IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALEXIS MALDANADO, Plaintiff v. DEPARTMENT OF CORRECTIONS, *et al.*, Defendants	: : : : : : : : : :	CIVIL NO. 1:CV-13-2249 (Judge Caldwell)

M E M O R A N D U M

I. *Introduction*

In August 2013, the pro se plaintiff, Alexis Maldanado, a state inmate, filed this civil-rights lawsuit concerning an event that occurred while he was housed at the state correctional institution in Huntingdon, Pennsylvania (SCI-Huntingdon). (ECF No. 1). This action proceeds on the Amended Complaint (ECF Nos. 29 and 30). On August 20, 2015, we granted the Pennsylvania Department of Corrections Defendants' motion to dismiss. (ECF No. 20). Presently before the court is Dr. Polmueller's uncontested motion to dismiss the Amended Complaint. (ECF No. 78).

For the reasons discussed below, the court will grant Dr. Polmueller's motion to dismiss and close the case.

II. *Standard of Review*

A motion to dismiss under Fed. R. Civ. P 12(b)(6) authorizes the dismissal of a complaint "for failure to state a claim upon which relief can be granted." Under Fed. R. Civ. P. 12(b)(6), the district court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff is entitled to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008)). While a complaint need only contain "a short and plain statement of the claim," Fed. R. Civ. P. 8(a)(2), and detailed factual allegations are not required, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964, 167 L.Ed.2d 929 (2007), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570, 127 S.Ct. at 1974. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)(quoting *Twombly*, 550 U.S. at 556, 127 S.Ct. at 1965). Formulaic recitations of the elements of a cause of action will not suffice. *See Id*. "[L]abels and conclusions" are not enough, and a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1965.

With this standard in mind, the following is the background to this litigation, as Plaintiff alleges it.

III. *Background*

Before his September 9, 2010, transfer to SCI-Huntingdon, Plaintiff was housed in a "gang unit" at SCI-Fayette where he was involved in a "gang fight" for which he received unspecified disciplinary sanctions and prompted his transfer. Upon his arrival at SCI-Huntingdon he was housed in Administrative Custody (AC) in the institution's Restricted Housing Unit (RHU). Fourteen days later, on September 22, 2010, he was placed in SCI-Huntingdon's general population. (Doc. 30, ECF p. 2 and p. 7).

While at SCI-Huntingdon, he held the following classification (housing) codes: "H-Code" - High Risk due to violent tendencies; "O-Code" - Observations, to be closely watched; and "Z-Code" - single cell status. (*Id*., ECF p. 8). He also received bi-weekly meetings with a psychologist. (*Id*.) He kept a diary as part of his therapy and attended "institutional guided classes to attempt to address his psychological needs." (*Id*., ECF p. 8; pp. 15-16 and pp. 27-28). He also took "strong medications," including Paxil and/or Remeron, to treat his severe depression. (*Id*., ECF p. 12 and p. 14). Maldanado spoke to officers, wrote request slips, and spoke with nurses all in effort "to get somebody to take him [and his mental health needs] more seriously." (*Id*., ECF p. 10).

On July 11, 2011, Maldanado was placed in the RHU for disciplinary reasons. (*Id.,* ECF p. 3). On or about September 2, 2011, while still in the RHU, Maldanado notified staff of his "extreme anxiety" and that he was going to kill himself "if necessary" to stop these feelings. Prison staff contacted Mrs. Lane, a CRNP, in the psychiatry department about his concerns. Shortly thereafter, Maldanado was removed from his cell, taken to a

shower area, stripped of his clothes and placed in a "smock." (*Id*., ECF p. 4). At the same time, staff removed Maldanado's property from his cell, including his mattress and bedding. (*Id*.) He was not placed in a Psychiatric Observation Cell (POC) but was returned to his empty RHU cell. (*Id*.) A "709 Notice" was placed outside of his cell door advising all staff that he was under "razor restriction, as well as, suicide watch." (*Id*.)

The following day, Plaintiff obtained a razor which he used to attempt suicide. He was then removed from his cell and taken to a POC in the medical unit and placed on "Basic 4" restrictions as ordered by Dr. Polmueller. (*Id*.; *see also* ECF p. 21). "Basic 4" restrictions consist of "an anti-suicide smock and blanket which are tear resistant, a mattress, and slides — basic laceless shoes." (*Id*., p. 5 and p. 21).

Maldanado's POC cell did not have a mattress. Maldanado was without a mattress for four or five days "in direct violation of a doctors (sic) orders." (*Id*., p. 20). This deprivation denied him of "the minimal civilized measure of life's necessities" in violation of the Eighth Amendment. (*Id*.) Plaintiff, who had a pre-existing back injury, claims he suffered "sleepless nights and endured extreme pain for no medical or penological reason" due to the denial of the mattress. (*Id*., p. 21).

IV. *Discussion*

The Eighth Amendment prohibits cruel and unusual punishment, which includes the unnecessary and wanton infliction of pain by prison officials. U.S. Const. amend. VIII; *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

However, not all deficiencies and inadequacies in prison conditions amount to a violation of an inmate's constitutional rights.

"A claim of inhumane prison conditions may rise to the level of an Eighth Amendment violation where the prison official 'deprived the prisoner of the minimal civilized measure of life's necessities' and 'acted with deliberate indifference in doing so, thereby exposing the inmate to a substantial risk of serious damage to [his] future health." *Palakovic v. Wetzel*, 854 F.3d 209, 225 (3d Cir. 2017) (quoting *Parkell v. Danberg*, 833 F.3d 313, 335 (3d Cir. 2016)). Accordingly, to sufficiently allege a constitutional challenge to prison conditions, a prisoner must show that: (1) the deprivation alleged was objectively serious; and (2) the official responsible for the deprivation must have exhibited deliberate indifference to the inmate's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 1977, 128 L.Ed.2d 811 (1994).

In order to satisfy the first requirement, "the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm." *Id*. With regard to the second requirement, the Supreme Court has explained that "deliberate indifference entails something more than mere negligence . . . [but] something less than acts or omissions for the very purpose of causing harm or with the knowledge that harm will result." *Id*. at 835, 114 S.Ct. at 1978. The Supreme Court defined this "deliberate indifference" standard as equal to "recklessness," in which "a person disregards a risk of harm of which he is aware." *Id*. at 836-37, 114 S.Ct. at 1978-79. "[E]xtreme deprivations are required to

make out a conditions-of-confinement claim." *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992).

In reviewing this type of claim, the courts have stressed the importance of the duration of the complainant's exposure to the alleged unconstitutional conditions, and a review of the "totality of the circumstances," as being critical in the Eighth Amendment determination, and not just the allegedly egregious conditions themselves. *Rhodes v. Chapman,* 452 U.S. 337, 362 - 33, 101 S.Ct. 2392, 2407, 69 L.Ed.2d 59 (1981). This is the standard the Court will apply to Maldanado's claim that he was denied a mattress for four or five days while housed in the medical unit's POC after attempting suicide.

Addressing the objective prong of Maldanado's conditions-of-confinement claim, Dr. Polmueller correctly notes that the temporary denial of a mattress for four or five days, following his suicide attempt, does not constitute a deprivation of a minimal civilized measure of life's necessities. *See Freeman v. Miller*, 615 F. App'x 72, 77-78 (3d Cir. 2015)(nonprecedential)(no violation found where suicidal inmate was placed in "hard cell" without a desk, seat, shower, mattress, soap, recreation, mail or toilet paper for approximately seven days); *Adderly v. Ferrier*, 419 F. App'x 135, 139 (3d Cir. 2011) (nonprecedential)(deprivation of clothing, toiletries, legal mail, pillow, mattress and shower for seven days was harsh but not a deprivation of the civilized measure of life's necessities). "The denial of [an inmate's] mattress for a short period of time does not rise to the level of a constitutional violation." *Milhouse v. Gee*, No. 09–CV–2134, 2011 WL 367414, at *13 (M.D. Pa. Aug. 17, 2011)(citing *Lane v. Culp*, No. 05–CV–576, 2007 WL

954101 (W.D. Pa. Mar. 28, 2007)(holding the denial of clothing and bedding for a period of seven days does not rise to the level of a constitutional violation)); *Williams v. Delo*, 49 F.3d 442, 444 (8th Cir. 1995)(four days without clothing, mattress, or any bedding was not a constitutional violation). Accordingly, the temporary denial of a mattress for four or five days while Maldanado was on suicide watch does not rise to the level of an Eighth Amendment conditions-of-confinement claim.

Maldanado also fails to state an Eighth Amendment claim against Dr. Polmueller based on deliberate indifference to a serious medical need arising from the defendant's involvement or acquiescence in the prison officials' decision to withhold a mattress during this time.

For the denial of medical care to rise to a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, a prisoner must demonstrate "(1) that defendants were deliberately indifferent to [his] medical needs and (2) that those needs were serious." *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). As noted before, deliberate indifference requires proof that the official "knows of and disregards an excessive risk to inmate health or safety." *Farmer,* 511 U.S. at 834, 114 S.Ct. at 1977.

Accepting the allegations as true, Dr. Polmueller knew of Maldanado's suicide attempt and placement in the POC. He ordered Maldanado receive the "Basic 4" which included a mattress. Assuming for the sake of argument that Dr. Polmueller knew of or acquiesced in the temporary deprivation of the mattress, this at most demonstrates Dr. Polmueller made a medical determination concerning the absence of a mattress for this

period. Maldando's disagreement with Dr. Polmueller's decision is therefore nothing more than a “[m]ere disagreement as to the proper course of medical treatment,” which is insufficient to state an Eighth Amendment claim. *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004)(citing *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987).

Alternatively, if Maldando sought to argue that Dr. Polmueller was medically negligent for failing to notice and take remedial action concerning the temporary denial of the mattress, this too fails to state a claim. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d (1976).

Finally, Maldanado does not argue Dr. Polmueller prescribed the mattress for him while he was in the POC to address a serious medical need. Rather, the mattress was part of the “Basic 4." Maldanado has also not alleged he needed follow-up medical care for his back after the four- or five-day denial of a mattress. While unpleasant, the discomfort of sleeping on the floor, even with the history of a back ailment, does not rise to the level of a serious medical need.

In sum, given the brevity of the deprivation, and the totality of the circumstances, the lack of alleged resulting physical injury or exposure to a substantial risk of serious harm, Maldanado’s conditions-of-confinement claim based on the temporary lack of a mattress while in the POC following a suicide attempt will be dismissed as to Dr. Polmueller. Further, given our review of the allegations against Dr. Polmueller, we will not

grant Maldanado another opportunity to amend his claims against this Defendant as doing so would be futile. *Shelley v. Patrick*, 481 F. App'x 34, 36 (3d Cir. 2012)(nonprecedential).

An appropriate order follows.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

Date: July 18, 2017