IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LESTER DOBBEY, #R-16237	)	
	)	
Plaintiff,	)	
	)	**No. 13 C 1068**
v.	)	
	)	
WILLIAM WEILDING, et al.,	)	**Honorable Judge**
	)	**Robert M. Dow**
Defendants.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PORTIONS OF PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

Defendants MARCUS HARDY, MICHAEL STUDER, and MICAHEL LEMKE, by and through their attorney, LISA MADIGAN, Attorney General of Illinois, submit the following Memorandum of Law in Support of their Motion to Dismiss Portions of the Plaintiffs' Second Amended Class Action Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6):

I. INTRODUCTION

The Second Amended Complaint in this matter was filed on January 7, 2014, and it seeks injunctive relief for alleged deficiencies at Stateville Correctional Facility. [1] (*See* Plaintiff's Second Amended Complaint, attached hereto as Exhibit A.) On January 23, 2014 (amended on February 11, 2014), this Court certified a class in this matter. (*See* Docket Nos. 36 and 41.) The Class of Plaintiffs ("Plaintiffs") is defined as "all individuals incarcerated at the Stateville Correctional Center at any time since January 1, 2011, and all individuals who will be housed at the Stateville Correctional Center in the future." *Id.*

[1] The named Plaintiff, Lester Dobbey, #R-16237, is an adult individual currently incarcerated at Stateville Correctional Center serving a term of 45 years for first degree murder, and a term of 6 years for attempted murder.

The Second Amended Complaint consists of eight counts alleging unsanitary and unsafe conditions at Stateville Correctional Center. *See* Ex. A. Plaintiffs are seeking injunctive relief for the alleged deficiencies.[2] Specifically the Plaintiffs request that the following alleged conditions be remedied: the presence of birds, mice, roaches, spiders and other bugs in the facility; 24 hour lighting conditions in the hallways; the irregular distribution of cleaning supplies; the presence of mold in the shower; leaky roofs; lead based paint on the walls; improperly cleaned food carts; dust, hair and dander in the air system; covered air vents; inadequate heat in the winter; lack of blankets in the winter; tainted water supply; and cracked foundations of housing units. (*See* Exhibit A; Docket No. 41.) Defendants' Motion to Dismiss does not address Plaintiffs' complaints regarding rodent infestations, improperly cleaned food carts, distribution of blankets, tainted water supply, or cracked building foundations. The Defendants move to dismiss the remaining claims in Counts I – V because they fail to state constitutional violations.

II. STANDARD

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) does not test whether the plaintiff will prevail on the merits, but instead whether the claimant has properly stated a claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236(1974). A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.8(a)(2). Detailed factual allegations are not required, but a plaintiff's complaint may not merely state an "unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A pleading that offers 'labels and conclusions' or a formulaic recitation of the elements of a cause of action will not do.'" *Id.*

[2] In addition to injunctive relief, Mr. Dobbey seeks compensatory and punitive damages for his own personal physical and mental suffering. While Mr. Dobbey's prayer for relief is alleged separate from the Plaintiff Class, the legal issues as applied to the Plaintiff Class remain identical to Mr. Dobbey's personal claims.

A plaintiff's complaint must contain allegations that "state a claim to relief that is plausible on its face." *Iqbal*, at 663, *citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "A claim that has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, at 663. In reviewing the sufficiency of a complaint under this standard, the court must accept as true all well-pleaded factual allegations. *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011). However, legal conclusions and "conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *Id*.

III. ARGUMENT

The Second Amended Complaint alleges unfavorable conditions at Stateville Correctional Center, an adult male maximum security prison. However, the Seventh Circuit Court has already established that unfavorable prison conditions do not necessarily give rise to a constitutional violation; "prison conditions may be harsh and uncomfortable without violating the Eighth Amendment's prohibition against cruel and unusual punishment." *Dixon v. Godinez*, 114 F.3d 640, 642 (7th Cir. 1997), *citing Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994). In order for an inmate to succeed on a conditions of confinement claim, "the court must first determine whether the conditions at issue were 'sufficiently serious' such that 'a prison official's act or omission result[ed] in the denial of the minimal civilized measures of life's necessities." *Gray v. Hardy*, 2013 WL 5433280, *5 (N.D. Ill. 2013)(Pallmeyer, J.)(attached hereto as Exhibit B), *citing Farmer*, 511 U.S. at 832.[3] A condition is sufficiently serious to warrant constitutional violation only if it is a deprivation which denies an inmate "the minimal civilized measure of life's necessities." *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). Further, "an objectively

[3] *Gray v. Hardy* was decided on September 30, 2013 in the Northern District of Illinois. While it is not binding precedent, it speaks directly to the issues of the instant case.

sufficiently serious risk, is one that society considers so grave that to expose *any* unwilling individual to it would offend contemporary standards of decency." *Christopher v. Buss*, 384 F.3d 879, 882 (7th Cir. 2004) (citations omitted)(emphasis in original).

Additionally, Plaintiffs must prove the subjective component of a conditions-of-confinement claim. A prison official may not be found liable unless he was deliberately indifferent to a substantial risk to the inmate's health or safety. *Id*. Deliberate indifference can be demonstrated by showing that the defendants knew about the serious condition and disregarded it. *Id*. If the harm resulting from the complained of condition is remote rather than immediate, or the official does not know about it or cannot do anything about it, then the subjective component is not established and the suit fails. *Farmer*, 511 U.S. at 837-838.

"Negligence, or even tort recklessness, does not state a claim under the Eighth Amendment." *Smith-Bey v. Hospital Administrator*, 841 F.2d 751, 759 (7th Cir. 1988). The plaintiff must plead sufficient facts which would allow the Court to make a reasonable inference that the Defendants are liable because they knew that harm was imminent and did nothing, not merely that the harm is consistent with the Defendant's alleged liability. *Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009).

The conditions alleged in Counts I – V of the Second Amended Complaint are not sufficiently serious to deny the minimal civilized measures, and they fail to demonstrate that the Defendants acted with deliberate indifference. Therefore Plaintiffs have failed to state these claims under the requirements of the law, and they should be dismissed.

A. The Presence of Birds in Stateville is Not Sufficiently Serious.

Plaintiffs first allege that "Stateville Correctional Center has had an extensive history of unsanitary birds . . . within the inmate's living units." Ex. A, ¶21. Additionally, Plaintiffs allege

that they "ha[ve] suffered annoyance, as well as deprivation of peace-of-mind, where Plaintiff[s] would experience every morning for months, birds chirping and singing." Ex. A, ¶29. These claims are not sufficiently serious as defined by the Supreme Court of the United States; Plaintiffs' annoyance at signing birds does not signify a deprivation that reaches to the "minimal civilized measure of life's necessities." *Wilson*, 501 U.S. at 298.

Plaintiffs list a number of illnesses and rare infectious diseases that are possibly carried by birds. Ex. A, ¶ 27 (a)-(e). Yet Plaintiffs have failed to assert that either the named Plaintiff or anyone in the Plaintiff Class has ever been afflicted by one of these diseases as a result of the presence of birds in the prison. Furthermore, the courts in this District have recently addressed this issue and determined that "the existence of pests and birds does not establish an objectively serious condition." *Gray v. Hardy*, 2013 WL 5433280, *7 (Exhibit B). There, the court held that in order for an inmate to state a valid claim for birds in a prison, the plaintiff must describe conditions that are much more severe. *Id.*; see also *Antonellie v. Sheahan*¸ 81 F.3d 1422 (7th Cir. 1996) (court allowed claim for pest infestation where plaintiff claimed prolonged exposure to pests was seriously impacting his health); *White v. Monohan,* 326 Fed.Appx. 385 (7th Cir. 2009) (court allowed claim arising from pest infestation where plaintiff claimed pests bit and stung him so often as to leave scars, wounds and sores causing internal injuries.) Because Plaintiffs have not asserted any sufficiently serious condition or viable injury regarding birds, this Court should dismiss the claims regarding the presence of birds in Stateville Correctional Center in Count I of the Second Amended Complaint.

B. Twenty-Four Hour Lighting is not Sufficiently Serious to Trigger a Constitutional Violation.

Plaintiffs allege in Count II of their complaint that lighting along the "building wall and/or ceiling . . . brightly illuminate[s] the building." Ex. A, ¶35. Plaintiffs further allege that

these lights stay on twenty-four hours a day, causing annoyance to inmates at Stateville. Again, Plaintiffs have failed to state a claim for which relief can be given. Twenty-four hour lighting in the hallways of a maximum security prison is not a sufficiently serious condition, nor is it an extreme deprivation of human civilities, which rises to the level of a constitutional violation.

The Seventh Circuit has previously addressed twenty-four hour lighting and determined that continuous lighting was not an actionable claim. In 2008 the Court held that an inmate's cell being lit by four fluorescent lights, three that could be turned off and one that stayed on constantly, did "not objectively constitute an 'extreme deprivation.'" *Vasquez v. Frank*, 290 Fed. Appx. 927, 929 (7th Cir. 2008), *citing Doe v. Welborn*, 110 F.3d 520, 524 (7th Cir. 1997). Here, Plaintiffs' allegations cannot be so serious as to establish a constitutional violation when the lighting complained of is outside of the inmates' cells, and in *Vasquez*, the court found that 24-hour lighting inside the cells was not a violation. *Vasquez*, 290 Fed. Appx. at 929.

Moreover, this issue has been dismissed in other Circuits, strongly indicating a universal tenant that lighting the inside of a prison for twenty-four hours is not a constitutional violation. The Third Circuit has recently addressed 24-hour lighting conditions in prisons and held that "constant illumination does not rise to the level of cruel and unusual punishment." *Huertas v. Secretary Pa. Dep't of Corr.*, 533 Fed.Appx. 64, 68 (3rd Cir. 2013). Additionally, that court held that uninterrupted lighting in prisons is "permissible and reasonable in the face of legitimate penological justifications, like the need for security and the need to monitor prisoners." *Id*.

Finally, in order for an inmate to successfully plead a constitutional violation regarding prison lighting, he/she must plead that the constant illumination had harmful effects on his health beyond mere discomfort. *Vasquez v. Frank*, 2007 WL 3254702, *1 (W.D. Wis. Nov. 2, 2007). Plaintiffs do not assert any injuries resulting from constant illumination, outside of "cries of

annoyance." Ex. A, ¶37. Therefore, twenty-four hour security lighting is not a sufficiently serious condition to rise to the level of a constitutional violation, and Plaintiffs' claims regarding illumination in Count II should be dismissed.

C. Distribution of Cleaning Supplies and Presence of Mold is Not Sufficiently Serious as to Constitute a Constitutional Violation.

Plaintiffs further allege in Count III of their Complaint that Defendants do not distribute cleaning supplies on a sufficiently regular basis, and that the quantity of cleaning supplies available is inadequate, leading to dirty cells and the presence of mold in the showers. Ex. A ¶ 39, 43. 47. It is well established that "inmates cannot expect the amenities, conveniences and services of a good hotel." *Harris v. Fleming*, 839 F.2d 1232, 1235 (7th Cir. 1997). Cases where the conditions of confinement have survived to go to trial involved far harsher surroundings. *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992) (prisoner "forced to live with 'filth, leaking and inadequate plumbing, roaches, rodents, the constant smell of human waste, poor lighting, inadequate heating, unfit water to drink, dirty and unclean bedding, without toilet paper, rusted out toilets, broken windows [and] . . . drinking water contain[ing] small black worms which would eventually turn into small black flies"); *Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989) (inmate housed in cell without running water and in which cell was smeared with feces while ignoring is requests for cleaning supplies). As previously established, in order for inmates to succeed on conditions-of-confinement claims, they must alert the court to extreme deprivations. *Hudson v. McMillian*, 503 U.S. 1, 24 (1992).

Here, the Plaintiffs have made no such allegations. Plaintiffs were not forced to live in such filth and uncleanliness as to cause them illness. Rather, Plaintiffs were not able to clean their living units and showers as much or as often as they liked. Cleaning supplies are not a necessity, but a luxury. Plaintiffs have access to water in their cells that may be used for cleaning

purposes. The Plaintiffs' allegations do not constitute a constitutional violation, as "the Eight Amendment is not violated when the hygienic conditions in a prison simply do not meet the prisoner's personal standards of cleanliness." *Jordan v. Peters*, 2000 WL 149256, *4 (N.D. Ill. Feb. 8, 2000) (Pallmeyer, J.).

Similarly, Plaintiffs allege that the roof leaks. However they have not alleged any injuries resulting from said leaks. Ex. A, ¶50. Rather, they indicate that the Defendants have taken steps toward ensuring that Plaintiffs are not injured by puddles formed as a result of the leaks in the roof. *Id*. By Plaintiffs own admissions in the plain language of the Second Amended Complaint, the Defendants have not shown deliberate indifference to Plaintiffs' concerns over leaks in the roof—rather they are addressing them by catching the water in buckets and trash cans. *Id*. Plaintiffs also alleged that mold is produced as a result of the roof leaks, yet they allege no injuries or illnesses occurring because of the presence of said mold.

Plaintiffs have failed to allege sufficiently serious conditions and deliberate indifference on the behalf of the Defendants. Therefore, Plaintiffs have failed to state a claim for which this Court can grant relief, and Plaintiffs' claims relating to cleaning supplies and the presence of mold in Count III should be dismissed.

D. The Presence of Lead Paint Undercoats on Cell Walls is Not Sufficiently Serious.

The presence of lead paint undercoats on cell walls is not sufficiently serious as to establish a constitutional violation. The courts in Northern District of Illinois have consistently been clear about this issue. In a §1983 claim extremely similar to the instant case, an inmate at Stateville Correctional Center alleged that he suffered from cruel and unusual living conditions, partly as a result of lead paint exposure. *Mejia v. McCann*, 2010 WL 5149273, *8 (N.D. Ill. Dec. 10, 2010) (Conlon, J.)(attached hereto as Exhibit C). In that case, the Court held, "the existence

of lead paint on walls does not state a viable constitutional claim. The judges of this court have repeatedly held that claims of lead paint undercoats on prison walls are not the kind of deprivation of basic human needs redressable under the Eighth Amendment." *Id*. at 8; see, *e.g.*, *Sanchez v. McCann*¸ 2010 WL 1408917, *3 (N.D.Ill. Apr.2, 2010) (Conlon, J.); *Walker v. Dart*, 2010 WL 669448, *3 (N.D.Ill. Feb.19, 2010) (Andersen.J.); *Jones v. Mitchell*, 1994 WL 517202, *3–4 (N.D.Ill. Sep.20, 1994) (Moran, J.); *Foster v. Cooper*, 1994 WL 110180, *9 (N.D.Ill. Mar.28, 1994) (Marovich, J.). Further, Plaintiffs fail to state how the presence of lead paint undercoats has harmed any Plaintiff or otherwise gives rise to a constitutional violation. There are millions of homes in the United States that contain lead-based undercoats of paint. Inmates are not entitled to any greater rights than these millions of non-incarcerated individuals. *See* *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001)("The Eighth Amendment does not require prisons to provide prisoners with more salubrious air, healthier food, or cleaner water than are enjoyed by substantial numbers of free Americans.")

There is no reason or basis for a conclusion that the presence of lead paint undercoats is a violation of the Eighth Amendment. Plaintiffs' Second Amended Complaint does not contain any allegations that Plaintiffs were forced to or that they did ingest lead paint or were otherwise harmed by it. Plaintiffs' allegations do not amount to constitutional violations, and these claims in Count III should be dismissed.

E. Plaintiffs' Ventilation Allegations do Not State a Claim for which Relief Can be Granted.

Plaintiffs also allege that Stateville is equipped with an inadequate ventilation system. Specifically, Plaintiffs allege that the "air circulating around … individual cells consist of ions that are thick with dust, hair, pest and bird dander, airborne viruses, and wool fibers from state-issued blankets," and that the "vents in numerous cells are covered with steel plates preventing

any air circulation." Ex. A, ¶ 62, 64. It is true that in certain circumstances courts have determined that inadequate ventilation, usually in combination with multiple other factors, may give rise to an Eighth Amendment claim. *Ramos v. Lamm*, 639 F.2d 559, 569 (10th Cir. 1980). However, the problem must be extreme. *Dixon v. Godinez*, 114 F.3d 640, 645 (7th Cir. 1997). The problems alleged in this case, even taken as a whole, are insufficient to rise to the level of a constitutional violation. *See Sain v. Wood*, 512 F.3d 886, 894 (7th Cir. 2008)(while an inmate alleged that he was plagued by bites from cockroaches, foul odors, extreme heat, and an inability to open a window without letting insects in, these allegations did not violate the Constitution either individually or collectively).

Like the plaintiff in *Dixon*, Plaintiffs here offer only conclusory allegations with no facts to support them. *Dixon*, 114 F.3d at 645. Conditions such as poor ventilation or dry air do not fall below "the minimal civilized measure of life's necessities." Thus, these claims in Count IV should be dismissed.

F. Plaintiffs Have Not Sufficiently Stated a Claim Regarding the Heat at Stateville Correctional Center.

Plaintiffs have failed to state a claim for inadequate heating at Stateville because the Second Amended Complaint does not claim an actionable injury. While Illinois experiences cold winter weather that affects all citizens, Plaintiffs have claimed no physical or mental injuries due to the cold inside Stateville. Rather, all Plaintiffs have actually complained about is the interruption of their daily activities; the "temperatures have made Plaintiff's regular daily activities impermissible, such as studying religious materials, as well as criminal and civil law, writing, and just simply standing up in the cell for any long period of time." Ex. A, ¶76. This does not constitute a serious deprivation that gives rise to a constitutional violation. *See Farmer*, 511 U.S. at 832. Additionally, these are not actionable claims because they describe winter issues

that affect all citizens in Illinois. *See Carroll*, *surpa*. Therefore, Plaintiff's allegations relating to heat in Count V should be dismissed.

IV. CONCULSION

Plaintiffs assert a number of allegations of unsafe and unsanitary conditions at Stateville Correctional Center. However, Plaintiffs have failed to meet their burden under the law. In order to succeed on a conditions-of-confinement claim, they must establish that serious conditions affecting their well-being are present, and that prison officials were deliberately indifferent to such conditions. Plaintiffs have failed to do that here. Plaintiff cannot show that the conditions of their confinement were so extremely outrageous to suggest constitutional violations. Accordingly, these claims in Counts I – V of the Second Amended Complaint should be dismissed.

WHEREFORE, for the foregoing reasons and the reasons set forth in the Defendants' Motion to Dismiss, the Defendants respectfully request that this Honorable Court dismiss these claims in Counts I – V of the Second Amended Complaint, and enter all such further relief the Court deems reasonable and just.

Respectfully submitted,

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