

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES HARDWICK,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-326-SLR
)
 PERRY PHELPS, et al.,)
)
 Defendants.)

MEMORANDUM

1. **Background.** Plaintiff, an inmate at the James T. Vaughn Correctional Center ("VCC"), Smyrna, Delaware, filed this lawsuit pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act. He proceeds pro se and has paid the filing fee. An amended complaint was filed on March 2, 2015.

2. **Standard of Review.** This court must dismiss, at the earliest practicable time, certain in forma pauperis and prisoner actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A (actions in which prisoner seeks redress from a governmental defendant). 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 plaintiff proceeds pro se, his pleading is liberally construed and his 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).

3. 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. § 1915(e)(2)(B)(I) and § 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).

4. 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 plaintiff leave to amend his complaint unless amendment would be inequitable or futile. See *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

5. 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). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. See *Johnson v. City of Shelby*, ___ U.S. ___, 135 S.Ct. 346, 347 (2014). A complaint may not be dismissed, however, for imperfect statements of the legal

theory supporting the claim assert. See *id.* at 346. When determining whether dismissal is appropriate, the court must take three steps: “(1) identify[] the elements of the claim, (2) review[] the complaint to strike conclusory allegations, and then (3) look[] at the well-pleaded components of the complaint and evaluat[e] whether all of the elements identified in part one of the inquiry are sufficiently alleged.” *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). Elements are sufficiently alleged when the facts in the complaint “show” that the plaintiff is entitled to relief. *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

6. **Discussion.** Plaintiff was one of several inmates who sought relief for alleged violations of religious rights. (See Civ. No. 12-1120-SLR) Due to plaintiff’s differing religious beliefs, on April 22, 2015 the court severed the claims, opened new cases, and gave plaintiffs leave to file amended complaints in the new cases. (D.I. 1, 2) Plaintiff, who practices Judaism, filed a complaint (D.I. 3), an amended complaint (D.I. 6), and a motion for leave to file a first amended complaint (D.I. 8).¹ He also requests counsel. (D.I. 9)

7. The court turns to the amended complaint (D.I. 6) as it appears to be the operative complaint based upon plaintiff’s statement, “enclosed [is] a newly written complaint against various members of D.O.C./J.T.V.C.C. personnel.” (D.I. 6) Plaintiff

¹The motion to amend seeks to add as a defendant Lt. Cheryl/Sheryl Morris (“Morris”). (D.I. 8) The motion will be granted. The amended complaint at D.I. 6 contains allegations directed against Morris.

alleges that defendants Christopher Senato ("Senato"), Frank Pennell ("Pennell"), and Morris have violated plaintiff's right to practice his religion, by failing to acknowledge that he practices Judaism, impeding his ability to attend services, failing to provide kosher food, failing to accommodate his observation of not working on the Sabbath, and denying him religious items.² (D.I. 6, issues 1-4; D.I. 8, ex.). Plaintiff seeks compensatory and punitive damages.

10. **Respondeat Superior.** There are four individuals listed on the Court docket who were not included by plaintiff when he filed his amended complaint: David Pierce, James Scarborough, Michael Knight, and Joseph Simmons. In addition, the amended complaint adds Perry Phelps, Jim Corroathers, R. Hostermann, Major Costello, R. Kearney, Major M. M. Delay, Lt. E. Lehman, J. Simmons, Major J. Brennan, Wendal Lundy, Lt. Savage, and C. Danberg. There are no allegations directed towards the newly added defendants.

11. The Third Circuit has reiterated that a § 1983 claim cannot be premised upon a theory of respondeat superior and that, in order to establish liability for deprivation of a constitutional right, a party must show personal involvement by each defendant. *Brito v. United States Dep't of Justice*, 392 F. App'x 11, 14 (3d Cir. 2010) (unpublished) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009); *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1998)). Personal involvement is an essential element of a civil rights action. *Sutton v. Rasheed*, 323 F.3d 236, 249-250 (3d Cir. 2003). Individual liability can only be imposed if the state actor played an "affirmative part" in the conduct

²The original complaint in Civ. No. 12-1120-SLR named numerous defendants.

complained of. *Chinchello v. Fenton*, 805 F.2d 126, 133 (3d Cir. 1986). “Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence” in the challenged practice. *Argueta v. United States Immigration and Customs Enforcement*, 643 F.3d 60, 72 (3d Cir. 2011) (quoting *Rode*, 845 F.2d at 1207). “In a § 1983 suit . . . masters do not answer for the torts of their servants.” *Iqbal*, 556 U.S. at 676-77. The mere assertion “that the constitutionally cognizable injury would not have occurred if the superior had done more than he or she did” is insufficient to establish liability. *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d cir. 1989).

12. Given that there are no allegations directed against them, the court will dismiss defendants David Pierce, James Scarborough, Michael Knight, Joseph Simmons, Perry Phelps, Jim Corroathers, R. Hostermann, Major Costello, R. Kearney, Major M, M. Delay, Lt. E. Lehman, J. Simmons, Major J. Brennan, Wendal Lundy, Lt. Savage, and C. Danberg pursuant to 28 U.S.C. § 1915A(b)(1).

13. **Request for counsel.** Plaintiff seeks counsel on the grounds that he is unable to afford counsel, the issues are complex, and his rights have been violated. (See D.I. 20)

14. A pro se litigant proceeding in forma pauperis has no constitutional or statutory right to representation by counsel.³ See *Brightwell v. Lehman*, 637 F.3d 187, 192 (3d Cir. 2011); *Tabron v. Grace*, 6 F.3d 147, 153 (3d Cir. 1993). However,

³See *Mallard v. United States Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296 (1989) (§ 1915(d) (now § 1915(e)(1)) does not authorize a federal court to require an unwilling attorney to represent an indigent civil litigant, the operative word in the statute being “request.”.

representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff's claim has arguable merit in fact and law. *Tabron*, 6 F.3d at 155. After passing this threshold inquiry, the court should consider a number of factors when assessing a request for counsel, including:

- (1) the plaintiff's ability to present his or her own case;
- (2) the difficulty of the particular legal issues; (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue investigation; (4) the plaintiff's capacity to retain counsel on his own behalf; (5) the extent to which a case is likely to turn on credibility determinations; and
- (6) whether the case will require testimony from expert witnesses.

Tabron, 6 F.3d at 155-57; accord *Parham v. Johnson*, 126 F.3d 454, 457 (3d Cir. 1997); *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002).

15. Assuming, solely for the purpose of deciding this motion, that Plaintiff's claims have merit in fact and law, several of the *Tabron* factors militate against granting his request for counsel. At present, plaintiff's filings indicate that he possesses the ability to adequately pursue his claims. Upon consideration of the record, the court is not persuaded that representation by an attorney is warranted at this time. The court can address the issue at a later date should counsel become necessary. Therefore, the court will deny the request without prejudice to renew.

16. **Conclusion.** For the above reasons, the court will deny without prejudice to renew plaintiff's request for counsel. (D.I. 9) The court will grant plaintiff's motion to amend and Lt. Cheryl/Sheryl Morris will be added as a defendant. The court will dismiss the claims against David Pierce, James Scarborough, Michael Knight, Joseph Simmons, Perry Phelps, Jim Corroathers, R. Hostermann, Major Costello, R. Kearney,

Major M, M. Delay, Lt. E. Lehman, J. Simmons, Major J. Brennan, Wendal Lundy, Lt. Savage, and C. Danberg as frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Finally, plaintiff will be allowed to proceed against Christopher Senato, Frank Pennell, and Lt. Cheryl/Sheryl Morris. A separate order shall issue.

Dated: August 6, 2015


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES HARDWICK,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-326-SLR
)
 PERRY PHELPS, et al.,)
)
 Defendants.)

ORDER

At Wilmington this ~~6th~~ day of August, 2015, for the reasons set forth in the memorandum issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff's request for counsel (D.I. 9) is **denied** without prejudice to renew
2. Plaintiff's motion to amend (D.I. 8) is **granted**.
3. The Clerk of Court is directed to add Lt. Cheryl/Sheryl Morris as a defendant.

In addition, the Clerk of Court is directed to docket the amended complaint attached as an exhibit to the motion to amend pleading at docket item 8.

4. Plaintiff may proceed against defendants Christopher Senator and Frank Pennell, both of whom have been served with process, and newly added defendant Lt. Cheryl/Sheryl Morris.

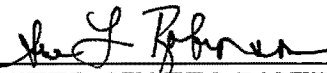
IT IS FURTHER ORDERED that:

1. The Clerk of Court shall notify the Delaware Department of Correction ("DDOC") and the Delaware Department of Justice ("DDOJ") of this service order. As an attachment to this order, the Clerk of Court shall serve an electronic copy of the amended complaint (D.I. 6) and newly added amended complaint (D.I. 8 exhibit)

upon the DOC and the DDOJ. The court requests that Defendant Lt. Cheryl/Sheryl Morris waive service of summons.

2. The DDOC and/or the DDOJ shall have **ninety (90) days** from entry of this service order to file a waiver of service executed and/or a waiver of service unexecuted. Upon the electronic filing of service executed, defendant shall have **sixty (60) days** to answer or otherwise respond to the pro se complaint.

3. In those cases where a waiver of service unexecuted is filed, the DDOC and/or DDOJ shall have **ten (10) days** from the filing of the waiver of service unexecuted, to supply the Clerk of Court with the last known forwarding addresses for former employees, said addresses to be placed under seal and used only for the purpose of attempting to effect service in the traditional manner.


UNITED STATES DISTRICT JUDGE

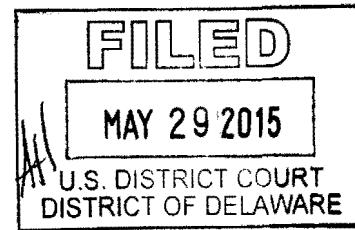
To: Clerk of the District Court

27 May 2015

FROM: Hardwick, James, 00529087, J.T.V.C.C.

RE: Resubmission of Complaint based upon

Judge S.L. Robinson's last Order in, Civ. A. No. 12-1120-SLR



To whom it may concern:

Please find enclosed the following document, a newly written complaint against various members of D.O.C./J.T.V.C.C., personnel. Rewritten as best as Plaintiff knows how.

Please assign a new number to it and return a copy to Plaintiff or forward the new case number to Plaintiff. Thank you for your time and any assistance in this regard.

Respectfully submitted,

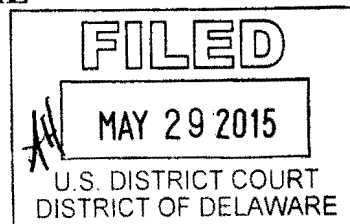
Hardwick, James 00529087
J.T.V.C.C.
1181 Paddock Rd.
Smyrna, DE. 19977-9679

Cc: States Attorney - Mr. Connelly, Esq.
ACLU of Delaware – Mr. Morse, Esq.
file

(Del. Rev. 5/14) Pro Se Prisoner Civil Rights Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARDWICK, JAMES



(In the space above enter the full name(s) of the plaintiff(s).)

-against-

PHELPS, P. et al.

Civ. Action No. _____
(To be assigned by Clerk's Office)

COMPLAINT
(Pro Se Prisoner)

Jury Demand?

Yes

No

*(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the space
provided, please write "see attached" in the space above and
attach an additional sheet of paper with the full list of names.
The names listed in the above caption must be identical to
those contained in Section IV. Do not include addresses here.)*

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Do not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

(Del. Rev. 5/14) Pro Se Prisoner Civil Rights Complaint

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Check one:

- 42 U.S.C. § 1983 (state, county, or municipal defendants); *etc.*
- Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)

II. PLAINTIFF INFORMATION

HARDWICK, JAMES

N/A

Name (Last, First, MI)

Aliases

00529087

Prisoner ID #

James T. Vaughn Correctional Center
Place of Detention

1181 Paddock Road
Institutional Address

New Castle, Smyrna
County, City

Delaware
State

19977
Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner

(Del. Rev. 5/14) Pro Se Prisoner Civil Rights Complaint

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: PENNELL, FRANK
Name (Last, First)

RECENTLY RETIRED, CHAPLAINCY HEAD
Current Job Title

(NOW) UNKNOWN
Current Work Address

SMYRNA DE
County, City State Zip Code

Defendant 2: HOSTERMAN, R.
Name (Last, First)

TREATMENT ADMINISTRATOR
Current Job Title

J.T.V.C.C.
Current Work Address

SMRYNA DE
County, City State Zip Code

Defendant 3: SENATO, C.
Name (Last, First)

FOOD SERVICES DIRECTOR
Current Job Title

J.T.V.C.C.
Current Work Address

SMYRNA DE
County, City State Zip Code

ADDITIONAL DEFENDANTS

7. M? MAJOR, Security Superintendent/Compliance and Standards @ J.T.V.C.C.
8. DELAY, M., former Bureau Chief, address unknown
9. LEHMAN, E. Lt., Food Services, @ J.T.V.C.C.
10. SIMMONS, J. Food Services, @ J.T.V.C.C.
11. BRENNAN, J. Major, @ J.T.V.C.C.
12. LUNDY, WENDAL, Warden's Designee @ J.T.V.C.C.
13. SAVAGE, ?. Lt. @ J.T.V.C.C.
14. DANBERG, C. Former, D.O.C. COMMISSIONER, Address Unknown
- 15.

WITNESSES

- I. MERSON, L., Grievance Liaison, @ J.T.V.C.C.
- II. MAY, P., Counselor, @ J.T.V.C.C.
- III. PIERCE, Warden, @ J.T.V.C.C.
- IV. DUTTON, M., Grievance Liaison, @ J.T.V.C.C.
- V. TOWNSEND, Sgt., @ J.T.V.C.C.
- VI. KNIGHT, M, Food Services Administrator, Dover Office
- VII. *W. J. ...*
- VIII. *2*
- IX. *3*
- X. *4*
- XI.
- XII.

1 APPENDIX TO PAGE 5 OF 1

2
3 Which of (my) Federal Constitutional rights have been violated!

4 First Amendment – Religious issues; *fourteenth Amendment;*

5 Fifth Amendment & Eight Amendment – Due Process issues; Prison conditions – Relating to meals; etc.

6 And so on.

7 PARTIES

8
9 **Plaintiff** was at all times relevant to this action a prisoner in the State of Delaware. Plaintiff is Jewish from
10 birth, and that that has never changed. Prior to incarceration, he was observant to the practices, observances, rituals,
11 etc., of the Jewish faith. Including eating “Kosher,” observing “Sabbath,” observing “Pesach” (Passover), observing
12 “Sukkot,” etc. *These are categorically binding upon every Jewish person.*

13 Plaintiff has suffered injury as a result of the denials by D.O.C., personnel of the allowance of the ability
14 to observe, practice, and follow the various rituals, and other practices of his faith.

15 This denial of accessibility to what other Jewish men were at that time being provided, caused additional
16 pain, suffering, and humiliation, etc., for plaintiff.

17 Each holyday, Sabbath, Pesach, Sukkot, etc., are specifically required by the faith to be followed, and each
18 has special & meaningful spiritual meanings attached to them, which is required, and which aides in his
19 development and spiritual growth, when observed and practiced, etc.

20
21 **Defendants** named herein, is or was at all times relevant to the events described herein this action are/or
22 were employee’ of the Department of Corrections of Delaware. Each was acting under both “Color of Law”
23 (Federal, State, or local), and as individuals, and are being sued in each capacity. Each defendant lacked penological
24 and/or security justification to ill-treat plaintiff in the manners described herein during his confinement at J.T.V.C.C.
25 Plaintiff believes upon information and belief, that each defendant acted wilfully and possibly with wanton and
26 malicious intent, etc. in their official capacity’s, and in their individual capacities. Each defendant’s acquiescence

of the unconstitutional behavior of each of their subordinates; Consistently violated their duty to inquire about such activities, or complaints made, and to be responsible for preventing such; the failure to supervise, and/or the official acquiescence which allowed the continued existence of prison conditions which, themselves, are injurious to prisoners, that they amounted to constitutional violations,

Plaintiff asserts that each defendant by their actions or inactions have deprived him of his federal constitutional rights, and each has acted under color of law, and in their individual capacities. Each defendant should be held accountable for, the acts of omission or commission, because they were aware of the problems, but failed to correct, intervene, or resolve the issues complained thereof. Each D.O.C., personnel participated in a civil conspiracy, because they allowed the violations to continue, after becoming aware of them, by way of letters or grievances, or direct verbal communications to them.

Defendants are liable to plaintiff, when they chose to deny plaintiff his guaranteed constitutional rights. Each defendant engaged in a pattern of conduct which denied plaintiff the right to practice and exercise his religious beliefs.

SUMMARY STATEMENT OF CASE

Issue #1 While housed at Gander Hill, and S.C.I., there were no provisions known to plaintiff for Jewish inmates via the religious department. Plaintiff arrived at J.T.V.C.C. in or about 2008. Shortly thereafter arriving, plaintiff became aware of religious programs for persons of the Jewish faith. Plaintiff attempted contact with the Chaplaincy department for access to these programs. Plaintiff communicated with the Chaplaincy head (Defendant Pennell) in person for a few minutes during a round he made in the housing unit. Where upon defendant Pennell informed plaintiff that they have a form which he could fill out which allows the honoring of plaintiff's faith via the available chapel programs. This form was sent, and filled out, and returned to defendant Pennell. Where upon plaintiff believed this was the only avenue for which he could observe, practice and attend to the various aspects of his faiths commandments, guidelines, etc. Defendant Pennell offered no other information, nor access to the various Jewish services, nor functions.

1 A very brief time thereafter this event, plaintiff learned that there were actually other Jewish men herein at
2 J.T.V.C.C., and there were Jewish, not Protestant based religious programs, services, etc. And that there were men
3 actually practicing, and observing the Jewish faith within the institution.

4 Plaintiff revoked/annulled the form for which he signed previously, via misinformation/or lack thereof,
5 given to him by the defendant Pennell.

6 Where upon, plaintiff requested of the defendant Pennell, to allow plaintiff to attend, observe, and practice
7 his faith along with the other men here at J.T.V.C.C. Plaintiff was denied this request by defendant Pennell.
8 Claiming he needed his (the chaplain's) Rabbi to confirm plaintiff's faith as a Jewish person. This denial of the
9 observance, practice, etc. went on approximately four years causing the various constitutional violations.

10 During this four year period, plaintiff filed several grievances relating to this issue. He also wrote this Rabbi
11 several times. During this time, the Rabbi never made any contact with plaintiff, as promised by defendant Pennell.
12 Thus, they had abandoned their duty; which defendant Pennell cited was a much needed requirement for plaintiff's
13 approval.

14 Defendant Pennell made no apparent effort to resolve this critical issue, via any other avenue. Such as
15 a) making the decision for himself to recognize plaintiff's being Jewish, as is done for men of other faiths here at
16 J.T.V.C.C.;

17 b) Contact another Rabbi;

18 c) Asking his supervisor or any superior to waive the requirement of Rabbi approval. Rather than leaving plaintiff
19 in a state of not being able to effectively, and properly observe, practice and learn of his faith during these times.

20 Thus, causing distress, humiliation, pain and suffering, etc., to plaintiff. Outright denying plaintiff his
21 constitutional rights to practice, and observe his recognizable Jewish faith.

22 During this time, plaintiff could not observe several extremely important aspects of his faith, because of the
23 lack of recognition by the prison and chapel authorities. Nor to even utilize the Jewish book library at the chapel
24 during that time. And is still having problems accessing this library, to-date.

25 At the low level of the grievance hearings, plaintiff prevailed as his being properly listed as a Jewish male
26 even upon intake to the prison. The committee agreed that plaintiff be allowed to observe and practice his Jewish

1 faith. Even though plaintiff did not initially appeal this approval, the administrative level (Next level in the
2 grievance process.) chose to reply, and over ruled the committees decision, and further denied plaintiff the
3 recognition he desperately needed, and access to the Jewish faith, and all its activities, functions, etc., therein.

4 Outright denying plaintiff his constitutional rights to practice, and observe his recognized^{ed} Jewish faith.
5 Plaintiff based on information and belief, declares each grievance was met with resistance by the administrative
6 staff. Rather than attempting to resolve each issue; according to the grievance systems purpose.

7 Plaintiff exhausted the appellate process each time, to no avail. Resulting in further distress, pain,
8 humiliation and suffering, etc.

9 After this almost four year period, plaintiff learned from a chapel clerk (inmate) that there is a form which
10 may help resolve this long overdue problem for him. Therefore, plaintiff requested and received the form, filled it
11 out and returned it to the defendant Pennell. Where upon, inspite of plaintiff coming into the prison system claiming
12 to be a Jewish person, had to file a form claiming a change of faith. *Which made no sense to plaintiff.* After doing
13 this, Plaintiff, within approximately a years' time was finally recognized as a Jewish person and granted the
14 recognition as a Jewish person here at J.T.V.C.C.. And was therein allowed to observe, and practice his faith
15 according to the Torah (Bible). Exhibits available for these issues.

16
17 **Issue #2** Plaintiff upon receiving this recognition started receiving the "Kosher" diet. Soon thereafter, plaintiff
18 had experienced several different events where the food was an issue. Plaintiff spoke with defendant, C. Senato, food
19 Services Director, relating to the kosher meals. Including a particular meal which was being served to plaintiff,
20 which he could not eat, because of its being laced with chunks of fat, etc. Prohibited by plaintiffs religious sect and
21 faith.

22 Shortly thereafter, the culinary staff (inmates) had tampered with the kosher meals contents. Plaintiff
23 ignored it once. When it happened a second time, plaintiff showed the meal to the building Sargent, Mr. Town^{w.f.}send.
24 (Witness) And the meal was so over cooked, it was not eatable. [The inmates had removed the kosher main course
25 item, and replaced it with the main course item being served to the prison population.] The culinary steward in
26 authority over that chow hall, gave Sargent Townsend a hard time, but finally relented and ordered a replacement

1 meal. Upon receiving it, plaintiff showed Sargent Townsend the main course item just to confirm and prove plaintiff
2 was not lying about the stolen food item. It was the same labeled meal as previously served.

3 As a result of this theft of the food item a second time, and the disrespectfulness by the culinary staff (paid
4 employee) plaintiff wrote up a grievance, filed it, and for several months received no response. [Plaintiff believes
5 that as result of the grievance filling,] He experienced retaliation in the form of being provided the same (Non-
6 kosher, according to the Torah's prohibition against eating fat.) meal for seven days straight. An action which would
7 never have been acceptable to the general population of prisoners. Therefore, plaintiff could not eat a meal a day
8 for those seven days straight.

9 Plaintiff's grievance did not prevail. Plaintiff exhausted the appellate process in a timely fashion, to no
10 avail. The flat out denials and the forcing of a non-eatable meal upon plaintiff, caused distress, pain and suffering,
11 etc. ~~to plaintiff~~. Outright denying plaintiff his constitutional rights to practice, and observe his recognized Jewish
12 faith.

13 Over the last few years of plaintiff's being recognized as a Jewish person, he has had to file numerous
14 grievances over the lack of concern, improper meals and meal serving amounts, etc., most to no avail. Some he
15 signed off on, because the matter was then mute. But, each grievance was met with extreme resistance by the
16 culinary staff. Rather than attempting to resolve each issue. According to the grievance systems purpose.
17 Exhibits available for these issues.

18
19 **Issue #3** After a few years went by, plaintiff started to experience a withdrawal of activities, formerly granted by
20 the prison administration, as part of the practice, and observance of the Jewish faith. Such as, the denial of a place
21 to worship his CREATOR, weekly. Certain rituals, and holiday practices, and observances, are no longer being
22 allowed. E.g., Sukkoth, wherein, the prison provided a tent like structure to sit in for that week. On the chapel
23 grounds, were one of the tower officers could easily observe plaintiff while he read and or worshiped his
24 CREATOR.

25 According to defendant Pennell, plaintiff had been approved for the receipt of a religious item required
26 according to his sects' observances. When he finally was able to obtain one, by the graciousness of his faiths'

1 teachers, defendant Pennell told plaintiff, he would no longer be allowed to receive this item, now. In part because
2 of his temporary housing unit. And in part because of the administrations changing, and their own set of regulations
3 [ideas] concerning such items.

4 Plaintiff had not yet filed a grievance on this matter, because he is at a loss as to how to grieve it, based on
5 past experiences with the grievance systems failure to resolve issues. Since it is the prison whom denies prisoners
6 access to its rules, regulations, etc., he is at a loss as to how to even attempt to contend these issues. The grievance
7 system ignores laws, regulations, etc. Even scheduling hearing days on ones' law library days and times, causing
8 one to miss his very limited, and much needed, law library time, or lose out on the hearing, and forfeiting the
9 grievance. Plaintiff has one such event on the 29th of April. Exhibits available for these above cited issues.

10
11 **Issue #4** Plaintiff declares that as a Jewish male his faith requires him to not work from Friday evening [at sun
12 down] to Saturday evening [at sun down]. Plaintiff was classified to the J.T.V.C.C., work pool upon having his
13 classification in 2008/2009

14 The denial of a privilege to adherents of one religion while granting it to others is discrimination on the
15 basis of religion in violation of the equal protection clause of the Constitution. {Citation withheld.}

16 After waiting for several years, plaintiff was frustrated, zealously pursued employment. He spoke with one
17 of the Lieutenants responsible for employment. This Lieutenant referred plaintiff to the culinary department. During
18 the end of the [mass] interview [Plaintiff and numerous other prisoners plaintiff inquired concerning days off,
19 because of his faiths commandment's not to work on the Sabbath. [Friday to Saturday Ms. Morris [Lieutenant
20 complained that she has to work on her day of worship, (Sunday's) so she would not make any exceptions for others.

21 She never called plaintiff back, to be employed. Because of this action by her, plaintiff was not able to find
22 employment anywhere else within the institution for a long time. During this time period, J.T.V.C.C., enforced a
23 policy of, "No work in culinary department, no work anywhere else within the institution." He had several
24 interviews, and the interviewers desired to see the plaintiff hired, because of his ability to do the jobs offered. But,
25 because of his never working in the culinary department, nor was even given a chance to be further evaluated for
26 the position(s,) nor was he ever hired.

1 Several years later, Plaintiff was eventually offered a building janitorial position. Plaintiff took the position,
2 based on the promise that it would only be temporary; {As to working on the Sabbath.} Plaintiff did inform the
3 (inmate) work supervisor of his non-work requirements on Fridays & Saturdays. So against plaintiff's beliefs, he
4 accepted the job. Approximately four months had passed, before, plaintiff was offered another position. Which he
5 accepted. A move upward towards that promise. Plaintiff was allowed a helper (inmate volunteer) whom did the
6 brunt of the work on Saturdays. So this allowed the plaintiff to semi-follow his faiths precepts. Then the volunteer
7 was removed. (Administration stated – no volunteers allowed.)

8 So plaintiff inquired of his building Sergeants to possibly the change the days of sheet exchange from
9 Saturdays to Sundays, so he could observe his faith, more appropriately. He was denied.

10 And shortly thereafter, Plaintiff was shook-down, and the officer sought to write up Plaintiff. (For items,
11 which were allowable to be retained - because of his position, as a worker.) The Lieutenant who did the hearing,
12 found plaintiff guilty in part, and not guilty in part. And restored the employment, on a 90 day probation period.

13 The next morning after the hearing Sergeant Townsend called plaintiff into his office and fired him.
14 Quoting, "You received a write-up; that is why I am firing you ..."

15 Plaintiff appealed and never received any responses. He appealed to several administrative staff, to no avail.
16 Work assignments that require prisoners to violate their religious beliefs may violate the First Amendment of
17 RFRA/RLUIPA. {Citation withheld.}

18 Plaintiff may supplement further, if needed. And incorporates all previously submitted documents for
19 clarification purposes. Exhibits available for these issues.

20 Plaintiff has documentation of his claims, and can submit when the court is ready to receive them. One
21 source Plaintiff has read, says do not send with the complaint, another says to do so. *May it please the Court, to*
22 *advise plaintiff of when, he should submit these documents?*

24 I. ADMINISTRATIVE PROCEDURES

25 Is there a grievance procedure available at your institution? Yes

26 Have you filed a grievance concerning the facts relating to this complaint? Yes, where applicable.

1 Plaintiff declares that each defendant was made aware of the issues grieved herein, by way of either direct
2 communications, or via the grievance system procedures. And their responding to the various communications
3 and/or grievances provided, or an appeal made to them.

4 Plaintiff has exhausted his administrative remedies as required by the prison system grievance policy on
5 the issues contained herein, *where available remedy was provided*. Where issue was permissible to be grieved, etc.
6

7 **II. RELIEF SOUGHT**

8 a. Declare that the acts and omissions described herein, violated plaintiff's rights under the
9 Constitution and laws of the United States;

10 b. Direct that this Honorable Court utilize oversight of D.O.C., to ensure compliance with established
11 laws, statutes, regulations, etc., and whatever jury verdict of this case, if plaintiff prevails. Say, for a seven
12 year period.

13 c. The court ordered correction of D.O.C., policies, directives, etc., governing these issues. To bring
14 D.O.C., in line with current and established laws, relating to the issues complained of herein. Via injunctive,
15 and permanent, or whatever just and equitable relief that this Honorable Court deems necessary.

16 d. Order defendants to pay compensatory and punitive damages, and any other relief available to
17 plaintiff. E.g., \$50.00 per day, per violation of plaintiff's rights, per staff member. Whether they be
18 compensatory, and/or punitive, etc.

19 e. Order defendants to pay reasonable attorney fees and costs;

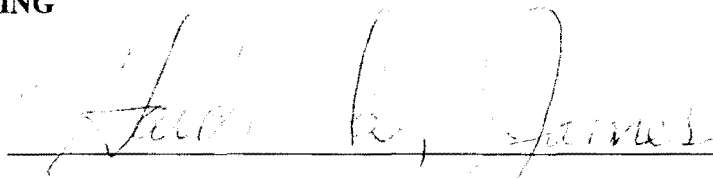
20 f. Order that D.O.C., employees be directed, that they will not retaliate against plaintiff, nor order,
21 direct or consent to the same, whether he prevails in this case, or not.
22

23 **III. PRISONER'S LITIGATION HISTORY**

24 Have you brought any other lawsuits in state of federal court while a prisoner? No
25
26

1 **IV. PLAINTIFF'S DECLARATION AND WARNING**

2
3 26 May 2015



4 Hardwick, James 00529087
5 J.T.V.C.C.
6 1181 Paddock Rd.
7 Smyrna, DE. 19977-9679
8
9
10
11

CERTIFICATE OF SERVICE

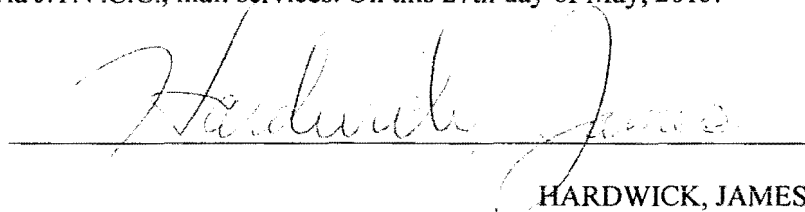
Plaintiff, HARDWICK, JAMES, hereby certifies that he has served a true and correct copy of the attached Amended complaint upon the following persons:

Judge, Sue L. Robinson
% District Court
844 N. King St. Unit 18
Wilmington, DE. 19801-3570

States Attorney
Mr. Ryan Connell, Esq.
820 N. French St.
Wilmington, DE. 19801

A.C.L.U.
Mr. R. Morse
100 West 10th St. Ste. 603
Wilmington, DE. 19801

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the institutional drop box to be forwarded to the United States postal service via J.T.V.C.C., mail services. On this 27th day of May, 2015.


HARDWICK, JAMES

1 **Appendix to Issue #1**

2 Prisoners should be afforded every reasonable opportunity to attend religious services. Denial of religious
3 services on a single occasion, without justification, violated both first Amendment and RFRA. How much more
4 almost a four year period? {Citations withheld.}

5 The Supreme Court has held that “reasonable opportunities must be afforded to all prisoners to exercise
6 the religious freedom guaranteed by the first Amendment and fourteenth Amendments ...” {Citation withheld.}

7 Group worship services are “essential parts of the right to the free exercise of religion.” {Citation with-
8 held.}

9
10 **Appendix to Issue #3**

11 Plaintiff’s entitlement to a kosher diet depended on whether he sincerely believed he should keep kosher,
12 not on whether a prison Rabbi agreed that he was Jewish. {Citation withheld.}

13 The laws of kosher are categorically binding upon every Jewish person. Plaintiff’s entitlement to a kosher
14 diet depended on whether he sincerely believed he should keep kosher, not on whether a prison Rabbi agreed that
15 he was Jewish. {Citation withheld.}

16 The laws of kosher address a comprehensive dietary system, including type of foods permitted to be eaten;
17 and insurance of non-contamination of non-kosher ingredients.

18 D.O.C., should acknowledge “keeping kosher” is an intrinsic element of the faith of some Jews, and Court
19 should find keeping kosher constitutes religious exercise for plaintiff.

20 The rule is well established that prison officials must provide a prisoner a diet that is consistent with his
21 religious scruples. The state is under duty to provide an adequate diet for all inmates. It is society’s responsibility
22 to protect the life and health of its prisoners. No doubt that the Constitution requires that the jail diet be adequate to
23 maintain the health of its inmates...” Officials are required under the First Amendment to provide inmate with a
24 diet sufficient to sustain him in good health without violating kosher laws...” Failure to provide kosher food
25 prepared according to the laws of Kashrut states a constitutional claim. {Citation withheld.}

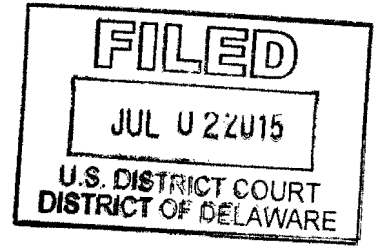
26 “...failure to provide diet conforming to ... religious beliefs states a claim.” {Citation withheld.}

1 Defendants have placed a substantial pressure and burden on plaintiff to modify his behaviors and to violate
2 his beliefs. Including not meeting his nutritional needs. Burden is substantial if it “truly pressures the adherent to
3 significantly modify his religious beliefs,” which occurs “when it either (1) influences the adherent to act in a way
4 that violates his religious beliefs, or (2) forces the adherent to choose between, on the one hand, enjoying some
5 generally available, non-trivial benefit, and, on the other hand, following his religious beliefs...” {Citations
6 withheld.}

7 Courts have barred prison officials from depriving sincerely religious prisoners of religious exercise as a
8 result of their violating their sincere beliefs. {Citation withheld.}

9
10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE



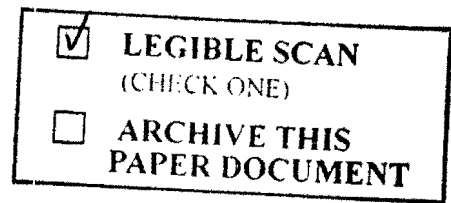
HARDWICK, JAMES, Pro se
Plaintiff
vs.

:
:
:
:
:
:
:

Civ. A. No. 15-376

Jury trial Requested

PHELPS, P. et al.
Defendants



AMENDED COMPLAINT

1 Additional Defendant missed (when typing complaint) – Morris, (Cheryl or Sheryl) Lt. Whom is
2 employed as a food services Lt., at J.T.V.C.C.

3 Plaintiff requests that each defendant be called as a witness in this case. In addition to the potential
4 witness list provided.

5 The actions of each defendant without need or provocation(s) from plaintiff and their failures to
6 intervene, to prevent the constitutional violations and ill-treatment's constitutes cruel and unusual
7 punishments in violation of the Eight Amendment of the U.S. Constitution.

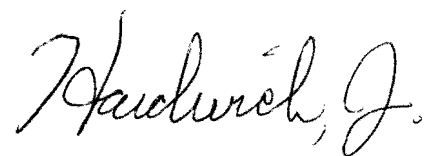
8

9 **WHEREFORE**, plaintiff requests that the court grant the following relief:

10 A. issue a declaratory judgment stating that:

11 1. The Constitutional rights and the abuse of plaintiff by various D.O.C.'s employee's actions or
12 inactions constitute violations under the First, Eight, (etc.,) Amendments of the United States Constitution,
13 and an award shall be granted to plaintiff.

- 1 B. Award compensatory damages in the following amounts:
 - 2 1. Fifty dollars (\$50.00) per day per violation, *while the violation continued unresolved by them*. For
 - 3 defendant's Pennell, Hosterman, Senato, Morris, Delay, Kearney, Danberg, Phelps, for the violations and
 - 4 injuries sustained as a result of their actions or inactions.
 - 5 2. Twenty dollars (\$20.00) per day from each additional defendant *while the violation continued*
 - 6 *unresolved by them*.
- 7 C. Award punitive damages in the amount of:
 - 8 1. Twenty-five thousand (\$25,000.00) each against defendant.
- 9 D. Award any additional compensations the jury or court deems appropriate.

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23 HARDWICK, JAMES
24 J.T.V.C.C. 00529087
25 1181 PADDOCK RD.
26 SMYRNA, DE. 19977-9679