

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LETHRA B. LINDSAY,	:	
	:	
Plaintiff,	:	Civ. No. 16-7699 (NLH)
	:	
v.	:	OPINION
	:	
SALEM COUNTY CORR. FACILITY,	:	
	:	
Defendant.	:	

APPEARANCES:
Lethra B. Lindsay
2216 Baird Blvd.
Camden, NJ 08105
Plaintiff Pro se

HILLMAN, District Judge

Plaintiff Lethra B. Lindsay seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Salem County Correctional Facility. (ECF No. 1.) Based on her affidavit of indigence (ECF No. 1-1), the Court will grant her leave to proceed in forma pauperis. See 28 U.S.C. § 1915. 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).

I. BACKGROUND

Plaintiff brings this civil rights action, pursuant to 42 U.S.C. § 1983, against Defendant Salem County Correctional

Facility ("SCCF"). The following factual allegations are taken from the Complaint, and are accepted for purposes of this screening only. The Court has made no findings as to the veracity of Plaintiff's allegations.

From approximately November 6, 2015 through December 30, 2015, Plaintiff alleges that she was forced to sleep on the floor of a cell in SCCF because she was housed with two other women and there were only two available bunk beds. (Compl. ¶ III(C), ECF No. 1.) Plaintiff states that as a result of sleeping on the floor, her back and legs "stiffened up." (Id.) She requested "Bengay" and Tylenol and it was provided by the nurse. (Id.) Plaintiff is requesting \$2,500 in damages. (Compl. ¶ V.)

II. DISCUSSION

A. Legal Standard

1. Standards for a *Sua Sponte* Dismissal

Per the Prison Litigation Reform Act, Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996) ("PLRA"), district courts must review complaints in those civil actions in which a prisoner is proceeding in forma pauperis, see 28 U.S.C. § 1915(e)(2)(B), seeks redress against a governmental employee or entity, see 28 U.S.C. § 1915A(b), or brings a claim with respect to prison conditions, see 42 U.S.C. § 1997e. The PLRA directs district courts to 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 as indigent.

According to the Supreme Court's decision in Ashcroft v. Iqbal, "a pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). To survive sua sponte screening for failure to state a claim¹, 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." Belmont v. MB Inv. Partners, Inc., 708 F.3d 470, 483 n.17 (3d Cir. 2012)

¹ "The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e) (2) (B) (ii) is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b) (6)." Schreane v. Seana, 506 F. App'x 120, 122 (3d Cir. 2012) (citing Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000)); Mitchell v. Beard, 492 F. App'x 230, 232 (3d Cir. 2012) (discussing 42 U.S.C. § 1997e(c) (1)); Courteau v. United States, 287 F. App'x 159, 162 (3d Cir. 2008) (discussing 28 U.S.C. § 1915A(b)).

(quoting Iqbal, 556 U.S. at 678). Moreover, while pro se pleadings are liberally construed, "pro se litigants still must allege sufficient facts in their complaints to support a claim." Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted).

2. Section 1983 Actions

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his constitutional rights.

Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Thus, to state a claim for relief under § 1983, a plaintiff must allege, first, the violation of a right secured by the Constitution or laws of the United States and, second, that the alleged deprivation was committed or caused by a person acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011).

B. Analysis

Plaintiff names Salem County Correctional Facility as the only defendant in this matter. However, a correctional facility

is not a "state actor" within the meaning of § 1983 and the claims against it must be dismissed with prejudice. *See, e.g., Grabow v. Southern State Corr. Facility*, 726 F. Supp. 537, 538-39 (D.N.J. 1989) (correctional facility is not a "person" under § 1983). Because Plaintiff may be able to amend the complaint to name state actors who were personally involved in the alleged unconstitutional conditions of confinement, the Court will grant Plaintiff leave to amend the Complaint within 30 days of the date of this order.

Plaintiff is advised that any amended complaint must plead sufficient facts to support a reasonable inference that a constitutional violation has occurred in order to survive this Court's review under § 1915. According to the factual allegations in the instant Complaint, Plaintiff is seeking \$2,500 in damages because she sleep on the floor of a double cell with two other women for approximately two months. Even accepting the statements as true for screening purposes only, there is not enough factual support for the Court to infer a constitutional violation has occurred.

It is well established that housing multiple prisoners in a single cell is not per se unconstitutional. *See, e.g., Nami v. Fauver*, 82 F.3d 63, 66 (3d Cir. 1996) (citing *Rhodes v. Chapman*, 452 U.S. 337, 347-49 (1981)); *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, 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 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.").

To that end, in the event Plaintiff files an amended complaint, she should include specific facts, such as whether she was a pretrial detainee or convicted prisoner, any specific individuals who were involved in creating or failing to remedy the conditions of confinement, and any other relevant facts regarding the conditions of confinement.

III. CONCLUSION

For foregoing reasons, the Complaint will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. Because it is conceivable that Plaintiff may be able to supplement her pleading with facts sufficient to overcome the deficiencies noted herein, the Court will grant Plaintiff leave

to move to re-open this case and to file an amended complaint.²
An appropriate Order follows.

s/ Noel L. Hillman
NOEL L. HILLMAN
United States District Judge

Dated: October 25, 2016
At Camden, New Jersey

² Plaintiff should note that when an amended complaint is filed, it supersedes the original and renders it of no legal effect, unless the amended complaint specifically refers to or adopts the earlier pleading. See West Run Student Housing Associates, LLC v. Huntington National Bank, 712 F.3d 165, 171 (3d Cir. 2013) (collecting cases); see also 6 CHARLES ALAN WRIGHT ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1476 (3d ed. 2008). To avoid confusion, the safer practice is to submit an amended complaint that is complete in itself. Id.