United States District Court
for the
Southern District of Florida

Andre Chapman, representative of Estate of Darren Rainey, et al. Plaintiffs,	)	
v.	)	Consolidated Action Case No. 14-23323-Civ-Scola (Orig. Case No. 14-24140-Civ-Scola)
Florida Department of Corrections, Corizon, LLC, Roland Clarke, and Cornelius Thompson, and Jerry Cummings, Defendants.	)	

Omnibus Order on Motions to Dismiss

Darren Rainey, a fifty-year-old mentally-ill inmate, was serving a two-year sentence for a minor drug offense in the Dade Correctional Institution. According to the Second Amended Complaint, in June 2012, guards forced him into a scalding hot shower and confined him there, unattended, for nearly two hours. Upon the guards' return, Rainey was unresponsive, not breathing, and without a pulse. He had burns over ninety-percent of his body and his skin sloughed off when touched. Rainey died as a result of his injuries.

The Plaintiffs, Rainey's estate and various family members, have since lodged a four-count complaint against various defendants. (2d Am. Compl., ECF No. 104.) Count One alleges violations of the Americans with Disabilities Act and the Federal Rehabilitation Act against Defendant Florida Department of Corrections. (*Id.* at ¶¶ 60–73.) Counts Two through Four allege § 1983 claims against, respectively, Defendant Corizon; Defendant guards Roland Clarke and Cornelius Thompson; and Defendant warden Jerry Cummings. (*Id.* at ¶¶ 74–98.) Cummings and FDC have both filed motions to dismiss. (ECF Nos. 124, 125.) For the reasons set forth below, Cummings's motion (**ECF No. 124**) is **denied** and FDC's motion (**ECD No. 125**) is **granted**.

1. Legal Standard

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must accept all of the Complaint's allegations as true, construing them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). A pleading need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an

unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). A plaintiff must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"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." *Iqbal*, 556 U.S. at 678. "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." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Thus, a pleading that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not survive dismissal. *See Twombly*, 550 U.S. at 555. "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 679.

Yet, where the allegations "possess enough heft" to suggest a plausible entitlement to relief, the case may proceed. *See Twombly*, 550 U.S. at 557. "[T]he standard 'simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence' of the required element." *Rivell v. Private Health Care Sys., Inc.*, 520 F.3d 1308, 1309 (11th Cir. 2008). "And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556.

2. Cummings's motion to dismiss is denied.

A. The Complaint is not a shotgun pleading.

Cummings complains that the Estate's Second Amended Complaint is a shotgun pleading because the count against him, Count Four, reincorporates all of the allegations against the other defendants raised in the three preceding counts. Because of this, says Cummings, it is "virtually impossible" for him "to frame any intelligent affirmative defenses or otherwise respond to the allegations against him in a meaningful way." (Cummings's Mot., ECF No. 124, 3.)

The principal problem with shotgun pleadings is that they "fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015). Although it is true that each count in this Complaint explicitly

"repeats and realleges" all prior paragraphs "as if fully set forth herein," the Complaint nonetheless clearly states the issues and each count differentiates between the various defendants, specifying distinct support for every separate count. This is not the type of pleading that makes it "exceedingly difficult, if not impossible, to know which allegations pertain to [each] count (according to its label), to separate the wheat from the chaff . . . [thereby] unnecessarily tax[ing] the time and resources of the District Court as well as the Court of Appeals." *Keith v. DeKalb Cty., Georgia*, 749 F.3d 1034, 1045 n. 39 (11th Cir. 2014).

Unlike the complaints in the cases cited to by Cummings, the Complaint here is not "replete with factual allegations that could not possibly be material to that specific count" and that "are buried beneath innumerable pages of rambling irrelevancies." *Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001). In reviewing the Complaint in this case, the Court finds that "ascertain[ing] exactly which facts formed the basis of the plaintiffs' federal law claims" is not so daunting a task. *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1296 (11th Cir. 2002) Unlike the *Magluta* and *Strategic* complaints, the pleading here contains distinct allegations as to each defendant for acts that they are each separately responsible for. *See Magluta*, 256 F.3d at 1284. While the better course is certainly for plaintiffs to avoid incorporating each prior paragraph into each successive count, the effect in this case is not so dire as to require repleading.

B. The Complaint sufficiently pleads a claim for relief against Cummings.

Cummings complains that the count against him "contains little factual content," presenting "mostly conclusions, labels, and formulaic recitations of the elements of a § 1983 claim and little more." (Mot. at 4–5.) This is a mischaracterization of the Complaint's allegations. The Plaintiffs' factual contentions include:

- Prior to Mr. Rainey's death, . . . Cummings knew about widespread abuse by correctional officers upon inmates with mental illness on the Dade CI mental health inpatient unit. (2d Am. Compl. at ¶ 45, ECF No. 104, 10.);

- In 2011, a psychological counselor at Dade CI reported several instances of physical abuse by correctional officers on inmates in the Dade CI inpatient unit to prison officials at Dade CI, including the warden, Cummings. The counselor indicated that the abuse included officers kicking and beating an inmate while he was restrained. (*Id.* at ¶ 46.);

- Dade CI correctional officials, including supervisors on the inpatient unit and the prison warden, Cummings, had actual knowledge of the widespread abuse of inmates on the inpatient mental health unit by correctional officers, but failed to take any steps to stop the abuse. (*Id.* at ¶ 50.);

- At all times material to this action, the Dade CI inpatient mental health unit had a history of widespread abuse of mentally ill inmates by Dade CI officers. Defendant Cummings knew and/or should have known about the widespread abuse and the necessity for correcting Dade CI officers' conduct, but failed or refused to stop the constitutional deprivations to Dade CI inpatient mental health unit inmates who were being abused by officers. (*Id.* at ¶ 92.)

- The constitutional deprivations that constitute widespread abuse, which were sufficient to put Defendant Cummings on notice of them and the necessity for correcting Dade CI officers' conduct, were inclusive of, but not limited to, numerous occurrences of Dade CI officers depriving inmates of food as punishment or for retaliation against inmates, the use of excessive force against inmates and the 'shower treatment,' which were obvious, flagrant, rampant, and of continued duration, and not merely isolated incidents. (*Id.* at ¶ 93.)

These are not mere "conclusions [that] are simply speculation" or "magic words" as maintained by Cummings. (Mot. at 6, 7.) Instead, these allegations, if accepted as true, articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). These allegations, together with the rest of the Complaint, amount to "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Complaint is not a mere "unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted).

Further, Cummings's contentions that "[n]owhere in the Complaint does the Plaintiff allege Cummings knew of the shower, knew of its use, or that anyone reported to him inmates were being abused by being place therein" are unavailing. (Mot. at 5.) Cummings cites no case law to support his apparent claim that a § 1983 supervisor-liability defendant have knowledge of the specific manifestation or form of the abuse ultimately inflicted on a plaintiff. Nor does he cite any support for his position that the Complaint fails because there is "no allegation that Cummings was at DCI on the date and time of the

incident." (Mot. at 5.) As set forth in the Eleventh Circuit's Pattern Jury Instructions, supervisor liability can be established simply by a showing that there was "[a] history of widespread abuse [that] put [the supervisor] on notice of the need to take corrective action and [he] failed to do so." Eleventh Circuit Civil Pattern Jury Instruction 5.8. Contrary to Cummings's submission that the Plaintiffs' allegations "reveal nothing more than isolated incidents at best," the Complaint explicitly asserts: that there was a history of widespread abuse by correctional officers upon inmates with mental illness; that Cummings had knowledge, or should have had knowledge, of the widespread abuse; that at least one psychological counselor at Dade CI reported several instances of abuse by correctional officers on inmates directly to Cummings; and that Cummings failed to act in the face of this knowledge.

Based on the factual allegations directed towards Cummings, the Court finds that Count Four "possess[es] enough heft" to suggest a plausible entitlement to relief. *See Twombly*, 550 U.S. at 557. Cummings appears to conflate *allegations* of facts with the *actual proof* of those facts. The Plaintiffs have sufficiently plead the facts of their case; whether they can establish actual proof of those alleged facts will be determined as this case progresses. Dismissal of the count against Cummings is not warranted at this time.

C. Cummings is not entitled to qualified immunity.

Cummings contends that Count Four fails to establish that Cummings: was aware of the abuse or that the abuse posed a serious risk of harm; recklessly disregarded the risk; was more than just negligent. (Mot. at 13.) Because of these flaws, argues Cummings, he is entitled to qualified immunity.

The qualified immunity defense is applied in dismissing a complaint at the 12(b)(6) stage where:

> from the face of the complaint, [a court] conclude[s] that (even if a claim is otherwise sufficiently stated) . . . the law supporting the existence of that claim—given the alleged circumstances—was not already clearly established . . . to prohibit what the . . . defendant is alleged to have done . . . before the defendant acted.

Marsh v. Butler Cty., Ala., 268 F.3d 1014, 1023 (11th Cir. 2001). As set forth in the preceding section, the Court finds that the Plaintiffs' claim is sufficiently pleaded. In support of his defense of qualified immunity, Cummings merely rehashes his arguments regarding the sufficiency of the Complaint. He fails to even allege that, "considering the preexisting case law of this circuit," "no reasonable [government-official defendant] could have concluded that the alleged conditions . . . failed to pose a substantial risk of serious harm." *Id.* at 1034. Further, Cummings's contention that the Complaint fails to allege that

he was deliberately indifferent to a known danger is without merit: the Plaintiffs' allegations assert Cummings's subjective awareness of the substantial risks to inmate safety and Cummings's response, or lack thereof, was patently unreasonable. (Compl. at ¶ 94 ("Cummings condoned, tolerated and through actions or inactions thereby ratified the . . . officers' conduct in abusing the inmates.") *See Marsh*, 268 F.3d at 1029 ("This alleged lack of action is not reasonable under the alleged circumstances."). Ultimately the Court finds that "Plaintiffs adequately allege facts which (if true) show that, at the time of the incident, [Cummings's] acts were not even arguably reasonable in . . . light of the clearly established law." *Id.* at 1034. As such, Cummings is not entitled to qualified immunity.

3. Defendant Florida Department of Corrections is entitled to dismissal as to the individual family-member plaintiffs.

Count One of the Complaint states claims against FDC for violations of Title II of the Americans with Disabilities Act and the Federal Rehabilitation Act. However, only Rainey's estate can maintain this claim: Rainey's survivors, under the allegations of this Complaint, do not have standing to bring either a Title II ADA or Rehabilitation Act claim. *See Popovich v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.*, 150 F. App'x 424, 427 (6th Cir. 2005). The Plaintiffs have conceded this point and agree that the Count One claims of Plaintiffs Andre Chapman, Renee Chapman, Deborah Johnson, Chnieaqua Breelove, and Harold Marr, in their individual capacities, are due to be dismissed.

4. Conclusion

For the foregoing reasons, Defendant Cummings's motion to dismiss and for qualified immunity (**ECF No. 124**) is **denied**; and Defendant Florida Department of Corrections' motion to dismiss (**ECF No. 125**) is **granted**.

Done and ordered in chambers, at Miami, Florida, on October 28, 2016.

Robert N. Scola, Jr.
United States District Judge