

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TIMOTHY FLETCHER,)
)
 Plaintiff,)
)
 v.) Civ. No. 12-489-SLR
)
 GLADYS LITTLE,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this *3rd* day of *December*, 2012, having considered plaintiff's letter/motion for injunctive relief and motion to amend (D.I. 13, 18);

IT IS ORDERED that the letter/motion for injunctive relief is **denied** and the motion to amend is **granted**, for the reasons that follow:

1. **Background.** Plaintiff Timothy Fletcher ("plaintiff"), an inmate at the James T. Vaughn Correctional Center ("VCC"), Smyrna, Delaware, who proceeds pro se and has been granted in forma pauperis status, filed this complaint pursuant to 42 U.S.C. § 1983. (D.I. 3) An amended complaint was filed on May 8, 2012. (D.I. 9) On November 2, 2012, plaintiff filed a letter/motion for preliminary injunction to stop alleged retaliatory conduct as a result of the filing of this lawsuit. (D.I. 13) On November 9, 2012, plaintiff filed a motion to amend the amended complaint. (D.I. 18)

2. **Preliminary injunction standard.** A preliminary injunction is "an extraordinary remedy that should be granted only if: (1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the

injunction is in the public interest.” *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999) (“*NutraSweet II*”). “[F]ailure to establish any element in [a plaintiff’s] favor renders a preliminary injunction inappropriate.” *NutraSweet II*, 176 F.3d at 153. Furthermore, because of the intractable problems of prison administration, a request for injunctive relief in the prison context must be viewed with considerable caution. *Rush v. Correctional Med. Services, Inc.*, 287 F. App’x 142, 144 (3d Cir. 2008) (not published) (citing *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995)).

3. Plaintiff alleges that Warden Perry Phelps (“Phelps”) and Captain Marcello T. Rispoli (“Rispoli”) retaliated against him for filing the instant lawsuit because:

- (1) plaintiff was deliberately placed on the same tier as inmate Kevin Wilkerson (“Wilkerson”), in August after plaintiff’s return from PCO (i.e., psychiatric close observation), and Wilkerson harassed and taunted plaintiff on a daily basis;
- (2) the return of plaintiff’s property was delayed following his return from PCO in August;
- (3) plaintiff receives soap only once per week to wash his clothes and himself; and
- (4) plaintiff is prevented from using the grievance system to address these complaints.

4. **Retaliation.** “Retaliation for the exercise of constitutionally protected rights is itself a violation of rights secured by the Constitution actionable under § 1983.” *White v. Napoleon*, 897 F.2d 103, 111-12 (3d Cir. 1990). It has long been established that the First Amendment bars retaliation for protected speech. See *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998); *Milhouse v. Carlson*, 652 F.2d 371, 373-74 (3d Cir. 1981). Proof of a retaliation claim requires plaintiff demonstrate that: (1) he engaged in protected activity; (2) he was subjected to adverse actions by a state actor; and (3) the protected

activity was a substantial motivating factor in the state actor's decision to take adverse action. *Carter v. McGrady*, 292 F.3d 152, 158 (3d Cir. 2002) (citing *Mt. Healthy Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); see also *Allah v. Seiverling*, 229 F.3d 220 (3d Cir. 2000) (a factfinder could conclude that retaliatory placement in administrative confinement would "deter a person of ordinary firmness from exercising his First Amendment rights" (citations omitted)). The causation element requires a plaintiff to prove either: (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link. See *Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 267 (3d Cir. 2007); *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 503-04 (3d Cir. 1997).

5. **Discussion.** Plaintiff filed this lawsuit on April 17, 2012, followed by an amended complaint on May 10, 2012. The court conducted its initial screening of the pleadings and, on August 2, 2012, issued a memorandum order that dismissed all claims except the claim raised against Gladys Little. (D.I. 10) On September 18, 2012, the service packet was forwarded to the United States Marshal Service ("USMS") following receipt of the required documents from plaintiff.

6. The record indicates that plaintiff was placed on PCO status on August 16, 2012 and remained there for a week or so. At that time, his personal items were sent to "property". On August 29, 2012, approximately one week after his return from PCO, his personal items were returned to him, but his clothing was missing. (D.I. 13, 21, ex. A-4, A-5) Plaintiff submitted a grievance the same day regarding the missing clothing. (D.I.

21, ex. A-4) On November 16, 2012, it was recommended that plaintiff be reimbursed the depreciated value of the missing clothing. (*Id.* at ex. A-7)

7. When plaintiff returned from PCO status he was placed on the same tier as inmate Wilkerson, a former cellmate who had made sexual advances toward him.

Plaintiff's file contains a "no contact order" for Wilkerson.

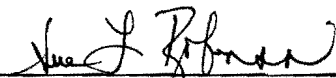
8. Upon review of the allegations made by plaintiff, the court concludes that he has not demonstrated the likelihood of success on the merits. There is no evidence that Phelps and Rispoli were aware of the instant lawsuit when plaintiff returned from PCO status, was placed on the same tier as Wilkerson, and his clothing went missing. Of note is that the service packet was not sent to the USMS until September 18, 2012, more than two weeks after plaintiff returned from PCO status. In addition, other than what plaintiff terms "harassment" there is no evidence that Wilkerson has taken untoward action towards him. Allegations that prison personnel have used threatening language and gestures are not cognizable claims under § 1983. *Collins v. Cundy*, 603 F.2d 825 (10th Cir. 1979) (defendant laughed at prisoner and threatened to hang him). Similarly, verbal abuse of a prisoner is not actionable under 42 U.S.C. § 1983. *Aleem-X v. Westcott*, 347 F. App'x 731 (3d Cir. 2009) (not published). See *Murray v. Woodburn*, 809 F.Supp. 383, 384 (E.D. Pa. 1993); *McBride v. Deer*, 240 F.3d 1287, 1291 (10th Cir. 2001) (taunts and threats are not an Eighth Amendment violation); *Prisoners' Legal Ass'n v. Roberson*, 822 F. Supp. 185, 189 (D.N.J. 1993) (verbal harassment does not violate inmate's constitutional rights).

9. In addition, the denial of plaintiff's claim seeking additional soap will not result in irreparable harm. Plaintiff is given, and receives, soap albeit in the amounts he wishes. Finally, the record reflects that plaintiff submits grievances. Nothing in the record indicates that he is being thwarted from exercising his right to submit grievances. Notably, plaintiff is being offered remuneration for the missing clothing. It is evident from his letter/motion that plaintiff's real complaint is that some grievances are not resolved in his favor.

10. Plaintiff has not met his burden to show that he can succeed on the merits. In addition, no irreparable harm will not result to plaintiff should an injunction not issue. Finally, granting injunctive relief is in contravention of the public's interest in the effective and orderly operation of its prison system. *Carrigan v. State of Delaware*, 957 F. Supp. 1376, 1385 (D. Del. 1997). Therefore the letter/motion for injunctive relief is denied. (D.I. 13)

11. **Motion to amend.** Plaintiff's motion to amend is granted. (D.I. 18) "After amending once or after an answer has been filed, the plaintiff may amend only with leave of the court or the written consent of the opposing party, but 'leave shall be freely given when justice so requires.'" *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) (quoting Fed. R. Civ. P. 15(a)). The proposed amended complaint clarifies plaintiff's claims against Little. It also proposes to dismiss as defendants Phelps, Rispoli and Brian Reynolds. This portion of the motion is unnecessary, however, as these defendants were dismissed upon initial screening of the case. (See D.I. 10)

12. **Conclusion.** For the above reasons, the court denies plaintiff's letter/motion for injunctive relief (D.I. 13) and grants plaintiff's motion to amend (18).


UNITED STATES DISTRICT JUDGE