IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHNNY LEE WALKER,	§	
TDCJ #1215501	§	
Plaintiff,	§	
v.	§	**CIVIL ACTION NO. 6:17-CV-00166**
	§	
LORIE DAVIS, et al.,	§	
Defendants.	§	

Defendants Collier, Texas Board of Criminal Justice, Cooper, Catoe, Richardson, and Davis's Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12(c)

Defendants Collier, Cooper, Catoe, Richardson, Davis, and Texas Board of Criminal Justice move for the Court to dismiss Plaintiff's Amended Pleading (Dkt No. 29) against them pursuant to Fed. R. Civ. Proc. 12(c).

I. Statement of the Case

On March 17, 2017, Plaintiff filed his civil rights complaint alleging violations of the Eighth Amendment based on his conditions of confinement. Dkt No. 1. Defendants moved for a more definite statement. Dkt No. 24. The Court ordered Plaintiff to provide a more definite statement. Dkt No. 26. Plaintiff filed a document titled "Plaintiff's Amended Pleading to Defendant's Motion for a More Definite Statement" (Amended Complaint). Dkt No. 29.

In Plaintiff's Amended Complaint, he makes numerous allegations relating to his conditions of confinement. *See generally* Dkt No. 29. Specifically, his claims are for: (1) inadequate living space, (2) sleep deprivation, (3) excessive overcrowding in the shower, (4) no public toilets in the day room, (5) extreme heat and cold conditions, (6) contaminated chow hall, (7) contaminated water, and (8) unsafe housing and living areas. Dkt No. 29, pp. 1-10. Plaintiff does not claim any injury for excessive overcrowding in the showers, public toilets, chowhall

contamination, or unsafe housing and living areas. For his claims regarding inadequate living space, sleep deprivation, extreme heat and cold conditions, and contaminated water, he does not provide any specific dates for the alleged Eighth Amendment violations.

Plaintiff provides conclusory allegations and does not provide specific time periods or allegation of his injury.

II. Argument

A. Standard for a Motion to Dismiss for Failure to State a Claim

When ruling on a motion to dismiss under Fed. R. Civ. Proc. 12(c), the court applies the same standards as a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6). *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 210 (5th Cir. 2010). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). When the Court cannot infer more than the mere possibility of misconduct by the alleged facts, "the complaint has alleged—but it has not 'show[n]' 'that the pleader is entitled to relief.'" *Id.* (citing Fed. Rule Civ. Proc. 8(a)(2)). The Court must assume the truth of the facts presented and construe all inferences from them in the light most favorable to the nonmoving party when reviewing a motion to dismiss under Rule 12(b)(6). *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Additionally, "a document filed pro se is 'to be liberally construed,' and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

B. Plaintiff has failed to state a claim against the Texas Board of Criminal Justice.

Plaintiff provides no allegations in his Amended Complaint against the Texas Board of Criminal Justice (the Board). Therefore, Plaintiff's claims against the Board should be dismissed.

C. Defendants are not liable under a theory of respondeat superior.

For an official to act with deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 1979, 128 L.Ed.2d 811 (1994). "A supervisory official may be held liable . . . only if (1) he affirmatively participates in the acts that cause the constitutional deprivation, or (2) he implements unconstitutional policies that causally result in the constitutional injury." *Gates v. Texas Dep't of Prot. & Reg. Servs.*, 537 F.3d 404, 435 (5th Cir. 2008).

To prevail on a "failure to train theory" a "the plaintiff must show that: (1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff's rights; and (3) the failure to train or supervise amounts to deliberate indifference." *Estate of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005). "In order for liability to attach based on an inadequate training claim, a plaintiff must allege with specificity how a particular training program is defective." *Trammell v. Fruge*, 868 F.3d 332, 345 (5th Cir. 2017) (citing *Zarnow v. City of Wichita Falls*, 614 F.3d 161, 170 (5th Cir. 2010)). Furthermore, the plaintiff must generally demonstrate at least a pattern of similar violations. *Snyder v. Trepagnier*, 142 F.3d 791, 798 (5th Cir. 1998).

All of Plaintiff's allegations against the Defendants are for supervisory liability. Defendant Davis is the Director of the Texas Department of Criminal Justice-Correctional Institutions Division. Dkt No. 1, p. 3. Defendant Collier is the Executive Director of the Texas Department of Criminal Justice (TDCJ). Dkt. No. 1, p. 3. Defendant Catoe is the senior warden at the Coffield Unit. Dkt No. 1, p. 3. Defendants Richardson and Cooper are associate wardens of the Coffield Unit. Dkt No. 1, p. 3.

Plaintiff provides conclusory allegations that Defendants Collier and Davis knew about the alleged violations. *See e.g.*, Dkt No. 29, p. 3, ¶ 11. Furthermore, Plaintiff provides no allegations against Defendants Collier and Davis for his claims of excessive overcrowding in the shower and extreme heat and cold conditions. Dkt No. 29, pp. 4, 6-7.

The pleadings do not sufficiently detail Defendants' individual actions, nor do they sufficiently demonstrate personal involvement or causal connections of particular Defendants with particular alleged violations. *See Henzel v. Gerstein*, 608 F.2d 654, 658 (5th Cir. 1979). Plaintiff provides conclusory allegations that Defendants have shown deliberate indifference toward him. However, he provides no allegations of a causal link that any of the Defendants, all of whom are supervisors, for his claims. For example, regarding his "extreme temperature conditions" claims, he claims that "Defendants Collier and Davis are aware of the ongoing structure problems that plagues the Coffield Unit and have done nothing to correct these numerous deficiencies that threatens inmates mental and physical health" (errors in original). Dkt No. 29, p. 6, ¶ 33. He further claims that "Defendants Catoe, Cooper, and Richardson has shown deliberate indifference to Walker mental and physical heath by the inhumane conditions Walker must suffer each year for months at a time." Dkt No. 29, p. 6, ¶ 34. There is no causal link between any of his allegations and the Defendants' conduct.

Plaintiff's claims against Defendants should be dismissed because they have no liability under the theory of respondeat superior.

D. Plaintiff failed to state a claim for a violation of the Eighth Amendment.

The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. Claims regarding conditions of confinement in a prison context fall under the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312, 327 (1986). This prohibition "does not mandate comfortable prisons, but neither does it permit inhumane

ones." *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). In a suit against a prison official for a violation of the Eighth Amendment relating to an inmate's conditions of confinement, two requirements must be met. *Farmer*, 511 U.S. at 834.

First, the prison official's act or omission must be objectively serious to deny the inmate's "minimal civilized measure of life's necessities." *Id.* (citations and internal quotation marks omitted). "For a claim . . . based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm." *Id.* The Supreme Court has also stated,

> "Some conditions of confinement may establish an Eighth Amendment violation in combination when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise—for example, a low cell temperature at night combined with a failure to issue blankets."

Wilson v. Seiter, 501 U.S. 294, 304 (1991) (emphasis, citations, and internal quotation marks omitted).

Second, the "prison official must have a sufficiently culpable state of mind," meaning that the official was "deliberate[ly] indifferen[t] to inmate health or safety." *Farmer*, 511 U.S. at 834 (citations and internal quotation marks omitted). A prison official cannot be liable for deliberate indifference "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837. "[S]ubjective recklessness as used in the criminal law is . . . the test for 'deliberate indifference' under the Eighth Amendment." *Id.* at 839-40. "[D]eliberate indifference describes a state of mind more blameworthy than negligence." *Id.* at 835. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways,

including inference from circumstantial evidence . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842 (internal citations omitted).

Plaintiff has provided nothing but conclusory allegations against the Defendants for his claims of an Eighth Amendment violation for conditions of confinement. There are no allegations that Defendants knew of any risk to Plaintiff or that their actions caused his injuries. Furthermore, there are no specific dates for his injuries or claims.

E. Plaintiff suffered no injury for some of his claims and, therefore, is not entitled to compensatory damages.

"Prisoners bringing federal lawsuits . . . ordinarily may not seek damages for mental or emotional injury unconnected with physical injury." *Minneci v. Pollard*, 565 U.S. 118, 129 (2012). Specifically, under the Prison Litigation Reform Act ("PLRA"), "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correction facility, for mental or emotional injury while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e); *see also DeMoss v. Crain*, 636 F.3d 145, 151 (5th Cir. 2011) ("Furthermore, to the extent [the plaintiff] seeks compensatory damages stemming from the unequal enforcement of the policy, that claim is also barred by 42 U.S.C. § 1997e(e) because he has not alleged any physical injury stemming from the [] policy."). The physical injury must be more than *de minimis*. *Harper v. Showers*, 174 F.3d 716, 719 (5th Cir. 1999) ("Without an allegation of a more than *de minimis* physical injury, this aspect of [the plaintiff's] complaint lacks any merit.").

It is the nature of the relief sought, and not the underlying substantive violation, that controls the application of the physical injury requirement contained in Section 1997e(e). *Geiger v. Jowers*, 404 F.3d 371, 375 (5th Cir. 2005). "Section 1997e(e) applies to all federal civil actions in which a prisoner alleges a constitutional violation, making compensatory damages for mental

or emotional injuries non-recoverable, absent physical injury." *Id.* The physical injury requirement does not apply to requests for declaratory injunctive relief. *Id.* It also does not preclude claims for nominal or punitive damages. *Hutchins v. McDaniels*, 612 F.3d 193, 197–98 (5th Cir. 2007) (per curiam). When there is no physical injury and only compensatory damages are sought, the claim for damages should be dismissed. *See e.g. Mayfield v. Tex. Dep't of Criminal Justice*, 529 F.3d 599, 605–06 (5th Cir. 2008).

Plaintiff has not alleged any injury for excessive overcrowding, chowhall contamination, and unsafe housing conditions. *See* Dkt No. 29, pp. 4-5, 8-9, 10. Plaintiff's claims for compensatory damages should be dismissed.

III. Conclusion

Plaintiff has failed to state a claim for violations of the Eighth Amendment and Defendants are not liable on the grounds of respondeat superior. Defendants respectfully request that the Court dismiss Plaintiff's claims against them.

Respectfully Submitted,

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NOTICE OF ELECTRONIC FILING

I, **AMBER McKEON-MUELLER**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing, a true and correct copy of the foregoing in accordance with the Electronic Case Files system of the USDC – Eastern District of Texas, on March 15, 2018.

/s/ Amber McKeon-Mueller
AMBER McKEON-MUELLER
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **AMBER McKEON-MUELLER**, do hereby certify that a true and correct copy of **Defendants Collier, Texas Board of Criminal Justice, Cooper, Catoe, Richardson, and Davis's Motion for a More Definite Statement** has been served via certified mail, return receipt requested, on March 15, 2018, addressed to:

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ORDER

This day the Court considered Defendants Collier, Cooper, Catoe, Richardson, Davis, and Texas Board of Criminal Justice motion to dismiss pursuant to Federal Rule of Civil Procedure 12(c). After considering the pleadings and arguments of the parties, the Court is of the opinion that the following order should issue:

For the reasons presented in Defendants' motion, it is hereby **ORDERED** that the motion to dismiss is in all things **GRANTED**. Any and all claims brought by Plaintiff against Defendants for a violation of the Eighth Amendment in the above-numbered and styled cause of action are hereby **DISMISSED** with prejudice.