the notice pleading standards of the Federal Rules. Consequently, the court will grant the defendants' motion to dismiss with respect to the plaintiff's claim in Count III against the individual defendants.

C. Count IV: Intentional Infliction of Emotional Distress

In Count IV, the plaintiff claims that the defendants are liable for the state law tort of intentional infliction of emotional distress. *See Compl.* ¶¶ 48-49. The defendants argue that Count IV should be dismissed because their conduct was not extreme and outrageous, as it must

have been for the plaintiff to recover for intentional infliction of emotional distress. *See Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1273 (3d Cir. 1979) (recognizing extreme and outrageous conduct as an element of intentional infliction of emotional distress); Defs. Mem. at 12-13. Although they make this argument, the defendants offer no explanation of why the conduct complained of could not be considered extreme and outrageous. *See* Defs. Mem. at 12-13. Assuming the truth of the allegations in the complaint and the reasonable inferences drawn therefrom, the court is unwilling to conclude as a matter of law that the defendants' alleged conduct was not extreme and outrageous. *See Jordan*, 20 F.3d at 1261.

The defendants also argue that the plaintiff's state law claim is barred by the statute of limitations. *See* Defs. Mem. at 11. From the face of the complaint, it is unclear when the complained of conduct occurred. Although some of it may have occurred more than two years before the plaintiff filed his complaint, some of it clearly occurred within that two-year period. *See, e.g.*, Compl. ¶ 19. Additionally, the complained of conduct that occurred more than two years before the plaintiff filed his complaint may have been part of continuing conduct. Because the face of the complaint does not "show[] noncompliance with the limitations period," the court declines to accept the defendants' statute of limitations argument. *Oshiver*, 38 F.3d at 1384 n.1.

For the foregoing reasons, the court will deny the defendants' motion with respect to Count IV.

IV. Conclusion

Because there is no indication that any of the individual defendants were personally involved in depriving the plaintiff of his rights, the court will grant the defendants' motion to

dismiss with respect to Count III's § 1983 claim as it relates to the individual defendants.

Because the plaintiff withdraws his request for punitive damages, the court will also grant the defendants' motion with respect to the plaintiff's punitive damages claim. The court will deny the defendant's motion to dismiss in all other respects. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHARLES RAINEY	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
COUNTY OF DELAWARE et al.	:	NO. 00-548
Defendant	:	

ORDER

YOHN, J.

AND NOW this day of August, 2000, upon consideration of the defendants' motion to dismiss (Doc. No. 4) and the plaintiff's response thereto (Doc. No. 8), IT IS HEREBY ORDERED that the motion is GRANTED IN PART and DENIED IN PART. The motion to dismiss is GRANTED with respect to Count III as it relates to defendants Godinez, Dooley, Ward, and Carillo. As it relates to defendants Godinez, Dooley, Ward, and Carillo, Count III is DISMISSED WITHOUT PREJUDICE to the plaintiff's right to amend that Count within ten (10) days of the date hereof. The motion to dismiss is also GRANTED with respect to the plaintiff's punitive damages claim, and that claim is DISMISSED WITH PREJUDICE. The motion to dismiss is DENIED in all other respects.

Additionally, as they relate to the two unnamed corrections officers, all counts in the complaint are DISMISSED WITHOUT PREJUDICE.

William H. Yohn, Jr.