

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABDUL-MAFIDH AS SALAFI, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 12-1120-SLR
)	
PERRY PHELPS, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington this ⁵th day of November, 2012, having screened the case pursuant to 28 U.S.C. § 1915A;

IT IS ORDERED that: (1) Maahir H. Hackett is **dismissed** as a plaintiff; (2) counts fifteen, sixteen, and seventeen of the complaint and docket items 7, 15, 20, and 25 are **stricken** as non-compliant with Fed. R. Civ. P. 20; and (3) plaintiffs may **proceed** on counts one through fourteen and eighteen of the complaint, for the reasons that follow:

1. **Background.** Plaintiffs, inmates at the James T. Vaughn Correctional Center, Smyrna, Delaware, filed this complaint on September 12, 2012, pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc *et seq.* (D.I. 1)¹ They have paid the filing fee.²

¹When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

²Section 1915A(b)(1) is applicable to all prisoner lawsuits regardless of whether the litigant paid the fee all at once or in installments. *Stringer v. Bureau of Prisons, Federal Agency*, 145 F. App’x 751, 752 (3d Cir. 2005) (unpublished).

Plaintiffs recently filed a motion for injunctive relief to ensure they receive proper and adequate nutritionally balanced diets. (D.I. 20)

2. None of the plaintiffs signed the original complaint. As a result, on September 19, 2012, an order was entered that required plaintiffs to submit a complaint with all their signatures within thirty days from the date of the order. Plaintiffs were warned that the failure of each plaintiff to sign the complaint would result in their dismissal. Plaintiff Maahir H. Hackett ("Hackett") has taken no action in this case. Therefore, he is dismissed as a plaintiff.

3. **Standard of Review.** This court must dismiss, at the earliest practicable time, prisoner actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A (actions in which prisoner seeks redress from a governmental defendant); 42 U.S.C. § 1997e (prisoner actions brought with respect to prison conditions). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to a pro se plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because plaintiffs proceed pro se, their pleading is liberally construed and their complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

4. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915A(b)(1), a court may dismiss a complaint as frivolous if it is "based on an indisputably meritless legal

theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); see, e.g., *Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate’s pen and refused to give it back).

5. The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915A(b)(1) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915A, the court must grant plaintiffs leave to amend their complaint unless amendment would be inequitable or futile. See *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

6. A well-pleaded complaint must contain more than mere labels and conclusions. See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Id.* at 678. When determining whether dismissal is appropriate, the court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint’s well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must

determine whether the facts alleged in the complaint are sufficient to show that plaintiffs have a “plausible claim for relief.”³ *Id.* at 211. In other words, the complaint must do more than allege plaintiff’s entitlement to relief; rather it must “show” such an entitlement with its facts. *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 678 (quoting Fed. R. Civ. P. 8(a)(2)).

7. **Discussion.** Rule 8(d)(1) states, in pertinent part, that “[e]ach allegation must be simple, concise and direct.” In addition, Rule 20 prohibits plaintiffs from joining together to file one action unless their claims arise out of “the same transaction, occurrence, or series of transactions or occurrences” and “any question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a).

8. “In exercising its discretion [to join parties], the District Court must provide a reasoned analysis that comports with the requirements of the Rule, and that is based on the specific fact pattern presented by the plaintiffs and claims before the court.” *Hagan v. Rogers*, 570 F.3d 146, 157 (3d Cir. 2009); see also *Boretsky v. Governor of New Jersey*, 433 F. App’x 73 (3d Cir. 2011) (unpublished).

9. The complaint contains eighteen counts. Counts one through fourteen and eighteen raise claims alleging violations of plaintiffs’ right to the free exercise of religion

³A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.*

under the First and Fourteenth Amendments to the United States Constitution and RLUIPA. Most of the claims are raised on behalf of those plaintiffs who belong to the Sunni-Salafi orthodox denomination of Islam. The complaint does not specifically identify those plaintiffs. It is evident from exhibits submitted by plaintiffs that at least two plaintiffs, Christopher Desmond (“Desmond”) and Joseph M. Walls (“Walls”), practice Catholicism. (See D.I. 15 at 3)

10. Counts fifteen, sixteen, and seventeen, however, have no relation to the free exercise of religion claims. Count fifteen complains of the transfer of plaintiff Idris Young (“Young”) to the Security Housing Unit (“SHU”) supermax and the conditions in SHU.⁴ Count sixteen is raised solely on behalf of Desmond and complains of his transfer from a one-man cell unit in the SHU supermax to a two-man unit in supermax.⁵ Count seventeen complains of alleged inadequate food portions served to inmates housed in SHU supermax, particularly Desmond, Salafi, Parson, Young, Stevenson, and Manley.

11. The inclusion of counts fifteen through seventeen violate Fed. R. Civ. P. 20(a). While joinder is encouraged for purposes of judicial economy, the “Federal Rules do not contemplate joinder of different actions against different parties which present entirely different factual and legal issues.” *Zhu v. Countrywide Realty Co., Inc.*, 160 F. Supp. 2d 1210, 1225 (D. Kan. 2001) (citation omitted). Counts fifteen

⁴Count fifteen also contains a solitary conclusory sentence that “there is no religious or educational practices permitted” and that Salafi, Young and Desmond are affected by the alleged violation.

⁵Desmond, a frequent filer, has three strikes pursuant to 28 U.S.C. § 1915(g).

through eighteen do not arise out of the same transaction or occurrence or series of transactions or occurrences. Moreover, the claims do not involve issues of law or fact common to all plaintiffs.

12. "The Prison Litigation Reform Act of 1995 ("PLRA"), which substantially changed the judicial treatment of civil rights actions by state and federal prisoners, also compels compliance with Rule 20. Specifically, under the PLRA, the full filing fee must ultimately be paid in a non-habeas action. Allowing a prisoner to include a plethora of separate, independent claims, would circumvent the filing fee requirements of the PLRA." *Mincy v. Klem*, 2007 WL 1576444, at *1 (M.D. Pa. May 30, 2007). See *George v. Smith*, 507 F.3d 605, 507 (7th Cir. 2007) ("The "[u]nrelated claims against different defendants belong in different suits, not only to prevent the sort of morass that this [multiple]-claim, [multiple]-defendant suit produced but also to ensure that prisoners pay the required filing fees."). See also *Smith v. Kirby*, 53 F. App'x 14, 16 (10th Cir. 2002) (unpublished) (finding no abuse of discretion where district court denied leave to amend or supplement the complaint where the "new claims were not relevant to the claims before that court. . . .").

13. Based upon the foregoing discussion, the court strikes counts fifteen, sixteen, and seventeen as noncompliant with Fed. R. Civ. P. 20. To the extent that the named plaintiffs in those counts seek redress of alleged violations of constitutional rights, each should file **separate complaints** addressing the violations and either submit a motion to proceed in forma pauperis or pay the filing fee.

14. Subsequent to the filing of the complaint, Desmond filed three documents, solely on his behalf and with only his signature, including a memorandum of law in support of his claim against defendants (D.I. 7), an amended complaint against all defendants (D.I. 15), and a motion for preliminary injunction (D.I. 25). The court strikes the filings as they were filed in derogation of Rule 20. Similarly, the court will strike the motion for injunctive relief (D.I. 20) which is related to paragraph seventeen and the issue of the meals served in SHU supermax.

15. **Conclusion.** For the above reasons: (1) Maahir H. Hackett is **dismissed** as a plaintiff; (2) counts fifteen, sixteen, and seventeen of the complaint and docket items 7, 15, 20, and 25 are **stricken** as non-compliant with Fed. R. Civ. P. 20; and (3) plaintiffs may **proceed** on counts one through fourteen and eighteen of the complaint as they appear to contain non-frivolous and cognizable claims.

IT IS FURTHER ORDERED that:

1. The clerk of the court shall cause a copy of this order to be mailed to plaintiffs.

2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), plaintiffs shall provide the Clerk of Court **original** "U.S. Marshal-285" forms for **defendants as well as for the Attorney General of the State of Delaware**, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to 10 Del. C. § 3103(c). Plaintiffs have provided the court with copies of the complaint (D.I. 1), memorandum (D.I. 21) and appendix (D.I. 22) for service upon defendants and the Attorney General of the State of Delaware.

3. Plaintiffs have paid the filing fee and are responsible for the costs of service. The United States Marshals Service ("USMS") advises that the cost of service for defendants is \$64.00 (i.e., \$8.00 mailing service for each defendant) and the cost of service for the attorney general is \$55.00 (for personal service) for a total of \$119.00 in service costs. **Therefore, plaintiffs shall remit payment in the sum of \$119.00, payable to the "U.S. Marshals Service"** for the costs of service of service of defendants and the Attorney General of the State of Delaware. Plaintiffs shall **submit the payment**, payable to the "U.S. Marshals Service" **to the Clerk of Court** along with the required USM-285 forms.

4. The USMS will not serve the complaint until complete "U.S. Marshal 285" forms and payment to the USMS for its costs of service have been received by the Clerk of Court. Plaintiffs are placed on notice that failure to provide the "U.S. Marshal 285" forms and payment of service costs within 120 days from the date of this order may result in the complaint being dismissed or defendant(s) being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

5. Upon receipt of the USM-285 forms and the \$119.00 service fee payable to the "U.S. Marshals Service" as required by paragraphs 2, 3, and 4 above, the Clerk of Court will forward the payment of service costs to the USMS, and the USMS shall forthwith serve copies of the complaint (D.I. 1), memorandum (D.I. 21), appendix (D.I. 22), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the defendant(s) so identified in each 285 form.

6. A defendant to whom copies of the complaint, memorandum, and appendix this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form have been sent, pursuant to Fed. R. Civ. P. 4(d)(1), has thirty days from the date of mailing to return the executed waiver form. Such a defendant then has sixty days from the date of mailing to file its response to the complaint, pursuant to Fed. R. Civ. P. 4(d)(3). A defendant residing outside this jurisdiction has an additional thirty days to return the waiver form and to respond to the complaint.

7. A defendant who does not timely file the waiver form shall be personally served and shall bear the costs related to such service, absent good cause shown, pursuant to Fed. R. Civ. P. 4(d)(2). **A separate service order will issue in the event a defendant does not timely waive service of process.**

8. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

9. **NOTE: ***** When an amended complaint is filed prior to service, the court will **VACATE** all previous Service Orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). *******

10. **Note: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service.


UNITED STATES DISTRICT JUDGE