

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

CECIL FRANCIS,

Plaintiff,

v.

**PEOPLE OF THE VIRGIN ISLANDS;
CLERK, DISTRICT COURT OF THE
VIRGIN ISLANDS; GOVERNOR OF THE
VIRGIN ISLANDS; and BUREAU OF
CORRECTIONS,**

Defendants.

1:23-cv-00001-WAL-EAH

**TO: Cecil Francis # 1691568, *Pro Se*
Keen Mountain Correctional Center
3521 Woodsway
State Farm, VA 23160**

REPORT AND RECOMMENDATION

THIS MATTER comes before the Court for an initial screening of the complaint filed by Plaintiff, Cecil Francis, a prisoner proceeding pro se and in forma pauperis pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. For the following reasons, it is **RECOMMENDED** that the complaint be **DISMISSED WITHOUT PREJUDICE** with leave to amend within an appropriate time frame ordered by the District Court.

BACKGROUND

On January 3, 2023, Francis, a Virgin Islands inmate incarcerated at Keen Mountain Correctional Facility in Virginia ("Keen Mountain"), filed a complaint alleging violations of his constitutional rights and raising other claims. Dkt. No. 1. Because Francis failed to submit the required filing fee and Civil Cover Sheet with his complaint, the Court directed the Clerk's Office to furnish him with a Civil Cover Sheet and an application to

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proceed in forma pauperis (“IFP”), and informed Francis that he had to attach a certified copy of his inmate trust account statement to the completed IFP application. Dkt. No. 2.

On February 27, 2023, Francis filed a completed IFP application and his account information. Dkt. Nos. 5, 5-1. He also sent a Civil Cover Sheet. Dkt. No. 5-2.

Francis’s complaint is difficult to follow. Dkt. No. 1. On page 1 of his four-page handwritten complaint, he named “People of the Virgin Island[s]; Clerk, District Court of the Virgin Island[s], Governor of the Virgin Island[s], and [the] Bureau of Corrections” as Defendants.¹ *Id.* Francis alleged that, in September 2022, he was transferred to Keen Mountain, a Virginia Department of Corrections facility, while the Virgin Islands Bureau of Corrections retained custody over him. Dkt. No. 1 at 1-2. He stated that he had surgery on May 5, 2022 and was unable to return to his unit without a doctor’s clearance. *Id.* at 2. He received this clearance on May 10, 2022 and was given a bottom bunk permit for 180 days. *Id.* When he was moved to Keen Mountain, despite having a copy of his bottom bunk permit,² a prison official placed him on a top bunk from the day of his arrival to October 11, 2022, in violation of his constitutional rights. *Id.* When he went to sick call in October 2022, he was again given a bottom bunk permit, for twelve months, but was told that he must return to a top bunk. *Id.* He was taken to the hospital once in June 2022 for severe pain but had been unable to return to the hospital for seven months. *Id.*

¹ On the second page of the complaint, however, Francis’s caption names seven individual prison officials, but Francis did not identify where they work; none of those individuals were named on page 1. Dkt. No. 1 at 2. Thus, it is unclear who he intends to name as Defendants in this case.

² On the second page of the complaint, Francis stated that, when he came to Keen Mountain, he “had [a] copy [of his] medical record assignment bottom bunk form.” Dkt. No. 1 at 2. However, later on that same page, he claimed he did not have a copy of the permit, despite making repeated requests to prison officials for it. *Id.*

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Francis further alleged that he had applied for jobs since transferring to Keen Mountain but had not received a work assignment. *Id.* Thus, he had no income and only \$0.24 in his account. *Id.* He requested medical records but was told that obtaining copies would cost \$31.20, which he could not afford. *Id.* at 3. He owed Keen Mountain \$300.00 for an unspecified reason and, because he had not paid that amount, he had been unable to do legal work. *Id.* Finally, he repeatedly stated that he is a Virgin Islander in Virginia. *Id.* at 2-3. Francis sought \$150,000 for pain and suffering. *Id.* at 3.

Francis attached exhibits to his complaint: a facility request, wherein he asked for his medical records and was informed by prison staff that he had insufficient funds, Dkt. No. 1-2 (facility request); and letters that his Western Virginia Regional Emergency Physicians account in the amount of \$1,416.00 for unspecified services rendered on January 24, 2022 was being sold to a debt collector, Dkt. Nos. 1-3, 1-4 (letters).

On the Civil Cover Sheet that Francis submitted with his IFP application, he checked a box describing his lawsuit as a personal injury-medical malpractice suit. Dkt. No. 5-2. When asked to cite the cause of action, he wrote “medical malpractice, discrimination, negligence” and elaborated that the “Institution did not give me vitamins and feed me proper vegan meals, and I was forced to eat fish, against my Rastafarian diet/religion.” *Id.* He named the Virgin Islands entities and individuals listed on page 1 of his complaint as Defendants, not the prison officers he referred to in the caption on page 2 of his complaint. *Id.*

The Court granted the motion to proceed IFP. Dkt. No. 6 Pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court now issues this R&R pursuant to its duty to conduct an initial review.

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APPLICABLE LEGAL STANDARD

Pursuant to 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),³ seeks redress against a governmental employee or entity, *see* 28 U.S.C. § 1915A(b),⁴ 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. 28 U.S.C. § 1915(e)(2). This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) and 1915A because Plaintiff is a prisoner who is proceeding in forma pauperis.

³ 28 U.S.C. § 1915(e)(2) provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C.A. § 1915(e)(2)(B).

⁴ 28 U.S.C. § 1915A provides, in relevant part:

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

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Whether a complaint fails to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is governed by the same standard as Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012) (citing *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)). In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. *See Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994); *see also Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (finding that although the Court must accept the allegations in the complaint as true, it is not compelled to accept “unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation.”) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). However, a court “need not credit a complaint’s ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Sec. Lit.*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (finding that a complaint will not be sufficiently plead if it merely tenders “‘naked assertions’ devoid of ‘further factual enhancement’”) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Thus, in order to state a valid cause of action, a plaintiff must provide some factual grounds for relief which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

In addition, Fed. R. Civ. P. 8 requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1); *Scibelli v.*

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Lebanon Cnty., 219 F. App'x 221, 222 (3d Cir. 2007). “Fundamentally, Rule 8 requires that a complaint provide fair notice of what the . . . claim is and the grounds upon which it rests.” *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019) (internal quotation marks omitted). The complaint must also “identify discrete defendants and the actions taken by these defendants in regard to plaintiff’s claims.” *Id.* (internal quotation marks omitted); *see also Evancho v. Fisher* 423 F.3d 347, 353 (3d Cir. 2005) (explaining that a civil rights complaint must allege facts identifying the “conduct, time, place, and persons responsible”); *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988) (“A defendant in a civil rights action must have personal involvement in the alleged wrongs.”). Failure to comply with Rule 8 may be grounds for a Rule 12(b)(6) dismissal. *Evancho*, 423 F.3d at 355 (affirming dismissal of complaint under Rule 12(b)(6) for failing to satisfy the minimum pleading requirements of Rule 8(a)); *Moy v. Williams*, 4:22-cv-00348, 2023 WL 1070591, at *3 (M.D. Pa. Jan. 27, 2023) (“D]ismissal under Rule 8 is proper when a complaint ‘le[aves] the defendants having to guess what of the many things discussed constituted [a cause of action].’”) (quoting *Binsack v. Lackawanna County Prison*, 438 F. App'x 158, 160 (3d Cir. 2011)).

Because Francis proceeds *pro se*, his pleadings are to be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, he “still must allege sufficient facts in the[] complaint[] to support a claim.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013).

ANALYSIS

A. Rule 12(b)(6)

A review of the complaint indicates that Francis has not stated a cognizable claim. Francis alleged that he was placed in a top bunk in violation of his constitutional rights,

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suggesting that he intended to bring a claim under 42 U.S.C. § 1983. A section 1983 plaintiff “must demonstrate that a person⁵ acting under the color of state law violated a right protected by the Constitution or laws of the United States.” *Agarwal v. Schuylkill Cnty. Tax Claim Bureau*, 442 F. App'x 733, 735 (3d Cir. 2011) (citing *Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3d Cir. 1996)). The first step is to “identify the exact contours of the underlying right said to have been violated” and to determine “whether the plaintiff has alleged a deprivation of a constitutional right at all.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 841 n. 5 (1998).

Francis did not identify which of his constitutional rights were violated. Because he generally alleged medical malpractice and lack of proper treatment, the Court could construe his complaint as a claim of deliberate indifference under the Eighth Amendment. “[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, proscribed by the Eighth Amendment,” and states a cause of action under section 1983. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal quotation and citation omitted). To state a deliberate indifference claim, a plaintiff must show “(1) a serious medical need, and (2) acts or omissions by prison officials that indicate deliberate indifference to that need.” *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003) (citations omitted). A prison employee acts with deliberate indifference when he or she “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference

⁵ “[T]he Government of the Virgin Islands, its agencies, and its employees sued in their official capacities are not ‘persons’ under 42 U.S.C. § 1983.” *Tobal v. V.I. Police Dep’t*, No. 2010-0062, 2022 WL 136481, at *12 (D.V.I. Jan. 13, 2022) (citing *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 240 (3d Cir. 2010); *Ngiraingas v. Sanchez*, 495 U.S. 182, 192 (1990)). Thus, Francis cannot bring a claim against the People of the Virgin Islands or the Bureau of Corrections as an entity within the government, see 5 V.I.C. § 4503(a). Nor can he sue the Governor of the Virgin Islands in his official capacity.

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could be drawn that a substantial risk of serious harm exists, and he must also draw that inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

Francis does not identify any ailment constituting a serious medical need. He does not identify the surgery he had that prompted his being permitted to have a bottom bunk; he simply alleges that being moved from a bottom bunk violated his constitutional rights—without any elaboration. Nor has he adequately alleged that prison officials were deliberately indifferent to that need. He made no attempt to describe the involvement or knowledge of the Defendants, either those named on page 1 or page 2 of his complaint. Mere “[a]llegations of medical negligence do not trigger constitutional protections.” *Hartman v. Corr. Med. Servs.*, 336 F. App’x 453, 455 (3d. Cir. 2010). Francis has not sufficiently alleged deliberate indifference, and thus his complaint fails to state an Eighth Amendment violation supporting a section 1983 claim.

Francis alleged on his cover sheet that the institution did not provide him proper vegan meals and forced him to eat fish against his Rastafarian diet/religion. Dkt. No. 5-2. Although he could bring a section 1983 claim based on his being unable to freely exercise his religion, *see O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348-49 (1987); 42 U.S.C. § 2000cc-2, his conclusory statements on the cover sheet do not suffice to state a claim.⁶

In sum, Francis has not met the pleading requirements for any cause of action the Court can discern from the allegations as stated, and it is recommended that his complaint

⁶ The Free Exercise Clause “protect[s] the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts. . . . A plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not neutral or generally applicable.” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2021-22 (2022) (internal quotation marks omitted).

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be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(ii) and 1915A(b)(1) for failure to state a claim.

B. Rule 8

The complaint also does not comply with Rule 8. Francis failed to simply, concisely, and directly allege his claims and the grounds on which they rest. He conclusorily stated that being moved from a bottom bunk violated his constitutional rights, and complained in a cursory and unintelligible way that his transfer to Keen Mountain was problematic. *See e.g.*, Dkt. No. 1 at 2-3 (“I was transfer too [sic] Keen Mountain on September 16, 2022[.] Mr. Meadows had mine [sic] medical when arose here 9-16-2022. Came here had copy medical record assignment bottom bunk form Mr. Meadows put me on top bunk A-1-142 . . . I stay their [sic] 10-11 2022 then moved me to A4-441 bottom bunk violated m[y] constitution[al] rights.”).

Moreover, it is impossible to identify the Defendants and their alleged roles in the deprivation of his constitutional rights or other injury.⁷ He lists two different sets of Defendants in the complaint and does not provide any details for the bases of his claims against the Defendants named on page 1 and his Civil Cover Sheet. While he does detail some involvement of individual correctional officers, it is unclear whether they are the Defendants named on page 2 of his complaint or whether he intended them to be named Defendants at all, given that he never listed them on the Civil Cover Sheet he was directed to file. The complaint cannot move forward “as pled because it is not clear what each Defendant did to violate his rights.” *Cooper v. Link*, No. 18-cv-4481, 2018 WL 6528170, at *5 (E.D. Pa. Dec. 12, 2018). Thus, his claims are subject to dismissal for his failure to comply with Rule 8, and it is recommended that they be dismissed on this basis as well.

⁷ There also may be a venue issue, depending on where the Defendants are located.

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C. Amendment

The Third Circuit has instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d. Cir. 2002). It is unclear whether amendment may be futile because Francis may be able to clarify his allegations and provide additional details. It is therefore recommended that the complaint be dismissed without prejudice to allow Plaintiff to amend his complaint to address the deficiencies set forth above.

CONCLUSION

Based upon the foregoing, it is **RECOMMENDED** that the complaint be **DISMISSED WITHOUT PREJUDICE** with leave to amend within an appropriate time frame ordered by the District Court. It is also **RECOMMENDED** that Francis be directed to refile his amended complaint, if he chooses to file one, on the Court's Civil Rights Complaint Form (Form VI-P-CR) that the District Court could direct the Clerk's Office to forward to him when it issues an Order addressing the R&R. The Clerk of Court shall not issue summonses or direct service of Plaintiff's Complaint until further Order of the Court.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

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The Clerk of Court shall mail a copy of this Order and Report and Recommendation to the pro se Plaintiff by certified mail, return receipt requested.

ENTER:

Dated: August 23, 2023

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE