United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 22, 2023

Before:

Thomas L. Kirsch II, ***Circuit Judge***
John Z. Lee, ***Circuit Judge***
Doris L. Pryor, ***Circuit Judge***

No. 23-2725

MARILYN EASON,
Plaintiff - Appellant,

v.

COOK COUNTY CORRECTIONAL FACILITY and COOK COUNTY SHERIFF'S DEPARTMENT,
Defendants - Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:22-cv-06624

Virginia M. Kendall,
Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 (not 90) days of the entry of the judgment or order appealed. In this case judgment was entered on May 15, 2023, and the notice of appeal was filed on August 29, 2023, 10 weeks late. The district court has not granted an extension of the appeal period, *see* Rule 4(a)(5), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

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

MARILYN EASON (2022-0831127),	)	
	)	
PLAINTIFF,	)	CASE NO. 22 CV 6624
	)	
V.	)	
	)	HON. VIRGINIA M. KENDALL
COOK COUNTY CORR. FACILITY, ET AL.,	)	
	)	
DEFENDANTS.	)	

ORDER

The Court dismisses Plaintiff's Second Amended Complaint pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii). As Plaintiff has had three chances to articulate a tenable federal claim, dismissal of this case is with prejudice. The Court assesses Plaintiff a "strike" pursuant to 28 U.S.C. § 1915(g). The Court directs the Clerk to enter final judgment in this matter. Civil case closed.

STATEMENT

Plaintiff Marilyn Eason, a pretrial detainee at the Cook County Jail, brings this *pro se* civil rights action under 42 U.S.C. § 1983. Plaintiff claims that certain deprivations (lack of drinking cups, bras, socks, feminine hygiene products, and stain-free underwear) during a prior period of confinement were so objectively unreasonable as to violate her constitutional rights. By Order of March 7, 2023 [10] the Court rejected Plaintiff's proposed Amended Complaint, but gave her the opportunity to submit a Second Amended Complaint elaborating on her claims and naming a suable entity. Plaintiff having done so, this matter is before the Court for threshold screening of the Second Amended Complaint. For the reasons set forth in this Order, the Second Amended Complaint is dismissed in its entirety for failure to state a cognizable claim.

Pleading Standard

Under 28 U.S.C. § 1915(e), the Court may screen Complaints and dismiss the Complaint, or any claims therein, if the Court determines that the Complaint or claim is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. *See Jones v. Bock,* 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). Screening complaints under Section 1915 entails the same standard of review as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Burress v. Art Akiane LLC*, No. 21 CV 6262, 2022 WL 6822601, at *1 (N.D. Ill. Sept. 21, 2022) (citing *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011)).

A Complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citation omitted); *Ali v. City of Chicago*, 34 F.4th 594, 602 (7th Cir. 2022) (same) (citation omitted). The statement also must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," which means that the pleaded facts must show there is "more than a sheer possibility that a defendant acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Law Offs. of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1129 (7th Cir. 2022). When screening a *pro se* plaintiff's Complaint, courts construe the plaintiff's allegations liberally. *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (per curiam). *Chamara*, 24 F.4th at 1129 (citing *Huon v. Denton*, 841 F.3d 733, 738 (7th Cir. 2016)). The courts accept all well-pleaded facts as true, and draw all reasonable inferences in the plaintiff's favor. *Chamara*, 24 F.4th at 1129; *Denton*, 841 F.3d at 738.

Factual Allegations

Plaintiff Marilyn Eason is a pretrial detainee at the Cook County Jail. (Dkt. 1, Complaint, p. 4.) Plaintiff was incarcerated when she initiated this lawsuit, but she has been in and out of jail since this matter has been pending. (Dkt. 12, Change-of-Address Notice; unnumbered Docket Entries of May 4, 2022, confirming payments from the jail toward filing fees.) Defendant Thomas Dart is the Cook County Sheriff. (Dkt. 15, Second Amended Complaint, p. 2.)

Plaintiff alleges the following facts, assumed true for purposes of the Court's threshold review of the Second Amended Complaint: Plaintiff was booked into the Cook County Jail (CCJ) on October 31, 2021. (*Id.*, p. 6.) Upon entry, jail officials provided Plaintiff with a blanket, but nothing more. (*Id.*)

Jail officials failed to furnish Plaintiff with shampoo when she was admitted into the facility. (*Id.*) She quickly began to suffer from dandruff, and she also developed a rash on her scalp. (*Id.*)

Jail officials assigned Plaintiff to a tier that was dormitory style. (*Id.*) Because there were no individual cells, the detainees were regularly exposed to one another. (*Id.*)

The dormitory was not equipped with sanitary pads. (*Id.*) Plaintiff had her menstrual period around August 31, 2021[1]. (*Id.*) When Plaintiff asked her fellow inmates what she should do in the absence of pads, they recommended that she just use toilet paper. (*Id.*) Plaintiff took their advice and used rolled-up issue in her underwear. (*Id.*)

Overnight, Plaintiff's underwear became exposed to "blood-borne pathogens," which seems to mean that the blood seeped into her underwear. (*Id.*) Plaintiff told an officer that she needed new underwear; the officer promised to "call someone." (*Id.*) Plaintiff began to "smell,"

1 The dates recorded in the Second Amended Complaint reflect some discrepancy. On page 6, for example, Plaintiff states both that she arrived at the jail in October 2021, and that she encountered hurdles trying to procure sanitary napkins in August 2021, two months earlier.

but she had no soap with which to wash her underwear, as at that time, inmates received soap and toilet paper only twice a week. (*Id.*) As Plaintiff continued to menstruate, apparently without recourse to additional tissues, the bleeding got worse, she bled through her pants. (*Id.*) The other detainees began to complain about her body odor. (*Id.*)

In September 2022, Plaintiff went through another unhappy experience in connection with her monthly cycle. (*Id.*, p. 8.) When Plaintiff asked how she could get her hands on sanitary pads, someone told her she merely had to ask a correctional officer. (*Id.*) Plaintiff did so twice, to no avail. (*Id.*) An unidentified officer turned her down twice, stating, "We have no pads." (*Id.*)

Shortly thereafter Plaintiff was moved to a different tier. (*Id.*, p. 8.) Plaintiff asked an officer if she could get new underwear. (*Id.*) The officer promised to ask someone, but new panties did not materialize. (*Id.*) Plaintiff asked another officer the next day. (*Id.*) That officer likewise said that he would see what he could do. (*Id.*) But again Plaintiff received no underwear. (*Id.*)

Cups were not provided at meals, except for a dinnertime. (*Id.*) As a result, Plaintiff was constantly dehydrated and constipated. (*Id.*, pgs. 8-9.)

Plaintiff submitted daily request slips asking for feminine hygiene products during each day of her period. (*Id.*, p. 6.) The last time Plaintiff made an entreaty for new underwear, an officer "yelled" at her. (*Id.*) Plaintiff demanded to speak to a "white-shirt" (i.e., a higher-ranking officer), but apparently, no one called for a white-shirt. (*Id.*) Plaintiff received no fresh underwear. (*Id.*)

Plaintiff believes she contracted a urinary tract infection, which she appears to attribute to the lack of replacement underwear. (*Id.*) She filed a grievance informing correctional officials that she had "a bad UTI and needed antibiotics and topical ointment." (*Id.*, pgs. 6-7. (*Id.*) Plaintiff repeatedly asked for medical treatment, complaining of pain and irritation. (*Id.*, p. 7.) Plaintiff also submitted a request to the health care unit, but no appointment was scheduled for her. (*Id.*) No nurse went to Plaintiff's dorm to issue her a tube of antibiotic ointment, and no doctor ever saw her. (*Id.*) No one scheduled her for an appointment, and, in her view, the UTI never fully receded. (*Id.*)

Plaintiff never received new underwear. (*Id.*) Consequently, she had to wear the same stained underwear from approximately August 31, 2021, through July of 2022. (*Id.*)

Plaintiff had to place numerous collect telephone because oftentimes her family did not answer. (*Id.*)

Commissary funds were "hard to come by." (*Id.*) As a result, Plaintiff sometimes had to go without things she needed. (*Id.*) Plaintiff applied for a position as a tier worker to bring some extra money into her commissary account. (*Id.*) Her request was denied. (*Id.*)

"No bras were used from October 31, 2021, until of July of 2022." (*Id.*, p. 7.) At some point, Plaintiff "noticed a significant droop in the way [her] chest sat." change in the way her

breasts sat on her chest. Her breasts had begun to droop significantly. (*Id.*) Plaintiff fears that she "may need surgery" to correct the perceived "disfigurement." (*Id.*)

Regardless of the weather, Plaintiff never had socks during the entirety of her incarceration at CCJ. (*Id.*) Plaintiff spent the winter of 2021/2022 without socks. (*Id.*) A charitable organization donated care packages that included socks; however, jail officials never distributed to the inmates. (*Id.*, pgs. 7-8.) It is Plaintiff's belief that going without socks can lead to colds, pneumonia, infections, and rashes. (*Id.*, p. 8.)

Pleading Standard

Under 28 U.S.C. § 1915(e), the Court may screen Complaints and dismiss the Complaint, or any claims therein, if the Court determines that the Complaint or claim is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. *See Jones v. Bock,* 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). Screening complaints under Section 1915 entails the same standard of review as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Burress v. Art Akiane LLC*, No. 21 CV 6262, 2022 WL 6822601, at *1 (N.D. Ill. Sept. 21, 2022) (citing *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011)).

Facts

At the time Plaintiff, Marilyn Eason, initiated this lawsuit, she was a pretrial detainee in the custody of the Cook County Department of Corrections. (Dkt. 1, Complaint, p. 4.) She has since been released. (Dkt. 12, Change-of-Address Notice.) Defendant Thomas Dart is the Cook County Sheriff. (Dkt. 15, Second Amended Complaint, p. 2.)

Plaintiff alleges the following facts, assumed true for purposes of the Court's threshold review of the amended complaint: Plaintiff was booked into the Cook County Jail (CCJ) on October 31, 2021. (*Id.*, p. 6.) Upon entry, jail officials provided Plaintiff with a blanket, but nothing more. (*Id.*)

Jail officials assigned Plaintiff to a tier that was dormitory style. (*Id.*) Because there were no individual cells, the detainees were regularly exposed to one another. (*Id.*) The dormitory was not equipped with sanitary pads. (*Id.*) Plaintiff had her menstrual period around August 31, 2021. (*Id.*) When Plaintiff asked her fellow inmates she should do in the absence of pads, they recommended that she just use toilet paper. (*Id.*) Plaintiff took their advice and used rolled-up hygienic tissue under her panties. (*Id.*)

Overnight Plaintiff's underwear became exposed to "blood-borne pathogens," which seems to mean that the blood seeped into her underwear. (*Id.*) Plaintiff told an officer that she needed new underwear; the officer promised to "call someone." (*Id.*) Plaintiff began to smell, but she had no soap with which to wash her underwear. (*Id.*) At the time of Plaintiff's confinement, inmates received soap and toilet paper only twice a week. (*Id.*) As the bleeding got worse, Plaintiff bled through her pants. (*Id.*) The other detainees began to complain about her body odor. (*Id.*)

In September 2022, Plaintiff went through another unhappy experience in connection with her month cycle. (*Id.*) When Plaintiff asked how she could get her hands on sanitary pads, someone told her merely gad to ask a correctional officer for pads. (*Id.*) Plaintiff did so twice, but ab unidentified officer turned her down twice. (*Id.*) The officer reportedly told Plaintiff that jail had no pads. (*Id.*)

Shortly thereafter Plaintiff was moved to a different tier. (*Id.*) Plaintiff asked an officer if she could get new panties. (*Id.*) The officer promised to ask someone, but new panties did not materialize. (*Id.*) Plaintiff asked another officer the next day. (*Id.*) That officer likewise said that he would see what he could do. (*Id.*) But again Plaintiff was not issued panties. (*Id.*)

Cups were not provided at meals, except for a dinnertime. (*Id.*, pgs. 8-9.) As a result, [P]laintiff was constantly dehydrated and constipated.

Plaintiff submitted a request slip asking for feminine hygiene products every single day until her period ended. (*Id.*) The last time Plaintiff made an entreaty for new underwear, an officer "yelled" at her. (*Id.*) Plaintiff demanded to speak to a "white-shirt" (i.e., a higher-ranking officer), but apparently, no one called for a white-shirt. (*Id.*) Plaintiff received no fresh underwear. (*Id.*)

Plaintiff developed a urinary tract infection. (*Id.*) She filed a grievance informing correctional officials that she had a bad UTI and that she needed antibiotic ointment. (*Id.*, pgs. 6-7. (*Id.*) Plaintiff repeatedly asked for medical treatment, complaining of pain and irritation. (*Id.*, p. 7.) Plaintiff also submitted a request to the health care unit, but no appointment was scheduled for her. (*Id.*) No nurse went to Plaintiff's dorm to issue her a tube of antibiotic ointment, and no doctor ever saw her. (*Id.*) No one scheduled her for an appointment, and the UTI never fully receded. (*Id.*)

Plaintiff never received new underwear. (*Id.*) Consequently, she had to wear the same stained underwear from approximately August 31, 2021, through July of 2022. (*Id.*)

Plaintiff had to place numerous collect telephone because oftentimes her family in order to her family did not answer. (*Id.*)

Commissary funds were "hard to come by." (*Id.*) As a result, Plaintiff sometimes had to go without things she needed. (*Id.*) Plaintiff applied for a position as a tier worker to bring some money into her commissary account. (*Id.*) Her request was denied. (*Id.*)

Plaintiff had to go without a bra from October 31, 2021, through some time in July 2022. (*Id.*) At some point, Plaintiff noticed a change in the way her breasts sat on her chest. Her breasts had begun to droop significantly. (*Id.*) Plaintiff fears that she may need surgery to correct the perceived "disfigurement." (*Id.*)

Regardless of the weather, Plaintiff never had socks during the entirety of her incarceration at CCJ. (*Id.*) Plaintiff spent the winter of 2021/2022 without socks. (*Id.*) A charitable

organization donated care packages that included socks; however, jail officials never distributed to the inmates. (*Id.*, pgs. 7-8.) It is Plaintiff's belief that going without socks can lead to colds, pneumonia, infections, and rashes. (*Id.*, p. 8.)

Jail officials failed to furnish Plaintiff with shampoo when she was admitted into the facility. (*Id.*) She quickly began to suffer from dandruff, and she also developed a rash on her scalp. (*Id.*)

Analysis

The Court finds that Plaintiff's allegations, even assumed true, do not state a tenable cause of action under 42 U.S.C. § 1983. The Second Amended Complaint fails to cure the multiple deficiencies the Court pointed out in its previous Orders.

Claims brought by pretrial detainees under the Fourteenth Amendment are subject to an "objective unreasonableness" inquiry. *See, e.g., Hardeman v. Curran*, 933 F.3d 816, 821-22 (7th Cir. 2019) (claim involving allegedly inhumane pretrial conditions of confinement); *McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018) (claim regarding inadequate medical care); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) (medical care) (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015) (excessive force case)); *Hardeman*, 933 F.3d at 823 (extending the objective inquiry standard "to *all* Fourteenth Amendment conditions-of-confinement claims brought by pretrial detainees") (emphasis added).

"The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones." *Passmore v. Josephson*, 376 F. Supp. 3d 874, 881 (N.D. Ill. 2019) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal citation omitted)). Under the Constitution pretrial detainees "are entitled to confinement under humane conditions which provide for their basic human needs." *Passmore*, 376 F. Supp. 3d at 881 (citation omitted). The courts have "long interpreted [the basic needs axiom] as a requirement that prisons provide inmates with "reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities." *Hardeman*, 933 F.3d 816, 820 (7th Cir. 2019) (internal quotation marks and string citation omitted). Inmates are also entitled adequate medical care. *Thomas v. Blackard*, 2 F.4th 716, 719 (7th Cir. 2021) (citing *Farmer*, 511 U.S. at 832). Living conditions can have a "a mutually enforcing effect that produces the deprivation of a single, identifiable human need." *Hardeman*, 933 F.3d at 821. In evaluating whether conditions are objectively unreasonable, "a court should consider the severity and duration of the challenged conditions experienced by the pretrial detainee because there is a '*de minimis* level of imposition with which the Constitution is not concerned.'" *T.S. v. Twentieth Century Fox Television*, 334 F.R.D. 518, 529 (N.D. Ill. 2020) (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 n.21 (1979)).

A. Stained Underwear

The Court already considered and rejected Plaintiff's claim that "dirty" (i.e., stained) underwear violated her constitutional rights.

Plaintiff now declares that she suffered from a UTI while at CCJ, evidently endeavoring to show harm, and to yoke that harm to her allegations about the lack of sanitary napkins and new underwear. Though factually distinguishable, *Passmore v. Josephson*, 376 F. Supp. 3d 874 (N.D. Ill. 2019) is illustrative. In *Passemore*, two pretrial detainees brought suit under 42 U.S.C. § 1983 claiming that they suffered skin rashes in their groin area from wearing dirty underwear. Laundry protocol at the facility included examining the underwear during the folding process; if clothing was stained or damaged, workers were supposed to dispose of it. But on more than one occasion after the twice-weekly clothing exchanges, the plaintiffs discovered that their underwear was stained and/or dirty. In view of plaintiffs' skin issues and correctional officials' alleged refusal to replace the objectionable underwear, one of the two plaintiffs stopped wearing it altogether; the other found some success washing out his drawers in his cell.

In granting summary judgment for jail officials, the court noted, "The Seventh Circuit has not expressly addressed whether the issuance of dirty underwear constitutes a constitutional violation...." *Id.* at 881. However, the court observed that "other federal courts faced with this question have concluded that it does not." *Id.* (citing *Crawford v. Caddo Corr. Ctr.*, No. 14 CV 3198, 2015 WL 3622689, at *3 (W.D. La. June 9, 2015) (finding no Eighth Amendment injury despite plaintiff's allegations that he "received boxer shorts with feces stains in the rear and unidentifiable stains in front" that caused "jock-itch serious enough to cause bleeding"); *Sandstrom v. Hoffer*, No. 08 CV 3245, 2011 WL 4553067, at *4 (D. Kan. Sept. 29, 2011) (holding that plaintiff who was issued "laundered but stained underwear" failed to state conditions of confinement claim); *Tapp v. Proto*, 718 F.Supp.2d 598, 619 (E.D. Pa. 2010) (holding that inmate forced to wear dirty, torn, and stained underwear failed to state constitutional injury)).

Plaintiff has alleged no impediment to washing her underwear herself if she thought it was dirty, as opposed to simply stained. The court found it worthy of note that the plaintiffs had "ample opportunity" to wash their underwear, and did so. *Passemore*, 376 F. Supp. at 382 (citing *Gates v. Cook*, 376 F.3d 323, 342 (5th Cir. 2004) (finding no constitutional injury where inmates were required to wash their own clothes with bar soap); *Darris v. Mazzaie*, No. 12 CV 1559, 2013 WL 5291940, at *10 (D. Colo. Sept. 17, 2013) (finding no constitutional injury where plaintiff "does not allege that he was unable to bathe or wash his clothes himself"); *Myers v. City of New York*, No. 11 CV 8525, 2012 WL 3776707, at *8 (S.D.N.Y. Aug. 29, 2012) (finding no constitutional injury where prisoner had opportunity and means to clean his own clothes).

Plaintiff understandably would have preferred fresh, new underwear with some regularity rather than addressing her hygiene using the soap she alleges she was issued twice a week. It is unpleasant to wear, or even look at, stained clothing, and in an ideal world, every inmate would have access to new unstained undergarments. But stained underwear and dirty underwear are two quite different things. Plaintiff has not provided facts from which one could reasonably infer that stained clothing unreasonably jeopardized her health.

B. Lack of Sanitary Products

The Court already considered and rejected Plaintiff's claim that "dirty" (i.e., stained) underwear violated her constitutional rights.

As with Plaintiff's allegations about stained underwear, any contention that the lack of feminine hygiene products caused a UTI is unacceptably speculative. *See Iqbal*, 556 U.S. at 678 (decreeing that a complaint must describe "more than a sheer possibility that a defendant has acted unlawfully"). Plaintiff's desire to use sanitary pads rather than tissue, while again understandable, does not implicate constitutional concerns given her allegations about access to basic hygiene items in the bathroom on her housing tier.

The Court previously dismissed Plaintiff's claim concerning the lack of sanitary pads. *See* Dkt. 10, Order of March 7, 2023, at pgs. 5-6. In shelving that claim, the Court referenced a decision granting summary judgment in favor of Cook County jail officials on a similar claim. *See Stead v. Skinner*, No. 10 CV 4526, 2011 WL 3882809, at *2 (N.D. Ill. Sept. 2, 2011) (Kendall, J.). The Court distinguished the denial of basic necessities from not receiving the level of comfort one might want. *Id.* at *4 (citing *Tesch v. Cty. of Green Lake,* 157 F.3d 465, 476 (7th Cir. 1998)).

The Court reasoned:

> [The plaintiff] had full access to toilet paper at all times. While she may have preferred to have more maxi pads to avoid the embarrassment of bleeding through her uniform pants, there is no evidence that her health was ever in danger. *See Harris v. Fleming,* 839 F.2d 1232, 1235 (7th Cir. 1998) (failure to provide the plaintiff with toilet paper for five days, or with soap, toothbrush, and toothpaste for 10 days was not a violation of his constitutional rights because the plaintiff suffered no physical harm and the conditions were temporary); *see also Myers v. Leflore County Det. Ctr. Pub. Trust,* No. 07 CV 0223, 2009 WL 87599, at *5 (E.D. Okla. Jan. 12, 2009) (receiving insufficient maxi pads, while embarrassing to the plaintiff, did not rise to the level of a constitutional violation)).

Stead, 2011 WL 3882809, at *4.

Neither living with stained underwear nor using hygienic tissue instead of sanitary pads on occasion offended the Fourteenth Amendment. Plaintiff's claims about sanitary napkins and stained underwear are dismissed.

C. Lack of Medical Care for UTI

The Court declines to hear Plaintiff's claim that she was denied care and treatment for her urinary tract infection. As the Seventh Circuit has observed, pleading is not like playing darts: a plaintiff can't keep throwing claims at the board until she gets one that hits the mark.'" *Doe v. Howe Military School,* 227 F.3d 981, 990 (7th Cir. 2000)); *see also Tartt v. Magna Health Sys.*, No. 13 CV 8191, 2016 WL 6585281, at *4 (N.D. Ill. Nov. 7, 2016) (citing *Doe*), *aff'd,* No. 17-1023, 2017 WL 4772538 (7th Cir. Feb. 14, 2017); *Reynolds v. Oak Park-River Forest Sch. Dist. 200*, No. 08 CV 1507, 2008 WL 5231251, at *2 (N.D. Ill. Dec. 10, 2008) (same).

The Court dismissed the original Complaint based in part on pleading deficiencies, in part for failure to state a claim, and in part to the extent Plaintiff was attempting to bring suit on behalf of her fellow inmates. (Dkt. 4, Order of December 6, 2022.) But the Court granted Plaintiff to leave to submit an Amended Complaint consistent with Fed. R. Civ. P. 11. (*Id.* at pgs. 4-5.)

Plaintiff duly submitted an Amended Complaint (Dkt. 7). But in granting Plaintiff multiple opportunities to amend her pleadings, the Court was not inviting her to summon up any wrong she could think of that might be actionable. A plaintiff "is not entitled to unlimited chances to bring a valid claim." *Tartt*, 2016 WL 6585281, at *4 (citation omitted). The Court will not entertain a series of amended complaints pertaining to the purported hardships Plaintiff endured at the Cook County Jail.

This is especially true given that any medical claim based on Plaintiff's alleged UTI does not appear to properly joined with her personal hygiene claims since it would involve different individuals and would be governed by different legal standards. "Prisoners, like other litigants in this Court, must comply with the rules for joining claims and defendants into a single lawsuit." *Rosas v. Metro. Corr. Ctr. - Chicago*, No. 18 CV 1284, 2019 WL 3241359, at *2 (N.D. Ill. Jan. 25, 2019) (citing *Owens v. Godinez*, 860 F.3d 434, 436 (7th Cir. 2017) (in turn, citing Fed. R. Civ. P. 18, 20); *see George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)). In *Rosas*, the court rejected an amended complaint setting forth claims against various correctional officers, health care providers, and MCC administrators; his claims arose from his detention at the facility from February 2016 through May 2018 and broadly ranged from medical issues to retaliation, wheelchair accommodation, harassment, liability for a fall l e his medical conditions, resulting in injury to Plaintiff) Due to the rules governing proper joinder, inmates "cannot throw all of [their] grievances ... into one stewpot." *Rosas*, 2019 WL 3241359, at *2 (citing *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 683 (7th Cir. 2012)). The court concluded, "Plaintiff therefore cannot pursue every complaint he has against MCC personnel in a single lawsuit." *Rosas* at *2 (citing *Owens v. Evans*, 878 F.3d 559, 561 (7th Cir. 2017)).

Requiring separate lawsuits not only "prevent[s] the sort of morass" that occurs in a multi-claim, multi-defendant lawsuit, but it also ensures that prisoners pay the filing fees required under the Prison Litigation Reform Act. *Bilik v. Hardy*, No. 12 CV 4532, 2018 WL 4052157, at *10 (N.D. Ill. Aug. 24, 2018) (quoting *George*, 507 F.3d at 605); *see also Jackson v. Linn*, No. 18 CV 0140, 2018 WL 11184629, at *1 (N.D. Ill. Feb. 13, 2018) (denying leave to proceed on complaint advancing claims that he was subjected to substandard conditions and medical care). Plaintiff's allegations concerning a UTI do not make her underwear and sanitary pad claims any more actionable.

D. Telephone Issues, Denial of Job Application, Detainees' Exposure to Each Other

Plaintiff's other miscellaneous new claims are likewise dismissed. They are misjoined and procedurally improper. But in any event, they are not actionable as described. Plaintiff asserts that for the first month she was incarcerated, her family members did not answer her collect telephone calls. However, Plaintiff offers no basis whatsoever for linking unanswered telephone

calls with malfeasance or even negligence on the part of jail officials. There is simply no way of knowing why Plaintiff's calls did not go through.

In addition, Plaintiff condemns the lack of "bodily privacy" at CCJ, protesting the fact that all of the detainees on her tier were able to see each other naked. In *Baker v. Mount*, a prisoner sued over a lack of privacy in his cell. No. 12 CV 2698, 2018 WL 10394889 (M.D. Fla. Feb. 1, 2018). The plaintiff complained that cell screens limited his exposure when his door was propped open but did not provide complete privacy because anyone walking close enough to the cell could view the toilets in the cell. In ruling in favor of correctional officials at summary judgment, the court observed: "[Plaintiff] is housed in a secure housing area. As such, he already enjoys more privacy than inmates housed in open bay dormitories at [that facility] and elsewhere." 2018 WL 10394889, at *6 (citing *Slevin v. McDonough*, No. 06 CV 0390, 2008 WL 821930, at *8 (N.D. Fla. Mar. 27, 2008) ("Plaintiff has the benefit of a single person cell. For the many inmates who ... are in open population, the concern over a lack of privacy must be even greater as the lack of privacy is greater. It is a harsh reality of incarceration and the necessity of ensuring security that precludes more privacy in the use of the toilet, even in one's own cell."). Plaintiff is entitled to no more bodily privacy than any occupant of a dormitory or barracks setting.

Third, Plaintiff is disgruntled because she wanted more money in her trust account but was not hired to be a tier worker. "A prisoner does not have a constitutional right to employment in prison." *Pawelkowski v. Walker*, No. 21 CV 0882, 2023 WL 2864905, at *3 (S.D. Ill. Apr. 10, 2023) (citing *Garza v. Miller*, 688 F.2d 480, 485-86 (7th Cir. 1982)). "[N]or is there a constitutionally protected property or liberty interest in a prison job." *Pawelkowski* at *3 (citing *DeWalt v. Carter,* 224 F.3d 607, 613 (7th Cir. 2000)). Nor has Plaintiff alleged that she was rejected for a work assignment on account of her race, religion, or any other impermissible reason. As such, Plaintiff has no viable constitutional claim regarding the failure to hire her.

E. No Shampoo

Plaintiff states that she was not provided shampoo upon admission to the jail. She further contends that she developed dandruff and a rash on her scalp, both of which she attributes to the lack of shampoo. Again, this claim is not properly joined but, again, it is unavailing. As discussed in previous Orders, when assessing the objective severity of conditions of confinement, the Court must consider their nature, duration, and any harm caused by the conditions. *See*, e.g., *Hall v. Nicholson*, 584 F. Supp. 3d 589, 593 (N.D. Ill. 2022) (citing *Thomas v. Illinois*, 697 F.3d 612, 614-15 (7th Cir. 2012)). The Second Amended Complaint does not say how long Plaintiff went without shampoo; she ignored the Court's bidding to provide dates or a relative time period. But the drought must not have lasted: Plaintiff stated in her original Complaint that "Being privileged with commissary from friends and family, I have given shampoo to multiple females and it is not my responsibility or liability to do so." (Dkt. 1, p. 5.) "A plaintiff can plead herself out of court by alleging facts that show she has no legal claim." *Shott v. Katz*, 829 F.3d 494, 497 (7th Cir. 2016) ("A plaintiff can plead herself out of court by alleging facts that show she has no legal claim."). Plaintiff's shampoo claim is dismissed.

F. No Socks

The Second Amended Complaint fails to save Plaintiff's misjoined claim about the denial of socks. Plaintiff has clarified that she lacked socks during the winter of 2021/2022. But the Court directed plaintiff's attention to *Lockhart v. Tritt*, No. 19 CV 1676, 2019 WL 7037676 (E.D. Wis. Dec. 20, 2019) (finding that the denial of socks did not deprive the plaintiff of "the minimal civilized measure of life's necessities." *Id.* (citations omitted). The Court also flagged for Plaintiff that she had alleged no harm. (Dkt. 10 at p. 5.) Plaintiff now expresses her belief that going without socks can lead to colds, pneumonia, infections, and rashes. (Dkt. 15 at p. 8.) But first, that is sheer conjecture, and second, Plaintiff is not entitled to damages for an injury that might have occurred but did not. *See, e.g., Walker v. Dart*, No. 09 CV 1752, 2010 WL 3307079, at *8 (N.D. Ill. Aug. 19, 2010) (citing *Boatman v. Dart,* No. 08 CV 3630, 2009 WL 1137753, *5 (N.D. Ill. Apr. 20, 2009. Plaintiff's socks claim is dismissed.

G. No Personal Drinking Cup

In accordance with the Court's Order of March 7, 2023, Plaintiff has confirmed that CCJ did not issue personal cups to the detainees, and that cups were provided only at dinnertime. As a result, Plaintiff claims, she was perpetually dehydrated and constipated. But Plaintiff has not explained away the Court's previous observation that there seemed to be no reason why she could not take advantage of water fountains and the faucet in her cell to quench her thirst between meals. Plaintiff's claim that the denial of a cup was equivalent to the denial of water is a non-starter. That claim is dismissed.

H. No Bra

Finally, Plaintiff's claim that she went without a bra at CCJ for nine months, as opposed to fourteen days, still fails to rise to the level of an objectively unreasonable living condition. "[T]he Fourteenth Amendment's Due Process Clause prohibits holding pretrial detainees in conditions that 'amount to punishment.'" *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) (quoting *Bell*, 441 U.S. at 535). "An adverse condition amounts to a constitutional deprivation when it results in the denial of a basic human need ... such as 'adequate food, clothing, shelter, and medical care." *Smith* at 309-10 (quoting *Farmer,* 511 U.S. at 832); *see also Dunmore v. Hodge*, No. 14 CV 0184, 2014 WL 943254, at *3 (S.D. Ill. Mar. 11, 2014) ("Not all prison conditions trigger Eighth Amendment scrutiny–only deprivations of basic human needs like food, medical care, sanitation and physical safety") (citations omitted).

To state a Fourteenth Amendment claim related to conditions of confinement, a detainee must allege that "the conditions in his cell posed an objectively serious threat to his health; that [the defendant's] response was objectively unreasonable under the circumstances; and that [the defendant] acted purposely, knowingly, or recklessly with respect to the consequences of their actions." *Mays v. Emanuele*, 853 F. App'x 25, 27 (7th Cir. 2021). In other words, the question is whether a named Defendant responded unreasonably to a serious condition. *Redman v. Downs*, 854 F. App'x 736, 738 (7th Cir. 2021). Objective reasonableness "turns on the facts and circumstances of each particular case." *Wilson v. Dart*, No. 20 CV 7009, 2021 WL 2549401, at *2 (N.D. Ill. June 22, 2021) (quoting *Kingsley*, 576 U.S. at 397).

A number of decisions assess whether the conditions in that particular case were serious enough to implicate the Fourteenth Amendment. In *Redman*, the plaintiff alleged that he was denied a toothbrush, toothpaste, soap, and so much as a smock with which to cover himself for 51 days he spent on suicide watch; he also said that he had to walk the halls naked to get his meals. The Court of Appeals reversed dismissal at the pleading stage, holding that the factual allegations supported an inference that the plaintiff's conditions were objectively unreasonable. 854 F. App'x at 738. The Court further counseled against making suppositions in the defendants' favor when conducting Section 1915A review. Similarly, the Court of Appeals found in *Hardeman*, *supra*, that inmates had stated an actionable claim in alleging that they were denied access to water for drinking, for washing, and for flushing toilets during a five-day, prison-wide water shut-off. 933 F.3d 824-25. As the appeals court succinctly summed up their opinion, jail officials "prevented the [inmates] from caring for themselves and then deprived them of the most basic of human needs—water." *Id.*

At the other end of the spectrum are hardships too inconsequential to rise to the level of a constitutional violation. In evaluating a pretrial detainee's conditions-of-confinement claim, a court must consider "the severity and duration of the conditions experienced by the inmate because there is 'a *de minimis* level of imposition with which the Constitution is not concerned.'" *Twentieth Century Fox*, 334 F.R.D. at 529 (discussing the applicable standard without deciding the question) (quoting *Bell*, 441 U.S. at 539 n.21).

As the Court previously admonished Plaintiff, the only legal precedent the Court could find on this subject observed that [t]here is no "obvious" constitutional right to a bra. *Brown v. Godinez*, No. 15 CV 0115, 2015 WL 1042537, at *3 (S.D. Ill. Mar. 5, 2015). In fact, "there is no case that holds that inmates have a specific right to underwear, and other courts faced with this question have found that a lack of underwear is a mere inconvenience rather than a constitutional violation." *Crites v. Lakin*, No. 15 CV 0677, 2018 WL 4403817, at *1 (S.D. Ill. Sept. 17, 2018) (citing *Foster v. Sangamon Cnty. Jail*, No. 07 CV 3202, 2008 WL 4491944, at *4 (C.D. Ill. Sept. 30, 2008)). Going without a bra was not the same as a deprivation of a basic living essential such as food, medical treatment for an objectively serious medical condition, personal physical safety, or reasonably clean surroundings.

As for the remarkable decline Plaintiff allegedly experienced from going braless, the Court treats as true that her breasts sagged to the point that they drooped markedly, that they became somehow "disfigured," and that she may need restorative surgery. Making the determination of plausibility is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679 (citation omitted); *Munson v. Gaetz*, 673 F.3d 630, 633 (7th Cir. 2012) (same); *Stauffer v. Innovative Heights Fairview Heights, LLC*, No. 20 CV 0046, 2022 WL 3139507, at *3 (S.D. Ill. Aug. 5, 2022) (same). "[T]he plausibility standard is not akin to a probability requirement." *Iqbal* at 678 (citation omitted). "Plausibility does not mean probability: a court reviewing [whether a complaint states a claim] motion must ask itself *could* these things have happened, not *did* they happen." *Mohammed v. WestCare Found., Inc.*, No. 17 CV 7492, 2018 WL 2388407, at *2 (N.D. Ill. May 25, 2018). The Court therefore assumes injury.

However, Plaintiff has not linked her bra claim to a possible Defendant. In three iterations of her Complaint, despite having been invited to do so, Plaintiff has failed to provide a name, a badge number, a physical description, a Jane or John Doe placeholder designation, or any other information about whom she intends to sue. The Second Amended Complaint says only that "no bras were used." (Dkt. 15, p. 7.) Plaintiff does not assign blame to anyone; she does not say she asked Persons A, B, and C for assistance. Plaintiff does not say that she spoke to, say, "the third shift nurse about the condition of my breasts," or that "I begged the female sergeant who opens the doors in the morning to please see that I get a bra." It is perplexing that Plaintiff went so long without a bra. But there is no indication that anyone at the jail was aware of either Plaintiff's need for a bra or her worsening condition, let alone that he or she responded unreasonably to her plight.

As for the sole named Defendant, Sheriff Dart, Section 1983 is premised on the wrongdoer's personal responsibility; therefore, an individual cannot be held liable in a civil rights action unless he caused or participated in an alleged constitutional deprivation. *Kuhn v. Goodlow*, 678 F.3d 552, 556 (7th Cir. 2012) (citations omitted); *Boykin v. Chess*, No. 16 CV 50161, 2020 WL 419408, at *12 (N.D. Ill. Jan. 27, 2020). The doctrine of *respondeat superior* (blanket supervisory liability) does not apply to actions filed under 42 U.S.C. § 1983. *See, e.g., Kinslow v. Pullara,* 538 F.3d 687, 692 (7th Cir. 2008).

Because Dart is not a proper Defendant and Plaintiff has been given three chances to name a suable Defendant, her claim concerning being denied a bra is dismissed with prejudice. The Second Amended Complaint is dismissed in its entirety.

Conclusion

In sum, the Court dismisses the Second Amended Complaint on initial review pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A. Even viewing the pleading's well-pled facts in the light most favorable to Plaintiff, and even drawing all references in her favor, the Court can discern no violation of a constitutional right. The Court directs the Clerk to enter judgment. Civil case closed. This is a final, appealable order.

This dismissal counts as a "strike" against Plaintiff pursuant to 28 U.S.C. § 1915(g). Plaintiff is warned that if she accumulates three strikes, then she will be barred from proceeding *in forma pauperis* in subsequent case and appeals unless she can show imminent danger of serious physical injury. *Id.* If Plaintiff wishes to appeal this dismissal, she may file a notice of appeal with the district court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1)(A). If Plaintiff should choose to appeal, she will be responsible for paying the $505 appellate filing fee irrespective of the outcome of the appeal. *See, e.g., McVay v. Obaisi*, No. 18 CV 6244, 2023 WL 2646678, at *13 (N.D. Ill. Mar. 27, 2023) (citing *Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998)). Furthermore, if the appeal is found to be non-meritorious, Plaintiff could be assessed another strike. *See Gibson v. Sullivan*, No. 22-2273, 2023 WL 2947436, at *2 (7th Cir. Apr. 14, 2023) ("Under 28 U.S.C. § 1915(g), prisoners incur 'strikes' for actions and appeals dismissed in their entirety as frivolous, malicious, or for failure to state a claim upon which relief may be granted.")

Warning Concerning Rule 11 Sanctions

Because Plaintiff has another lawsuit that remains pending in this district, the Court is compelled to remind her of the Federal Rules' provisions relating to sanctions. Per Fed. R. Civ. P. 11(b), by presenting to the court a pleading, written motion, or other document, the party certifies that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry:

> (1) the document is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) any factual contentions either have evidentiary support or will likely have support a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1),(2),(3).

The next paragraph, in turn, contemplates the imposition of sanctions for violations of Rule 11(b). *See* Fed. R. Civ. P. 11(c).

In *Truidalle v. Taylor*, the plaintiff filed suit over the quality of the water at his prison. No. 11 CV 1170, 2011 WL 6780690 (N.D. Ill. Dec. 23, 2011). The plaintiff claimed that the facility's water was so dirty and toxic that it burned both his stomach and esophagus when he drank it; that the water triggered gastro-intestinal complaints; and that his consumption of the water had led to long-term health problems. He also maintained that merely washing his face left his skin inflamed and sore, and that he began being afflicted by cysts and moles, supposedly on account of the toxicity of the water.

The court denied the defendants' motion to dismiss the complaint for failure to state a claim. *Id.* at *1. The court emphasized that it was required by law to treat the plaintiff's well-pleaded facts as true, and that it was constrained from making credibility determinations when ruling on a motion to dismiss. *Id.* at *6. But despite allowing the amended complaint to move forward, the court issued a "**Warning to the Plaintiff.**" *Id.* (emphasis in original). The court remarked that the plaintiff's allegations seemed "wildly exaggerated at best." Accordingly, the court directed the plaintiff's attention to Fed. R. Civ. P. 11. *Id.*

This Court takes a similarly dim view of hyperbole and falsehoods. Plaintiff should take care to be scrupulously honest and punctiliously accurate in any and every communication with the Court.

Date: 5/15/2023

/s/Virginia M. Kendall
United States District Judge