

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LEO REMILLARD,
Plaintiff,

v.

SCOTT SEMPLE, et al.,
Defendants.

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CASE NO. 3:15-cv-1741 (SRU)

INITIAL REVIEW ORDER

Plaintiff Leo Remillard, currently incarcerated at MacDougall-Walker Correctional Institution in Suffield, Connecticut, filed this case *pro se* under 42 U.S.C. § 1983 alleging that the defendants subjected him to cruel and unusual punishment by confining him in a cell without lights, air conditioning, or water during power outages. Remillard names as defendants Commissioner Semple and Warden Maldonado. The case was dismissed on January 27, 2016, for failure to respond to a notice directing Remillard to correct deficiencies in his motion to proceed *in forma pauperis*. On March 21, 2016, the court granted Remillard's motion to reopen the case and to proceed *in forma pauperis*.

Under section 1915A of title 28 of the United States Code, the court must review prisoner civil complaints and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. *Id.* In reviewing a *pro se* complaint, the court must assume the truth of the allegations, and interpret them liberally to "raise the strongest arguments [they]

suggest[.]” *Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). Although detailed allegations are not required, the complaint must include sufficient facts to afford the defendants fair notice of the claims and the grounds upon which they are based and to demonstrate a right to relief. *Bell Atlantic v. Twombly*, 550 U.S. 544, 555–56 (2007). Conclusory allegations are not sufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. Nevertheless, it is well-established that “[p]ro se complaints ‘must be construed liberally and interpreted to raise the strongest arguments that they suggest.’” *Sykes v. Bank of Am.*, 723 F.3d 399, 403 (2d Cir. 2013) (quoting *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006)); see also *Tracy v. Freshwater*, 623 F.3d 90, 101–02 (2d Cir. 2010) (discussing special rules of solicitude for *pro se* litigants).

I. Allegations

The following allegations are taken from Remillard’s complaint. During the summer of 2014, Remillard was confined at Osborn Correctional Institution. There were four power outages in June and July 2014, two of which were weather-related, and two of which were caused by the maintenance department. The outages occurred during the day and night. Four housing units at Osborn—Q1, Q2, Q3 and Q4—are not serviced by a back-up generator.

At least one outage lasted for eight hours. During that time, it became hot and sticky in the cell. During the power outages, the showers would not work because they were controlled by electricity.

II. Analysis

Remillard argues that the power outages resulted in confinement under unconstitutional

conditions. To state an Eighth Amendment claim for unconstitutional conditions of confinement, an inmate must allege facts demonstrating failure of prison officials to provide for the inmate's "basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety."

DeShaney v. Winnebago Dep't of Soc. Servs., 489 U.S. 189, 200 (1989). An inmate may prevail on an Eighth Amendment claim based on unconstitutional conditions of confinement "only where he proves both an objective element—that the prison officials' transgression was 'sufficiently serious'—and a subjective element—that the official acted, or omitted to act with a 'sufficiently culpable state of mind,' meaning with a 'deliberate indifference to inmate health or safety.'" *Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2001) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). A condition is objectively serious if it "pose[s] an unreasonable risk of serious damage to [a prisoner's] future health." *Id.* (quoting *Helling v. McKinney*, 509 U.S. 25, 32 (1993)). Thus, the "objective component relates to the seriousness of the injury." *Davidson v. Flynn*, 32 F.3d 27, 29 (2d Cir. 1994). To meet the subjective component, a plaintiff must allege that prison officials knew "of and disregard[ed] an excessive risk to inmate health or safety," that is, that they were "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed], and ... dr[e]w that inference." *Id.* at 185–86.

The U.S. Supreme Court has held that prisoners have no right to be housed in comfortable surroundings. Restrictions do not violate the Eighth Amendment unless they are "totally without penological justification," "grossly disproportionate," or "involve the unnecessary and wanton infliction of pain." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). The Supreme Court has further explained that, "[t]o the extent that such conditions are restrictive or even harsh, they are part of the penalty that criminal offenders pay for their offenses against

society.” *Id.* at 347.

Although Remillard describes uncomfortable conditions, including no lights or power to operate fans during hot weather, he alleges no facts rising to the level of conditions posing an excessive risk to inmate health or safety. Indeed, he alleges only that he was hot and sticky during the power outages. The complaint fails to allege facts supporting an Eighth Amendment claim for unconstitutional conditions of confinement.

III. Conclusion

The complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1). The Clerk shall enter judgment and close the file.

In light of the dismissal of this action, Remillard’s motion seeking a free copy of the complaint [**Doc. #11**] is **DENIED**.

SO ORDERED this 28th day of March 2016 at Bridgeport, Connecticut.

/s/ Stefan R. Underhill

Stefan R. Underhill
United States District Judge