UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JIBREEL WYLES,
 	
            Plaintiff,
   v.
 	
CAMDEN COUNTY DEPARTMENT OF
CORRECTIONS,
 	
            Defendant.
	HONORABLE JEROME B. SIMANDLE
	
	Civil Action
	No. 16-cv-06654 (JBS-AMD)
	
	OPINION

APPEARANCES:

Jibreel Wyles, Plaintiff Pro Se
1149 Lowell Street
Camden, NJ 08104

SIMANDLE, Chief District Judge:

1.   Plaintiff Jibreel Wyles seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Camden County Department of Corrections ("CCDOC"). Complaint, Docket Entry 1.

2.   Section 1915(e)(2) requires a court to review complaints prior to service in cases in which a plaintiff is proceeding *in forma pauperis*. The Court must *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3.   For the reasons set forth below, the Court will dismiss the complaint without prejudice for failure to state a claim. 28 U.S.C. § 1915(e)(2)(b)(ii).

4.   To survive *sua sponte* screening for failure to state a claim, the complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "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." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014). "[A] pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

5.   Plaintiff alleges he experienced unconstitutional conditions of confinement during confinements from March 2, 2012 to March 16, 2012; May 19, 2012 to September 8, 2012; July 8, 2013; January 28, 2014 to June 16, 2014; and May 14, 2016 to September 25, 2016. Complaint § III. Plaintiff states: "I was forced to sleep on the floor multiple times d[ue] to the fact it was overcrowded. I now deal with back [pains] and my body goes through [pains]." *Id.* Even accepting these statements as true

2

for screening purposes only, there is not enough factual support for the Court to infer a constitutional violation has occurred.

6.   The mere fact that an individual is lodged temporarily in a cell with more persons than its intended design does not rise to the level of a constitutional violation. *See Rhodes v. Chapman*, 452 U.S. 337, 348–50 (1981) (holding double-celling by itself did not violate Eighth Amendment); *Carson v. Mulvihill*, 488 F. App'x 554, 560 (3d Cir. 2012) ("[M]ere double-bunking does not constitute punishment, because there is no 'one man, one cell principle lurking in the Due Process Clause of the Fifth Amendment.'" (quoting *Bell v. Wolfish*, 441 U.S. 520, 542 (1979))). More is needed to demonstrate that such crowded conditions, for a pretrial detainee, shocks the conscience and thus violates due process rights. *See Hubbard v. Taylor*, 538 F.3d 229, 233 (3d Cir. 2008) (noting due process analysis requires courts to consider whether the totality of the conditions "cause[s] inmates to endure such genuine privations and hardship over an extended period of time, that the adverse conditions become excessive in relation to the purposes assigned to them."). Some relevant factors are the dates and length of the confinement(s), whether Plaintiff was a pretrial detainee or convicted prisoner, etc.

7.   Moreover, the CCDOC is not independently subject to suit because it is not a separate legal entity from Camden

County. *See Bermudez v. Essex Cty. D.O.C.*, No. 12-6035, 2013 WL 1405263, at *5 (D.N.J. Apr. 4, 2013) (citing cases). Plaintiff has not pled sufficient facts to impose liability on Camden County.

8.   "There is no *respondeat superior* theory of municipal liability, so a city may not be held vicariously liable under § 1983 for the actions of its agents. Rather, a municipality may be held liable only if its policy or custom is the 'moving force' behind a constitutional violation." *Sanford v. Stiles*, 456 F.3d 298, 314 (3d Cir. 2006) (citing *Monell v. N.Y.C. Dep't of Social Services*, 436 U.S. 658, 691 (1978)). *See also*, *Collins v. City of Harker Heights*, 503 U.S. 115, 122 (1992) ("The city is not vicariously liable under § 1983 for the constitutional torts of its agents: It is only liable when it can be fairly said that the city itself is the wrongdoer.").

9.   Plaintiff must plead facts showing that the relevant Camden County policy-makers are "responsible for either the affirmative proclamation of a policy or acquiescence in a well-settled custom." *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990).[1] In other words, Plaintiff must set forth facts

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[1] "Policy is made when a decisionmaker possess[ing] final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict. Government custom can be demonstrated by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually

4

supporting an inference that Camden County itself was the

"moving force" behind the alleged constitutional violation.

Monell, 436 U.S. at 689.

    10.   As Plaintiff may be able to amend his complaint to

address the deficiencies noted by the Court,[2] the Court shall

grant Plaintiff leave to amend the complaint within 30 days of

the date of this order.

    11.   Plaintiff should note that when an amended complaint

is filed, the original complaint no longer performs any function

in the case and cannot be utilized to cure defects in the

amended complaint, unless the relevant portion is specifically

incorporated in the new complaint. 6 Wright, Miller & Kane,

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to constitute law." *Kirkland v. DiLeo*, 581 F. App'x 111, 118 (3d
Cir. 2014) (internal quotation marks and citations omitted)
(alteration in original).

[2] To the extent the complaint seeks relief for conditions
Plaintiff encountered during his confinements in 2012, 2013, and
2014, those claims are barred by the statute of limitations.
Claims brought under § 1983 are governed by New Jersey's two-
year limitations period for personal injury. *See Wilson v.
Garcia*, 471 U.S. 261, 276 (1985); *Dique v. N.J. State Police*,
603 F.3d 181, 185 (3d Cir. 2010). "Under federal law, a cause of
action accrues when the plaintiff knew or should have known of
the injury upon which the action is based." *Montanez v. Sec'y
Pa. Dep't of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014). The
allegedly unconstitutional conditions of confinement at the
Camden County Correctional Facility would have been immediately
apparent to Plaintiff at the time of his detentions; therefore,
the statute of limitations for these claims expired, at the
latest, in March 2014, September 2014, July 2015, and June 2016,
respectively. In the event Plaintiff elects to file an amended
complaint, he should focus on facts of his May 14, 2016 to
September 23, 2016 confinement.

Federal Practice and Procedure 1476 (2d ed. 1990) (footnotes

omitted). An amended complaint may adopt some or all of the

allegations in the original complaint, but the identification of

the particular allegations to be adopted must be clear and

explicit. *Id.* To avoid confusion, the safer course is to file an

amended complaint that is complete in itself.[3] *Id.*

12. For the reasons stated above, the complaint is

dismissed without prejudice for failure to state a claim. The

Court will reopen the matter in the event Plaintiff files an

amended complaint within the time allotted by the Court.

13. An appropriate order follows.

February 1, 2017   **s/ Jerome B. Simandle**
Date   JEROME B. SIMANDLE
                                      Chief U.S. District Judge

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[3] The amended complaint shall be subject to screening prior to
service.