

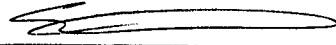
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Respectfully Submitted,

/s/ 
Eddie J. Moultrie, DC# J54553
Santa Rosa Correctional Inst.
5850 East Milton Road
Milton, Florida 32583

APP. A

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12887
Non-Argument Calendar

EDDIE JAMES MOULTRIE,

Plaintiff-Appellant,

versus

G. EDWARDS,

Lieutenant,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cv-00416-JLB-KCD

Before GRANT, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Eddie James Moultrie, a prisoner in the custody of the Florida Department of Corrections, appeals the district court's

dismissal of his § 1983 suit against Lieutenant Gerald L. Edwards, a prison official. Because the complaint fails to state a claim, we **AFFIRM**.

I.

Moultrie wanted to clean his “filthy” cell. He requested cleaning supplies, but received diluted cleaning chemicals, a dustpan, and a miniature broom. Unsatisfied, Moultrie filed a grievance. Edwards, the supervisor of Moultrie’s dorm, approved the grievance and ordered staff to provide all inmates with brooms and mops.

Not long after, clogged toilets flooded the dorm. Moultrie filed another grievance, again complaining about the lack of adequate cleaning supplies. After “the plumber” denied the grievance, Moultrie escalated the issue up to Edwards by filing yet another grievance. Edwards, again, approved the grievance and ordered staff to give Moultrie what he asked for.

In response to the spree of grievances, Edwards further ordered an officer to enter Moultrie’s cell and clean it. Inside, the officer found contraband: an extra bed sheet and sugar packs—not inherently dangerous, but nonetheless in violation of prison rules prohibiting the storage of extra items and food in cells. As discipline for the extra bed sheet, Edwards confiscated Moultrie’s mattress. For the sugar packs, Edwards put Moultrie on “meal management” for two meals, shrinking the amount of food that he would receive. Moultrie filed two grievances that day,

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complaining about the missing mattress and smaller meals. Edwards denied both grievances.

For a total of eighteen days, Moultrie slept on a metal bed frame, leading to significant back and hip pain.¹ He also filed grievance after grievance, raising complaints at all levels of Florida's administrative appeals system.

Eventually, Moultrie filed this lawsuit *pro se*, claiming that (1) Edwards confiscated the mattress to retaliate against Moultrie's grievances regarding his dirty cell, in violation of the First Amendment; and (2) that confiscation constituted "cruel and unusual punishment" under the Eighth Amendment.

The district court dismissed Moultrie's First Amendment claim on the grounds that the complaint did not support a reasonable inference that Edwards harbored any retaliatory animus. The court dismissed Moultrie's Eighth Amendment claim on exhaustion grounds, concluding that he did not properly appeal the denial of his mattress-related grievances. Rather than file an amended complaint, Moultrie appealed the dismissal order.

II.

We review *de novo* a district court's dismissal of a complaint for failure to state a claim. *Quality Auto Painting Ctr. of Roselle, Inc.*

¹ During this period, Moultrie (and his cellmate) received a disciplinary report claiming that their cell was "in complete disarray," with "bunks unmade." While Moultrie denies those charges, the complaint does not allege what came of any disciplinary proceedings.

v. State Farm Indem. Co., 917 F.3d 1249, 1260 (11th Cir. 2019). We accept the complaint's well-pleaded factual allegations as true and view them in the light most favorable to the plaintiff. *Id.* To survive a motion to dismiss, these allegations must allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While *pro se* pleadings are construed liberally, they must still allege sufficient facts "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); see *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008).

We "may affirm a judgment on any legal ground, regardless of the grounds addressed and relied upon by the district court." *Cuddeback v. Florida Bd. of Educ.*, 381 F.3d 1230, 1235–36 (11th Cir. 2004).

III.

To prevail on his First Amendment retaliation claim, Moultrie must prove that: (1) his speech was constitutionally protected; (2) he suffered adverse action that would likely deter a person of ordinary firmness from engaging in protected speech; and (3) there is a causal relationship between the retaliatory action and protected speech. *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008).

The filing of a grievance to complain about prison conditions is protected speech. See *Wildberger v. Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989). And there is no dispute that forcing an inmate to sleep without a mattress would likely deter an ordinary

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person from engaging in protected speech. But here the dispute is over causation—whether Edwards “was subjectively motivated to take the adverse action because of the protected speech.” *Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1197 (11th Cir. 2011).

At the outset, we note that Moultrie filed more than a dozen grievances complaining about many different things. The complaint alleges that Edwards retaliated against Moultrie for filing a particular set of grievances—those “complaining about the unsanitary conditions of confinement” and the lack of “adequate cleaning supplies.” The district court concluded that the complaint did not plausibly allege that Edwards confiscated (and then failed to return) Moultrie’s mattress to retaliate against him for filing those grievances. We agree for two reasons.

First, Edwards approved all of Moultrie’s grievances regarding the uncleanliness of the cell—including one that his colleague previously denied. There is no basis to infer that Edwards sought to retaliate against grievances *he already approved*. The allegation that Edwards harbored a retaliatory motive is not only conclusory, but “wildly implausible.” *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008).

Second, Moultrie admitted in his grievance forms that he possessed contraband. In response to many of those grievances, other prison officials confirmed that Edwards confiscated Moultrie’s mattress as discipline for violating prison rules. Moultrie does not allege that these other officials schemed with Edwards to retaliate against Moultrie for his earlier grievances. There is no indication

that Edwards's legitimate disciplinary justification was pretext for retaliation.

In sum, the complaint does not allege sufficient facts to support a reasonable inference that Edwards punished Moultrie for his protected speech.

IV.

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII. This prohibition guarantees that prisoners will not be deprived "of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

A two-step analysis governs an Eighth Amendment claim challenging a prisoner's conditions of confinement. *First*, under the "objective" component, the prisoner must "show that he is incarcerated under conditions posing a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). *Second*, under the "subjective" component, the prisoner must show that the prison official possessed a "sufficiently culpable state of mind"—that the official was deliberately indifferent to the prisoner's health or safety. *Id.* (quotation omitted).

To satisfy the first, "objective" component, the prisoner must clear a "high bar": he must demonstrate that "society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Chandler v. Crosby*, 379 F.3d 1278, 1289, 1298 (11th Cir. 2004) (quoting *Helling v. McKinney*, 509 U.S. 25, 36 (1993)).

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A “prisoner’s mere discomfort, without more, does not offend the Eighth Amendment.” *Id.* at 1295. After all, “routine discomfort is part of the penalty that criminal offenders pay for their offenses against society.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992) (quotation omitted). That is especially true when the discomfort comes as discipline for violating prison rules.

We start and end at this first step. Sleeping without a mattress for eighteen days, though uncomfortable, does not amount to “wanton and unnecessary” pain. *Chandler*, 379 F.3d at 1289 (quotation omitted). The harm from this sort of discipline is not so grave or extreme as to violate contemporary standards of decency. Because the challenged prison condition is not, “objectively, sufficiently serious,” the complaint fails to state an Eighth Amendment claim. *Farmer*, 511 U.S. at 834 (quotation omitted). For these reasons, we need not consider whether the district court’s conclusion that Moultrie did not exhaust administrative remedies was correct.

* * *

Moultrie filed many grievances about the uncleanness of his cell, and Edwards approved each and every one he reviewed. Moultrie faced discipline for his contraband, not his grievances. And that discipline did not violate the Eighth Amendment. We **AFFIRM**. All pending motions are denied as moot.

APP. B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDDIE JAMES MOULTRIE,

Plaintiff,

v.

Case No. 2:23-cv-416-JLB-KCD

G. EDWARDS,

Defendant.

ORDER

In this civil rights case, Plaintiff Eddie James Moultrie was, at all times relevant to the allegations of the complaint, a prisoner of the Florida Department of Corrections (FDOC). This *pro se* 42 U.S.C. § 1983 action stems from Plaintiff's allegations that Defendant Edwards retaliated against him for filing grievances and that Plaintiff was deprived of his cell property as a result. (Doc. 1.) Before the Court is Defendant Edwards's motion to dismiss for lack of exhaustion and for failure to state a claim on which relief may be granted, as well as Plaintiff's response to the motion. (Doc. 15; Doc. 17.) After careful review of the pleadings and exhibits, the Court grants the motion to dismiss. The Court grants Plaintiff leave to file an amended complaint if he wishes to proceed in this litigation.

I. Pleadings

The facts alleged in Plaintiff's amended complaint are taken as true at this stage of litigation and are as follows: On July 22, 2022, Plaintiff was housed in a dirty cell at Charlotte Correctional Institution. (Doc. 1 at 6.) "Security" told

Plaintiff that they would get him cleaning supplies when they got time, and that “cell clean-ups are on Sundays.” (Id.) Security never brought cleaning supplies; so, Plaintiff cleaned the cell with body soap and toothpaste. (Id.) On August 28, 2022, Plaintiff filed a grievance complaining about the staff’s failure to provide him with cleaning supplies. (Id.) On September 6, 2022, Defendant Edwards approved the grievance and stated that the staff would be advised to give all inmates an opportunity to clean their cells with a broom and mop. (Id.)

On September 8, 2022, some inmates (not Plaintiff) flushed objects down a toilet, causing water to back up and flow into several cells. (Doc. 1 at 6.) Security did not supply “cleaning supplies in its entirety,” and Plaintiff filed a grievance, which was denied by the plumber. (Id. at 6–7.) On September 11, 2022, Plaintiff filed another grievance, which was approved by Defendant Edwards. (Id. at 7.)

On September 15, 2022, an officer (Sgt. Randant) came to Plaintiff’s cell and asked him to submit to hand restraints for a random cell search. (Doc. 1 at 7.) Not trusting Sgt. Randant, Plaintiff refused. (Id.) Additional staff, including Defendant Edwards, were called to Plaintiff’s cell, and Plaintiff then agreed to “cuff up.” (Id.) After Plaintiff was secured in the shower for a strip search, “security begun tossing out all of [Plaintiff’s and his cellmate’s] state property.” (Id.) Plaintiff admitted that an extra bedsheet found in the cell belonged to him. (Id.) Plaintiff asked why his state property was being taken, and he was told it was because of the extra sheet. (Id.) When Plaintiff returned to his cell, he found his paperwork scattered along the back of the cell. (Id.) Plaintiff was brought nutraloaf for lunch, and the

officer told him that Defendant Edwards had ordered it because Plaintiff had sugar packs on his bunk. (Id.) The officer then admitted that “because [Plaintiff] wanted to file grievances complaining about not being provided adequate cleaning supplies to clean [his] cell, Defendant Edwards ordered him to clean it for [him].” (Id.)

Plaintiff filed another grievance, and Defendant Edwards denied it, stating that Plaintiff had been placed on property restriction due to his refusal to remove a sheet from his cell window (which Plaintiff claims is not true). (Id. at 9.) He was also told that he received the nutraloaf because he had food on his bunk. (Id.) Plaintiff filed another complaint against Defendant Edwards who once again stated (allegedly falsely) that Plaintiff had a sheet hanging on his cell window and a ripped up state-issued blanket in his cell. (Id.)

On September 19, 2022, security returned the property of Plaintiff’s cellmate, but Plaintiff was told that Defendant Edwards would bring his (Plaintiff’s) property later. (Doc. 1 at 8.) Defendant Edwards kept telling Plaintiff that he had not had an opportunity to bring the property, but would do so. (Id.) On September 26, 2022, Plaintiff filed another grievance against Defendant Edwards for failing to return his property, and for putting him on “meal management” for two meals. (Id.) Plaintiff received a response stating that all of his property had been returned within seventy-two hours and that he was not on meal management. (Id.) He also received a disciplinary report on the same day for failing to make his bunk, even though he had no mattress to make. (Id. at 8–9.)

On October 4, 2022, Plaintiff requested video to show that he was finally provided a mattress on October 3, 2022. (Doc. 1 at 9.) Defendant Edwards responded that “the mattress was placed in his cell for the one that was ripped,” which Plaintiff asserts is false. (Id.) Plaintiff asserts that he was provided the mattress “to refute the unlawful writing of the disciplinary report.” (Id.) The returned grievance appeals were denied on the grounds that the new mattress was placed in his cell because an earlier mattress was ripped, and Plaintiff had refused it. (Id. at 9–10.) Plaintiff asserts the following:

After careful assessment of the responses in all of the attached exhibits, it shall be evident by its many contradictions and faulty responses that the Defendant Edwards who was motivated by retaliation because I filed legitimate grievances complaining about the unsanitary conditions of confinement unlawfully deprived me of all my state property particularly my mattress and pillow to intentionally cause me unnecessary physical pain and mental suffering then in his attempt to cover up his unlawful actions he intentionally falsified department records.

(Doc. 1 at 10.) Plaintiff asserts that this ordeal caused a personality disorder prompted by his inability “to sleep for days almost a whole week straight and had a severe negative impact on [his] mental health.” (Id.) He now occasionally functions “in an irrational, illogical and incoherent manner becoming delirious and delusional at times having periods of psychotic episodes.” (Id.) He is on anti-psychotic medication to manage his “bouts with hearing and seeing unreal entities.” (Id.) Plaintiff asserts that he also has continuing back pain from this “extremely uncomfortable experience” of being without a mattress. (Id.) However, he has not visited medical because he can purchase remedies from other inmates for less

money. (Id.) Plaintiff raises claims under the First and Eighth Amendments to the United States Constitution and seeks nominal, compensatory, and punitive damages. (Doc. 1 at 3, 12.)

Defendant Edwards has filed a motion to dismiss. (Doc. 15.) He generally asserts that Plaintiff has not: (1) exhausted his administrative remedies; (2) stated a First Amendment retaliation claim; (3) stated an Eighth Amendment conditions of confinement claim; or (4) shown entitlement to compensatory relief. (Id.) Plaintiff responded to the motion to dismiss. (Doc. 17.)

II. Standards of Review

A. Motion to Dismiss

In evaluating a motion to dismiss, this Court accepts as true all allegations in the complaint and construes them in the light most favorable to the plaintiff.

Jackson v. BellSouth Telecomms., 372 F.3d 1250, 1262–63 (11th Cir. 2004).

Further, this Court favors the plaintiff with all reasonable inferences from the allegations in the complaint. Stephens v. Dep't of Health & Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990) (“On a motion to dismiss, the facts stated in [the] complaint and all reasonable inferences therefrom are taken as true.”). However, the Supreme Court has explained that factual allegations must be more than speculative:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be

enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations and quotation marks omitted). Further, courts are not “bound to accept as true a legal conclusion couched as a factual allegation.” Papasan v. Allain, 478 U.S. 265, 286 (1986).

In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court, referring to its earlier decision in Twombly, set forth a two-pronged approach to evaluate motions to dismiss. First, a reviewing court determines whether a plaintiff’s allegation is merely an unsupported legal conclusion that is not entitled to an assumption of truth. Next, it determines whether the complaint’s factual allegations state a claim for relief that is plausible on its face. Iqbal, 556 U.S. at 678–79. Evaluating a complaint under Rule 12(b)(6) is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id. at 679.

B. Exhaustion

Under section 1997e(a) of the Prison Litigation Reform Act (PLRA):

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). The PLRA’s exhaustion requirement is designed to “afford [] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.” Porter v. Nussle, 534 U.S. 516, 524–25 (2002). The Eleventh Circuit directs district courts to consider failure to exhaust in

a motion to dismiss. Bryant v. Rich, 530 F.3d 1368, 1374-75 (11th Cir. 2008) (“[A]n exhaustion defense [is not ordinarily the proper subject for a summary judgment; instead, it should be raised in a motion to dismiss, or be treated as such if raised in a motion for summary judgment.”) (internal quotation omitted).

The United States Supreme Court has explained that exhaustion must be “proper.” Woodford v. Ngo, 548 U.S. 81, 90–91 (2006). “Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.” Id. at 90–91. In other words, an institution’s requirements define proper exhaustion. Jones v. Bock, 549 U.S. 199, 218 (2007). Thus, inmates must do more than simply initiate grievances; they must also appeal any denial of relief through all levels of review that comprise the administrative grievance process. Bryant, 530 F.3d at 1378. Additionally, the Supreme Court has explained that “the PLRA’s text suggests no limits on an inmate’s obligation to exhaust—irrespective of any ‘special circumstances.’ And that mandatory language means a court may not excuse a failure to exhaust, even to take such circumstances into account.” Ross v. Blake, 578 U.S. 632, 639 (2016). Furthermore, an inmate who files an untimely grievance or simply spurns the administrative process until it is no longer available fails to satisfy the exhaustion requirement of the PLRA. Johnson v. Meadows, 418 F.3d 1152, 1157-59 (11th Cir. 2005).

To determine whether a complaint should be dismissed for failure to exhaust

administrative remedies, the reviewing court first considers the factual allegations in a defendant's motion to dismiss and those in the plaintiff's response, and if they conflict, the court must accept as true—for purposes of adjudicating this motion—the plaintiff's version of the facts. See Turner v. Burnside, 541 F.3d 1077, 1082 (11th Cir. 2008). “If, in that light, the defendant is entitled to have the complaint dismissed for failure to exhaust administrative remedies, it must be dismissed.” Id. If the court determines that the complaint is not subject to dismissal at step one, “the court then proceeds to make specific findings in order to resolve the disputed factual issues related to exhaustion.” Id. “Once the court makes findings on the disputed issues of fact, it then decides whether under those findings the prisoner has exhausted his available administrative remedies.” Id. at 1083.¹

III. Discussion

Plaintiff asserts that he is bringing claims of retaliation under the First Amendment and cruel and unusual punishment under the Eighth Amendment. (Doc. 1 at 3.) The Court liberally construes the complaint as raising two claims:

First Amendment Claim. Defendant Edwards retaliated against Plaintiff for filing grievances relating to the

¹ In cases, such as this one, in which the defendants allege that a prisoner has not exhausted his administrative remedies, courts are permitted to hear evidence outside of the record. Bryant, 530 F.3d at 1377 n.16. Accordingly, the parties may submit documentary evidence concerning the exhaustion issue, and doing so will not require the conversion of the motion to dismiss into one for summary judgment. Id. In addition, the district court may resolve factual questions concerning a plaintiff's alleged failure to exhaust as long as the factual disputes do not decide the merits and the parties had sufficient opportunity to develop a record. Id. at 1376.

provision of cleaning supplies by ordering other officers to search or “clean” his cell (Ground One); and

Eighth Amendment Claim: Defendant Edwards violated Plaintiff’s Eighth Amendment rights by ordering two nutraloaf meals and for failing to ensure that Plaintiff had a mattress until eighteen days after the retaliatory search. (Ground Two).

(See generally, Doc. 1.)

Defendant Edwards argues that Plaintiff’s complaint is subject to dismissal under 42 U.S.C. § 1997e(a) because Plaintiff did not properly exhaust either claim and under Rule 12(b)(6) of the Federal Rules of Civil Procedure because, even if the claims were exhausted, Plaintiff has not stated a claim upon which relief may be granted. (Doc. 15 at 7–22.) Before considering whether the grounds are subject to dismissal under Rule 12(b)(6), the Court considers whether Plaintiff exhausted either claim.

A. Plaintiff’s claims are exhausted to the extent they were raised in grievance sets 22-6-32943 or 22-6-33939.

To support their argument for dismissal under 42 U.S.C. § 1997e(a), the defendants offer an affidavit from Lawanda Sanders-Williams, an operational analyst in the FDOC’s Bureau of Policy Management & Inmate Appeals. (Doc. 15-1.) Ms. Sanders-Williams reviewed Plaintiff’s grievance records. (Id. at 2.) She found that the grievances associated with grievance appeal numbers 22-6-29950, 22-6-32943, 22-6-32944, 22-6-33949, and 22-6-37830 (“grievance sets”) referenced Defendant Edwards, cleaning supplies, cleanliness, or mattress issues. (Id.) Plaintiff does not direct the Court to additional grievances, so the Court considers it undisputed that these are the only ones filed that pertain to the claims raised here.

Therefore, without any issues of contested fact (regarding the existence and content of grievances), the issue of exhaustion can be resolved at the first Turner step.

1. Plaintiff properly exhausted two of the five related grievance sets.

Of the five grievance sets associated with the incidents alleged in Plaintiff's complaint, only two were properly exhausted. In Woodford, 548 U.S. at 93, the Supreme Court held that "the PLRA exhaustion requirement requires proper exhaustion." Proper exhaustion "means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)." Id. at 90 (emphasis in original). Therefore, "[t]o exhaust administrative remedies in accordance with the PLRA, prisoners must properly take each step within the administrative process." Bryant, 530 F.3d at 1378 (internal quotation marks and citation omitted). The grievance procedure outlined in Florida Administrative Code § 33-103 generally requires three steps to exhaust an issue: (1) an informal grievance; (2) a formal grievance; and (3) an administrative appeal.

The administrative appeals associated with grievance-sets 22-6-29950 and 22-6-37830 were returned without action because Plaintiff did not properly initiate the grievances by first filing informal grievances. (Doc. 15-3 at 1, 4.) See Bracero v. Sec'y, Fla. Dep't of Corr., 748 F. App'x 200, 203 (11th Cir. 2018) (finding that prisoner who did not comply "with the normal three-step process" did not exhaust his administrative remedies). The administrative appeal associated with grievance-set 22-6-32944 was returned as untimely. (Doc. 15-3 at 13.) See Johnson, 418 F.3d at 1154 (concluding that "an untimely administrative grievance does not satisfy the

exhaustion requirement of the PLRA”). Therefore, Plaintiff’s only fully exhausted issues are those raised in grievance sets 22-6-32943 and 22-6-33949, and the Court will consider whether these grievances exhausted Plaintiff’s First or Eighth Amendment claims.

(a) 22-6-32943 (Exhausted)

In the informal grievance relating to 22-6-32943, Plaintiff alleged:

This grievance is being initiated against F-Dorm Security to wit: Lt. Edwards, Sgt Swat and Ofc. Randant on a retaliation claim because I exercise[d] my constitutional right to file grievances complaining about our confinement conditions and the fact that [we] are not provided the things we need to keep our cells clean especially after the waste drain back flowed into my cell and we were left to clean it up with our sheets and toothpaste. On 9/15/22 Ofc. Randant, Sgt. Swat, and a F.A. conducted a “random cell search” and found an extra sheet and placed me and my cellmate on “state property restriction.” NOTE: My cellmate was at outside rec during this time. Then during lunch Ofc. Randant brought me a management meal stating that the Lt. put me on it because I had some packs of sugar. He later mentioned the truth because I filed complaints about needing to clean my cell he was ordered to do it for me and that’s the real reason why “I” was targeted like that.

(Doc. 15-3 at 12 (dated September 15, 2022).) Defendant Edwards responded to the grievance, stating that the cell search was conducted because Plaintiff had not followed orders to remove a sheet from his cell window. (Id.) Defendant Edwards also advised Plaintiff that he was put on meal management because of food found on his bunk. (Id.) Plaintiff then filed the following formal grievance:

In accordance with Rule 33-103.006 F.A.C. I’m initiating this retaliation complaint against F-Dorm security to wit: Lt. Edwards, Sgt. Swat and Ofc. Randant because I exercised my constitutional right to file grievance

complaining about the confinement conditions and they're refusal to abide by Dept. of Health Title 64E-26.005 which requires us an opportunity to clean our cells.

"Filing grievances and otherwise complaining about the conduct of correctional officers through proper channels are constitutionally protected activities, and prison officials may not retaliate against inmates for engaging in such protected activities." *See Reese v. Skinner*, 322 Fed. App'x 381, 383 (5th Cir. 2009) (citing *Morris v. Powell*, 449 F.3d 684 (5th Cir. 2006)).

Video and documents will reflect that on 9-15-22 wing 3 of F-dorm between 12:15 noon and 1:15pm per procedure #602.003 evidence shall reflect the defendants listed above conducted a cell search in which an extra sheet was found while my cellmate was out at rec. So we both were placed on state property restriction. Some sugar was found about 3 or 4 and during lunch Ofc. Randant informed that that Lt. Edwards placed me on meal management for it. Officer Randant further stated inadvertently that since I wanted to complain about me not be afforded an opportunity to clean my cell he was ordered to do it for me. Note: Ofc. Randant also informed that I solely was to be placed on meal management. Furthermore, upon entering my cell my paperwork and personal property along with my cellmates was scattered along the back of the cell and I was forced to relinquish my state crocs. The reason used to place us on property restriction and me on meal management was completely de minimis. The paperwork for meal management alone was more then they're alleged "cell search."

As the record shall conclusively prove, I had past incidents of assault by staff and intentional property deprivation. I respectfully plea that the Institution insure my personal safety.

(Doc. 15-3 at 10 (dated October 25, 2022).) Plaintiff's formal grievance was also denied, and the warden advised Plaintiff that he was placed on property restriction for misuse of state property and on a management meal. (Id. at 11.) The warden also advised:

Ofc. Randant was interviewed in regards to allegations of personal property left in disarray inside of your cell. Ofc. Randant advised that all personal and state property was placed back in its original form prior to Ofc. Randant exiting your cell.

Based on the foregoing information, your grievance is denied.

(Doc. 15-3 at 11(dated October 21, 2022).) Finally, Plaintiff appealed the denial of his formal grievance as follows:

I file this request for administrative appeal in accordance with Rule 33-103.006 F.A.C. appealing the denial of formal grievance #2210-510-015 after the facts clearly demonstrates it was incorrectly reviewed and evaluated and that the officer (Ofc. Randant) falsified information in relation to the cell search that had me placed on state property restriction.

FACTS OF THE CASE: This issue begun after officers retaliated against for filing complaints regarding our conditions in confinement. If you read the attached informal grievance #510-2209-0370 I stated that I was wrongfully placed on cell restriction on 9/15/2022 and the response also supports this assertion.

On the contrary when I sought further review in the grievance to the Institution and complained about the officers' wrongdoing, Ofc. Randant who was one of the culprits stated "all personal and state property was placed back in its original form . . ." Even review of my DC6-229 special housing log form shall reflect that I was on property restriction.

As it shows not only did Ofc. Randant [lie] to the complaint investigator, but also the investigator failed to properly review the complaint for if the informal grievance was reflected upon before completing the investigation the investigator would of realized Ofc. Randant is not an officer of integrity.

(Doc. 15-3 at 9 (dated October 31, 2022).) The appeal was denied on the ground that “[t]he response that you received at the institutional level has been reviewed and is found to appropriately address the concerns that you raised at the institutional level as well as the Central Office level.” (Id. at 8.)

(b) 22-6-32944 (Unexhausted)

In the informal grievance relating to 22-6-32944, Plaintiff alleged:

In fear of retaliation[,] I initiated this informal grievance complaint being that I was placed on “state property restriction” and “24 hour management meal” on 9/15/22 because I complained about us not getting cleaning supplies at all. Well today is 9/26/22 and I’m still on “state property restriction.” Sleeping on this cold bunk deprived of a mattress and pillow is both cruel and unusual punishment per my 8th Amendment right and outright painful. My neck and back feels completely out of line.

Every time I complain to a staff I’m told Lt. Edwards said he’s going to get me my state property when he gets ready and when I complaint to another shift supervisor I’m told to get with the dorm officer or dorm sergeant.

There is no excuse for F-Dorm security coming to work every day and seeing me in this state and do nothing about it for fear of Lt. Edwards for this kind of treatment of a prisoner is downright inhumane and may receive legal action.

(Doc. 15-3 at 18 (dated September 26, 2022).) In response, Plaintiff was advised that he had received his property back and that he was never placed on meal management. (Id. (dated October 6, 2022).) In his formal grievance, Plaintiff disagreed, noting that, if the Warden would review video, he would observe Plaintiff receiving a mattress on October 3, 2022. (Id. at 17 (dated October 24, 2022).) Plaintiff also complained that he received a disciplinary report on September 26,

2022 for not having his cell in compliance. (Id.) Plaintiff stated that he could witness that he did not have a mattress. (Id.) In a second formal grievance, Plaintiff complained about receiving a disciplinary report, alleging that he received a false disciplinary report for having his cell in “complete disarray” and “bunks unmade” (Id. at 15.) In response, Plaintiff was advised that, despite having an opportunity to do so, Plaintiff did not call any witnesses at the disciplinary proceedings. (Id. at 16.) Plaintiff filed an appeal stating the following:

This request for Administrative appeal is being filed in accordance with Rule 33-103.006 F.A.C. after evidence shows officers lied and gave me false disciplinary report. NOTE: This is not an appeal of the “writing of a known false D.R.” It’s a “complaint” demonstrating that the officers clearly knew that were filing a false report against me. See: D.R. Log # 510-221820

As the body of Part A – Inmate Grievance in #2210-510-070 reflects, I called video evidence to support my complaint that when the D.R. for failure to maintain an orderly cell to wit: make my bed was written, I did not have a mattress, pillow, nor bed roll (blanket sheets). I even mentioned officers/staff members also the DR Investigator in the D.R. witness statement to witness that I had no mattress, even when the D.R. was being served.

NOTE: Formal grievance #2210-510-051 is only to be used as “supportive evidence.” As it show[s] I filed a complaint on the fact officers were retaliating against me because I filed several complaints about the conditions of our cells and placed me on “state property restriction” which supposed to be only 72hr but I was forced to remain in those conditions for a total of 18 days and the video evidence supports my complaint meaning that writing this false D.R. was also a form of retaliation. I [am] waiting on the results of the O.I.G.’s investigation, but it felt it was important to inform Central directly of what has occurred.

If Central Office wish to show kindness and remove the D.R. from my record that'll be nice, but because it was minor (verbal warning), it wouldn't matter.

(Id. at 14 (dated October 30, 2022).) The administrative appeal was returned without action as untimely and as non-compliant because Plaintiff attempted to grieve separate issues. (Id. at 13.)

(c) 22-6-33949 (Exhausted)

In grievance set 22-6-33949, Plaintiff did not file a new informal grievance, but filed a second formal grievance complaining about the institution's responses to his September 26, 2022 informal grievance (grievance set 22-6-32944), which was not exhausted. In the formal grievance—filed before he filed the untimely grievance appeal in 22-6-32944—Plaintiff complained that there were numerous inconsistencies in the investigation of the allegations raised in 22-6-32944.

Specifically, he asserted:

This Formal grievance is being filed in compliance with Rule 33-103.006-F.A.C. seeking further review of denied informal grievance #510-2209-0549, after the responder stated per my DC6-229 I received my property (state) back within the 72hr period after I was placed on state restriction on 9-15-22.

As I witness I all on Major Scarpatti and video retention to be retained on 10/1/2022; F-Dorm wing 3103 between 9:00am – 10:00am in the morning. On the early Saturday morning the audio/video shall demonstrate Major Scarpatti who was the Duty warden was doing his inspection rounds and as he went past my cell which F3103 from the opposite it will show he doubled back and the audio shall demonstrate Major Scarpatti asking me why I have no mattress. Then he assures me that I'll "have one within 5 minutes, for there were some in wing 1." However, I haven't received one until 10/3/22.

The responder also stated in informal grievance #510-2209-0549 that I was “never” on management “per my 229;” however, as I supportive evidence I would like to submit informal grievance “510-2209-0370 in which that responder stated I was placed on management meal for access state food found on your bunk. That’s per Lt. G. Edwards the security official who authorized both state property restriction and management.

In light of all the conflicting evidence submitted to support this complaint it’s clear that the officers falsified documents and [have] no respect for the local state and federal rules, policies and procedures which govern the Dept. of Corrections.

The pain I continue to suffer as a result of going 18 days without a mattress is cruel and unusual punishment under my 8th Amendment Const. Right, for I have a right to complain about my living conditions and not be retaliated against per 1st Amend. Const.

(Doc. 15-3 at 21 (dated October 17, 2022).) In response, the Warden explained:

Colonel Scarpati was interviewed regarding alleged incident on 10/01/2022 between the hours of 9:00am – 10:00am and ensures you received a mattress on 10/01/2022 in cell F3103. An attempt was made to retain video footage; however, timeframe has lapsed for retention. For your second issue, it is unclear what you are grieving. Per dormitory documentation DC6-229, you were not placed on management meal.

(Id. at 22 (dated November 3, 2022).) Plaintiff appealed to the Secretary, arguing that the response was wrong, that he did not receive a mattress within 72-hours, and that he was placed on meal management for two meals. (Id. at 20 (dated November 5, 2022).) The secretary investigated the issue (Id. at 25–26), and was informed that the response Plaintiff received at the institutional level was “found to appropriately address the concerns [raised] at the institutional level as well as the Central Office level” (Id. at 19.) Plaintiff was advised to contact the institutional

medical department if he felt the need for medical attention. (Id.) He was also advised that “the institution was contacted and advised Inmate Moultrie was placed on a management meal for one day and then taken off due to paperwork being misplaced and he was given a regular tray.” (Id. (dated December 9, 2022).)

2. Plaintiff exhausted his retaliation claim against Defendant Edwards.

Grievance set 22-6-32943 exhausted some allegations against Defendant Edwards. First, in grievance set 22-6-32943’s informal and formal grievances, Plaintiff alleged that Defendant Edwards targeted his cell for a search (or to be cleaned) in retaliation for filing grievances relating to cleaning supplies. (Doc. 15-3 at 12, 10.) And while Defendant Edwards argues that Plaintiff did not properly appeal the denials of these claims because (in the appeal) his ire was directed towards Sgt. Randant, not Defendant Edwards (id. at 13), the Court disagrees. In the appeal, Plaintiff refers to the earlier grievances. And while he also complains about how they were addressed at the institutional levels, he did not abandon his initial allegations against Defendant Edwards. (Id. at 9.) Moreover, the response to the appeal specifically stated that his appeal was evaluated, and that the response Plaintiff received at the institutional level was “found to appropriately address the concerns that you raised at the institutional level as well as the Central Office level.” (Id. at 8.) The Court finds that grievance-set 22-6-32943 exhausted a First Amendment retaliation claim against Defendant Edwards.

3. Plaintiff did not exhaust a conditions of confinement claim.

However, grievance-set 22-6-32943 did not exhaust an Eighth Amendment claim against Defendant Edwards. A careful reading of grievance set 22-6-33949 (Plaintiff's only other exhausted grievance) shows that it is not directed towards Defendant Edwards's behavior, but solely at the officers' **responses** to the allegations contained in unexhausted grievance set 22-6-32944. In other words, instead of filing a timely appeal of the Warden's rejection of grievance set 22-6-32944, Plaintiff decided to file a separate formal grievance complaining about the how the institution handled the first formal grievance. However, the issues raised in grievance set 22-6-949 did not raise the substantive issues that were raised in the earlier, unexhausted, grievance, and did not serve to exhaust any Eighth Amendment claim against Defendant Edwards.²

B. Plaintiff has not stated a plausible claim for retaliation.

Under the First Amendment, a prison official may not retaliate against a prisoner for exercising his right to free speech. Farrow v. West, 320 F.3d 1235, 1248 (11th Cir. 2003). And “[a] prisoner can establish retaliation by demonstrating that the prison official’s actions were the result of his having filed a grievance concerning

² Because Plaintiff's Eighth Amendment claim against Defendant Edwards is dismissed for lack of exhaustion, the Court will not consider the defendant's arguments that it should also be dismissed under Rule 12(b)(6). Nevertheless, should Plaintiff decide to file an amended complaint, he should be mindful that the Eleventh Circuit, in an unpublished case, has stated that, in similar situations, “[o]bjectively speaking, sleeping on a steel bed without a mattress for eighteen days, though uncomfortable, is not so extreme as to violate contemporary standards of decency.” Alfred v. Bryant, 378 F. App'x 977, 980 (11th Cir. 2010). Although Alfred is not binding authority, it may be relied on to the extent it is persuasive and as an example of how a similar issue has been analyzed.

the conditions of his imprisonment.” Id. (internal quotation omitted). “To prevail on a retaliation claim, the inmate must establish that: (1) his speech was constitutionally protected; (2) the inmate suffered adverse action such that the official’s allegedly retaliatory conduct would likely deter a person of ordinary firmness from engaging in such speech; and (3) there is a causal relationship between the retaliatory action . . . and the protected speech.” O’Bryant v. Finch, 637 F.3d 1207, 1212 (11th Cir. 2011) (internal quotations and alterations omitted). While mindful that a plaintiff may not be held to a heightened burden of proof on a retaliation claim, see Crawford-El, 523 U.S. at 580–86 (holding that the prisoner is not required to show “clear and convincing” evidence of a defendant’s unconstitutional motives in a retaliation claim), courts approach prisoner claims of retaliation “with skepticism and particular care” due to the near inevitability that prisoners will take exception with the decisions of prison officials and the ease with which claims of retaliation may be fabricated. Dawes v. Walker, 239 F.3d 489, 491 (2nd Cir. 2001), impliedly overruled in part on other grounds by Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002).

Plaintiff asserts that Defendant Edwards retaliated against him for filing grievances relating to the provision of cleaning supplies. He also asserts that he knows that his cell was searched at Defendant Edwards’s direction because an officer advised him that “because [Plaintiff] wanted to file grievances complaining about not being provided adequate cleaning supplies to clean [his] cell, Defendant Edwards ordered him to clean it for [him].” (Doc. 1 at 7.) Plaintiff admits that

contraband—sugar packets and an extra sheet—were found in the cell as a result of the search, prompting both property restriction and food management. (Id.)

Under the present facts as alleged by Plaintiff and based on the materials attached to his complaint, he has not stated a plausible retaliation claim. Plaintiff has satisfied his burden of proof on the first element. It is well settled law that the First Amendment protects inmates from retaliation by prison officials for filing administrative grievances and lawsuits. Green v. Mowery, 212 F. App'x 918, 919 (11th Cir. 2006); Redd v. Conway, 160 F. App'x 858, 862 (11th Cir. 2005). But the second two factors—whether Plaintiff actually suffered an inverse action as a result of his grievances and whether there is a causal connection between the inverse actions and the grievances—are problematic for Plaintiff and will be addressed together.

First, Plaintiff has not plausibly alleged that Defendant Edwards ordered adverse action against him as a result of constitutionally protected speech. Plaintiff freely utilized the grievance procedures available to him, but he did not file an inordinate number of grievances against Defendant Edwards, and there were no serious or sensitive issues raised in the two grievances at issue here that would cause a reasonable corrections officer to want to retaliate. Plaintiff merely complained that he did not have adequate cleaning supplies in his cell, and both grievances were *approved* by Defendant Edwards who directed the staff to provide Plaintiff with the requested cleaning products (albeit not the precise supplies Plaintiff wanted). Grievances are a routine part of the corrections system and

dealing with them and the prisoners who file them are part of a corrections officer's daily work duties. Plaintiff alleges that he knows he was "targeted" by Defendant Edwards to have his cell cleaned because he (Plaintiff) "filed complaints about needing to clean [his] cell[and] [Officer Randant] was ordered to do it for [him]." (Doc. 1-5 at 1.) Even accepting the allegation as true, it is difficult to see how this supports a retaliation claim. Officer Randant's statement—that Defendant Edwards ordered him to clean Plaintiff's cell—is more easily interpreted as an expression of Defendant Edwards's exasperation with the officers who did not provide Plaintiff with the requested supplies after being directed to do so than as an act of retaliation targeting Plaintiff. Conclusory allegations of retaliation, such as the ones alleged here, without some facts to indicate that the retaliatory act (the cleaning of Plaintiff's cell) was in retaliation for filing (relatively innocuous) grievances (that were approved) are not sufficient. The allegations must be more than the "general attacks" upon a defendant's motivations alleged here. See Crawford-El v. Britton, 523 U.S. 574, 600 (1998) (citations omitted). A prisoner does not automatically cast doubt upon an institutional decision, nor is the decision "subject to exhaustive challenge," solely because the prisoner engaged in a First Amendment right. Adams v. James, 784 F.2d 1077, 1082 (11th Cir. 1986). In short, even though prison officials do not have the authority to prohibit inmates from filing grievances it does not follow that every time an inmate files a grievance, the act of doing so "renders the exercise of prison authority suspect." See Adams, 784 F.2d at 1082.

Moreover, it is clear from Plaintiff's complaint and attached grievances that he views the property restriction and management meals that were imposed as a result of the cell search, not necessarily just the actual search itself, as acts of retaliation. However, Plaintiff admits that he had contraband—an extra bedsheet and sugar packets—in his cell. Plaintiff's possession of these items was conduct that violated prison rules and was not protected speech. See Smart v. England, 93 F.4th 1283, 1289–90 (11th Cir. 2024) (“[A] prisoner’s violation of a prison regulation is unprotected by the First Amendment.”). In other words, even if some impermissible reason had entered into Defendant Edward’s decision to order Sgt. Randant and others to “clean” Plaintiff’s cell (a finding not made by this Court), Plaintiff would have been disciplined anyway because he violated prison rules by possessing an extra sheet and sugar packets. See e.g. Smith v. Mosley, 532 F.3d 1270 (11th Cir. 2008) (finding that if a prisoner would have been subject to the same discipline in the absence of protected speech, the retaliation claim will fail); O’Bryant v. Finch, 637 F.3d 1207, 1220 (11th Cir. 2011) (recognizing that “[a]ny possible causal connection between the protected activity (the grievances) and the harm . . . is severed since the harm is not in reaction to any protected activity, but directly due to an improper activity”); Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996) (addressing a prisoner’s retaliation claim, and explaining that, “if taken for both proper and improper reasons, state action may be upheld if the action would have been taken based on the proper reasons alone”). Any inference of a causal connection between Plaintiff’s grievances about cleaning supplies and the alleged

meal management and property restriction is broken because the adverse action suffered by Plaintiff was a direct response to his possession of contraband. Accordingly, Plaintiff has satisfied neither the second or third elements of a retaliation claim, and Ground Two of the complaint is dismissed.

IV. Conclusion

Plaintiff's Eighth Amendment claims against Defendant Edwards are unexhausted. In addition, Plaintiff has not stated a First Amendment claim for retaliation against Defendant Edwards. Should Plaintiff believe he can file an amended complaint that both states a claim and complies with this order, he must do so within twenty-one days. See Silberman v. Miami Dade Transit, 927 F.3d 1123, 1132 (11th Cir. 2019) (recognizing that a *pro se* plaintiff must generally be given at least one chance to amend before the action is dismissed with prejudice unless the plaintiff does not want to amend or further amendment would be futile).

Accordingly, it is

ORDERED:

1. Defendant Edward's motion to dismiss (Doc. 15) is **GRANTED** and Plaintiff's complaint is dismissed without prejudice.
 - (a) Plaintiff's conditions of confinement claim is **DISMISSED** for failure to exhaust his administrative remedies. 42 U.S.C. § 1997e(a).
 - (b) Plaintiff's retaliation claim is **DISMISSED** for failure to state a claim on which relief may be granted. Fed R. Civ. P. 12(b)(6).
2. Plaintiff may file an amended complaint within **TWENTY-ONE (21) DAYS** from the date of this Order. If Plaintiff does not file an

APP. C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12887

EDDIE JAMES MOULTRIE,

Plaintiff-Appellant,

versus

G. EDWARDS,

Lieutenant,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:23-cv-00416-JLB-KCD

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before GRANT, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court

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Order of the Court

24-12887

be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.