

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CARLOS RODRIGUEZ, Plaintiff,)	
)	
v.)	C.A. No. 11-359-M
)	
BRIAN MURPHY, Defendant.)	
)	

MEMORANDUM AND ORDER

JOHN J. McCONNELL, JR., United States District Judge.

Before this Court is a § 1983 Complaint filed by Plaintiff Carlos Rodriguez, *pro se*, an inmate at the Donald W. Wyatt Detention Facility (Wyatt) in Central Falls, Rhode Island, seeking declaratory and injunctive relief and damages against Defendant Brian Murphy, the Warden at Wyatt.¹ This Court has screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and finds that it fails to state a claim on which relief may be granted.

I. THE COMPLAINT

In the Complaint, Plaintiff asserts three principal claims: (i) he has been discriminated against due to his sexual orientation as a gay person (Pl.'s Aff. ¶ 4); (ii) because of Wyatt's failure to provide adequate protection from other inmates, including sex offenders and bullies, he was sexually harassed by one inmate (a sex offender) and sexually assaulted by another inmate (Compl. at 3; Pl.'s Aff. ¶¶ 2-3; 5-6); and (iii) twice he has been locked up based on false rumors, prior to an investigation of those rumors. (Compl. at 3; Pl.'s Aff. ¶ 4.) Plaintiff further claims that the living conditions in the protective custody unit where he has been assigned are

¹ Plaintiff filed a previous *pro se* civil rights action in this Court. *See Carlos Rodriguez v. Wyatt Detention Facility, et al.*, C.A. No. 11-057-S.

substandard and that his grievances concerning these conditions have gone unanswered. (Compl. at 3; Pl.’s Aff. ¶ 2.)

The Complaint names one Defendant, Brian Murphy, who is employed as the Warden at Wyatt. (Compl. at 2.) Plaintiff seeks \$1 million in damages for pain and suffering, along with such other damages as the Court sees fit to award. (*Id.* at 3.)

II. DISCUSSION

A. Screening under § 1915(e)(2) and § 1915A

In connection with proceedings *in forma pauperis*, § 1915(e)(2) instructs the Court to dismiss a case at any time if the Court determines that the action, *inter alia*, fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2). Similarly, § 1915A directs courts to screen complaints filed by prisoners against a governmental entity, officer, or employee and to dismiss the complaint, or any portion thereof, for reasons identical to those set forth in § 1915(e)(2). 28 U.S.C. § 1915A(b).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and § 1915A is identical to the legal standard used when ruling on a Rule 12(b)(6) motion. *See Friedman v. City of New York*, 195 F.Supp.2d 534 (S.D.N.Y. 2002); *Pelumi v. Landry*, No. 08-107, 2008 WL 2660968, at *2 (D.R.I. June 30, 2008). In making this determination, the Court must accept Plaintiff’s allegations as true and construe them in the light most favorable to Plaintiff. Although the Court must review pleadings of a *pro se* Plaintiff liberally, *Estelle v. Gamble*, 429 U.S. 97 (1976), the Court need not credit bald assertions or unverifiable conclusions. *Ashcroft v. Iqbal*, -- U.S. --, 129 S.Ct. 1937, 1949-50 (2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); Fed. R. Civ. P. 8(a)(2).

B. Review of Claims

The Complaint names Wyatt's Warden Murphy as its sole Defendant, but contains no allegations regarding Murphy's conduct or actions towards Plaintiff. Regardless of whether the Complaint seeks to hold Defendant Murphy liable for the conduct of his subordinates under a respondeat superior theory of liability, or on the basis of his own actions as a supervisor, it fails to state a claim on which relief can be granted. In regards to respondeat superior liability in a § 1983 action, "[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior." *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 49 (1st Cir. 2009) (quoting *Iqbal*, 129 S.Ct. at 1948). In regards to supervisory liability in a § 1983 action, there must be "'an affirmative link, whether through direct participation or through conduct that amounts to condonation or tacit authorization,' between the actor and the underlying violation." *Id.* (quoting *Camilo-Robles v. Zapata*, 175 F.3d 41, 44 (1st Cir. 1999)). Here, no "affirmative link" exists because the Complaint is devoid of allegations of conduct by Defendant Murphy. Because Murphy cannot be held liable under either respondeat superior or as a supervisor, the § 1983 Complaint fails to state a claim on which relief may be granted.

In view of this Court's determination regarding the Complaint's single Defendant, it need not review the allegations in detail. Even assuming that some of the allegations are actionable, the Complaint, as stated, cannot go forward against the sole Defendant named therein.

