EXHIBIT (E)

THIRD CIRCUIT

JUDGMENT, OPINION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1542

ROBERT TAYLOR,
Appellant

v.

THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE; THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC); FRANK PALUMBO, Currently Official Judge; THE CITY OF PHILADELPHIA; OBRIEN, Currently City of Philadelphia Police Officer #7461; UNNAMED AND UNKNOWN CITY OF PHILADELPHIA POLICE OFFICERS;THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF); GERALD MAY, Currently Warden; THE PHILADELPHIA SHERIFFS OFFICE; THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION; CHRIS ANGELO, Currently Public Defender; SGT. LEBESCO, Prison Official

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On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil Action No. 2:17-cv-03369)
District Judge: Honorable Joel H. Slomsky

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 4, 2020

Before: AMBRO, GREENAWAY, JR. and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for Eastern District of Pennsylvania and was submitted pursuant to Third Circuit

LAR 34.1(a) on February 4, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 19, 2019, be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: February 14, 2020

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Appellant

v.

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(Opinion filed: February 14, 2020)

OPINION*

PER CURIAM

Pro se appellant Robert Taylor appeals from the District Court's dismissal of his claims pursuant to 42 U.S.C. § 1983 as well as his related state law claims. For the reasons that follow, we will affirm the District Court's judgment.

I.

In 2017, Taylor filed a complaint in the District Court. After the District Court dismissed his complaint sua sponte, Taylor appealed. On remand from this Court, Taylor amended his complaint to allege a variety of civil rights claims against eleven named defendants as well as unidentified defendants. Many defendants moved to dismiss, and the District Court granted their motions. Taylor sought relief under Federal Rule of Civil Procedure 60(b)(1) and (b)(6). When the District Court denied his motion, he timely appealed.

Taylor was arrested and detained for allegedly violating his probation in November 2015 and remained incarcerated until he was released after his violation of

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

probation proceedings concluded on July 12, 2017.[1] In his amended complaint, Taylor alleged that he was stopped, asked harassing questions, and arrested without cause by Officer Obrien and an unidentified officer. He further maintained that he was held in a police vehicle for several hours while he was handcuffed before he was processed by police officers. After he was charged with violating his probation, Taylor's hearing on the matter was repeatedly continued while Taylor completed mental health and competency evaluations. Taylor maintained in his amended complaint that the Philadelphia Sheriff's Office repeatedly brought him to and from the Curran-Fromhold Correctional Facility ("CFCF"), where he was detained pending the outcome of his violation of probation hearing, to the Philadelphia Criminal Justice Center ("CJC"). Taylor contended that Judge Frank Palumbo, who presided over Taylor's violation of probation matter in the Philadelphia County Court of Common Pleas, conspired with numerous defendants to keep him detained without cause. Taylor also alleged that he wrote to the Defender Association of Philadelphia in January 2017, seeking to terminate his representation by a public defender.

While he was incarcerated at CFCF, Taylor maintained that unidentified prison

[1] Taylor's public state criminal record contains information regarding his 2015 arrest and his subsequent criminal proceedings. The District Court appropriately took judicial notice of the public records of Taylor's criminal proceedings in its decisions, as it may do "at any stage of the proceeding," see Fed. R. Evid. 201(b), (d), contrary to Taylor's assertion on appeal that, in doing so, the District Court improperly converted defendants' motions to dismiss into motions for summary judgment.

officials opened and resealed his legal mail before he could read it. He also maintained that he was forced to share a cell meant for two inmates with two or three other inmates and that he sometimes had to sleep on a plastic "boat" on the ground because there were insufficient beds for all inmates in his cell. Taylor alleged that he was sometimes kept in his cell for up to 20 hours a day, that he was sometimes insufficiently fed, that showers were limited, and that the prison had excessive lockdowns. Additionally, he reported to prison officials in November 2016 that his cell was severely cold for several days.

Taylor next alleged that he was subjected to unreasonable strip searches when he was returning to his cell from other areas of CFCF. He also claimed that defendant Sergeant Lebesco and another correctional officer searched his cell in June 2017 and that during the search, he was sprayed in the eyes with a chemical spray without provocation. Taylor claimed that medical staff purposely denied him medical care for 45 minutes while he remained in restraints after he was brought to the medical unit to receive medical care.

Further, Taylor maintained that he was prevented in participating in religious services, sometimes for months, and prevented from praying in his housing block. Taylor claimed that prisoners of other religious faiths were given designated times and spaces to pray but that he was not. He also alleged that other prisoners had access to a minister of their faith but that he did not. Taylor maintained that while he was fasting due to his faith in June 2016, he was not given food or drink until one to two hours after his fasting was

complete every day and was restricted to his cell. Further, Taylor claimed that he was not provided with a diet that was appropriate for his religious beliefs. Taylor stated that Warden Gerald May either directed prison staff to commit these violations or knew about the violations and failed to discipline his staff.

Finally, Taylor claimed that his dietary needs were neglected when he was not provided with a diet that was suitable for his health conditions, although ultimately his requests for special dietary accommodations were granted. Taylor also alleged that he experienced an asthma attack after the prison delayed refilling a prescription for an asthma inhaler. Taylor further maintained that he was not provided with a breathing treatment that he believed he needed to address his asthma attack.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.[2] We exercise plenary review over the District Court's dismissal of Taylor's claims. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). In our review, "we accept all

[2] As Taylor has made clear in his appellate filings, he never properly served one of the defendants named in his complaint pursuant to Federal Rule of Civil Procedure 4. The District Court did not address this remaining defendant its decisions. Because this defendant was never properly served, it was never a party to the case within the meaning of Federal Rule of Civil Procedure 54(b). See Gomez v. Gov't of Virgin Islands, 882 F.2d 733, 735-36 (3d Cir. 1989); United States v. Studivant, 529 F.2d 673, 674 n.2 (3d Cir. 1976). Thus, the District Court's orders are final and appealable and we have jurisdiction over this appeal. See Gomez, 882 F.2d at 735-36. We construe one of Taylor's filings regarding this service issue — which he has titled as a motion — to be a response to this Court's request for supplemental briefing.

factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011) (citation omitted). Dismissal is appropriate "if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that [the] plaintiff's claims lack facial plausibility." Id. We review a district court's denial of a motion under Rule 60(b)(1) and (b)(6) for abuse of discretion. See Budget Blinds, Inc. v. White, 536 F.3d 244, 251 (3d Cir. 2008).

III.

We agree with the District Court's dismissal of Taylor's claims. First, the District Court properly dismissed Taylor's claims against the CJC and Judge Palumbo. The CJC is not a "person" for purposes of § 1983. See Callahan v. City of Philadelphia, 207 F.3d 668, 673 (3d Cir. 2000). Next, "[a] judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts." Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam). A judge "will be subject to liability only when he has acted in the clear absence of all jurisdiction." Id. (internal quotation marks omitted). Taylor's unsupported personal belief that a conspiracy between Judge Palumbo and various defendants in the court system kept him incarcerated is insufficient to state a claim against any of those defendants. See Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 178 (3d Cir. 2010) ("[T]o properly plead an unconstitutional conspiracy, a plaintiff must assert facts from which a

conspiratorial agreement can be inferred."). Because Taylor's factual allegations do not suggest that Judge Palumbo acted outside of the scope of his position, Taylor's claims against him are barred by absolute judicial immunity.

Next, the District Court correctly dismissed Taylor's claims against the Defender Association of Philadelphia and an individual public defender, Chris Angelo. Public defenders do not act under color of state law for purposes of § 1983 when they "perform[] a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." Polk County v. Dodson, 454 U.S. 312, 325 (1981). Taylor made no factual allegations regarding the Defender Association or his individual public defender aside from his contention that he asked to terminate his representation by a public defender. Thus, Taylor cannot establish that his public defender acted outside of his traditional capacity or that he could state a claim against either defendant.

The District Court also properly dismissed Taylor's claims against CFCF, the Sheriff's Office, and the City of Philadelphia. As the District Court explained, Taylor's claims against both CFCF and the Sheriff's Office are claims against the City of Philadelphia. See 53 Pa. Stat. Ann. § 16257 (requiring that all suits stemming from transactions of any department of the City of Philadelphia be in the name of the City). However, Taylor's allegations against the City failed to state a § 1983 claim.

A plaintiff seeking to pursue a § 1983 claim against a municipality must identify a municipal policy or custom that resulted in his alleged constitutional violations. See

Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690-92 (1978); see also Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996) ("When a suit against a municipality is based on § 1983, [a] municipality can only be liable when the alleged constitutional transgression implements or executes a policy, regulation or decision officially adopted by the governing body or informally adopted by custom."). Because Taylor did not identify any policies or customs in his complaint underlying his remaining allegations regarding his arrest or the individual issues he faced in prison, his allegations did not form a basis for Monell liability by the City. See Monell, 436 U.S. at 690-92. On appeal, Taylor has briefly summarized his allegations but has still not identified any policies or customs that extended beyond his own experience underlying his claims against the City. Accordingly, Taylor's claims against the City, and thus his claims against CFCF and the Sheriff's Office, were properly dismissed.

The District Court also properly concluded that Taylor failed to state an excessive force claim against Lebesco based on his allegations about being sprayed with a chemical spray. Taylor's vague insistence that the application of the spray was unreasonable, without alleging any of the underlying specific circumstances of the incident, is not sufficient to state a claim against Lebesco. See Whitley v. Albers, 475 U.S. 312, 320-21 (1986) (explaining that "whether [a] measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of

causing harm") (internal quotation marks and citation omitted). Although Taylor claims that he was later denied medical care while he remained restrained, he does not contend that Lebesco was involved in any alleged denial of medical care. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) ("A defendant in a civil rights action must have personal involvement in the alleged wrongs.").

Taylor also did not state a claim against Obrien, the officer who arrested him, as he alleged that Obrien was involved with his arrest but did not identify how Obrien personally violated his constitutional rights in any way.[3] See id. Similarly, despite Taylor's unsupported statement that Warden May was aware of his alleged constitutional violations, Taylor did not allege Warden May's personal involvement in any of the incidents alleged in his complaint. See id. The District Court thus properly dismissed Taylor's claims against remaining defendants Lebesco, Obrien, and May.[4]

The District Court did not abuse its discretion in denying Taylor's motion under Rule 60(b)(1) and (b)(6). For the reasons given by the District Court, Taylor's arguments all either lacked merit or were not grounded in a proper basis for relief. See Budget Blinds, 536 F.3d at 251.

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[3] For this same reason, the District Court also correctly concluded that Taylor could not state a claim based on his vague allegations against any unnamed police officer defendant who was involved with his arrest.

[4] The District Court did not abuse its discretion in declining to exercise supplemental jurisdiction over Taylor's state law claims. See 28 U.S.C. § 1367(c).

On appeal, Taylor argues that his complaint, as drafted, sufficiently alleged the facts underlying the claims he sought to pursue; he does not address the deficiencies that the District Court identified with his complaint. See United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005) ("[A]n appellant's failure to identify or argue an issue in his opening brief constitutes waiver of that issue on appeal."). Any further opportunity for amendment would thus have been futile under the circumstances of this case. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

For the reasons above, we will affirm the judgment of the District Court.[5]

[5] In light of our disposition, we deny Taylor's motion to reverse the denial of his motion for reconsideration. We also deny Taylor's motion for sanctions.

EXHIBIT(C)

DISTRICT COURT OPINION,ORDER

- 60 (B) MOTION ORDER
- 42 U.S.C. s 1983 ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR,

Plaintiff,

v.

THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Defendants.

CIVIL ACTION
NO. 17-3369

ORDER

AND NOW, this 14th day of February 2019, upon consideration of Plaintiff Robert Taylor's Motion to Vacate Dismissal (Doc. No. 22), Defendants Criminal Justice Center and the Honorable Frank Palumbo's Response to Plaintiff's Motion (Doc. No. 23), and Defendants Gerald May, Officer Obrien, Sergeant Lebesco, and the City of Philadelphia's Response to Plaintiff's Motion (Doc. No. 24), it is **ORDERED** that Plaintiff's Motion to Vacate Dismissal (Doc. No. 22) is **DENIED**.[1]

[1] On September 22, 2009, Plaintiff Robert Taylor was arrested in Philadelphia and charged with various state offenses, including the possession of a firearm and making false statements to authorities. Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 5 (Ct. Com. Pl. Philadelphia, filed July 28, 2010). After a trial, he was found guilty and sentenced to a county prison sentence and probation. Id. at 6-7.

On November 16, 2015, Plaintiff was arrested and detained for violating his probation. Id. at 19; (Doc. No. 10 at 3). His case was assigned to the Honorable Frank Palumbo, a judge on the Court of Common Pleas for Philadelphia County, who presides in the Philadelphia Criminal Justice Center ("CJC"). Throughout the proceedings, Plaintiff was housed at the CJC and the Curran-Fromhold Correctional Facility ("CFCF"). He claims that while detained at the CFCF, he was subjected to overcrowding, unreasonable searches, mail tampering, religious discrimination, and deprivation of his special dietary needs. (Doc. No. 10.)

In February 2016, the Court of Common Pleas appointed Assistant Defender Christopher Angelo from the Defender Association's Mental Health Unit to represent Plaintiff. (Doc. No. 13 at 4.) On January 23, 2017, Plaintiff told the Defender Association that he no longer wanted

it to represent him. Because he did not retain other counsel or express his desire to proceed pro se, the Defender Association continued to represent Plaintiff until he was released from custody on July 12, 2017. (Id.; Doc. No. 10 at 4.)

On April 23, 2018, Plaintiff, proceeding pro se, filed in this Court an Amended Complaint pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights arising out of his arrest on November 16, 2015 and his subsequent confinement at the CFCF. (Doc. No. 10.) Named as Defendants were the Commonwealth of Pennsylvania, the Philadelphia District Attorney's Office, the Philadelphia Criminal Justice Center ("CJC"), the Honorable Frank Palumbo, the City of Philadelphia, the Philadelphia Department of Prisons, the Curran-Fromhold Correctional Facility ("CFCF"), the Philadelphia Sheriff's Department, the Philadelphia Defender Association, Assistant Public Defender Christopher Angelo, Philadelphia Police Officer Obrien, CFCF Warden Gerald May, and Sergeant Lebesco, an official at the CFCF. (Id. at 1-2.) Plaintiff sued Defendants for injunctive and monetary relief.

On May 15, 2018, Defendants Criminal Justice Center and the Honorable Frank Palumbo filed a Motion to Dismiss the Amended Complaint. (Doc. No. 11.) Then, on May 25, 2018, Defendants Defender Association and Assistant Public Defendant Christopher Angelo filed a Motion to Dismiss the Amended Complaint. (Doc. No. 13.) On June 4, 2018, Defendants City of Philadelphia, the CFCF, the Philadelphia Prison System, the Philadelphia Sheriff's Department, Warden Gerald May, Officer Obrien, and Sergeant Lebesco filed a Motion to Dismiss the Amended Complaint. (Doc. No. 14.) Plaintiff did not file a response or request additional time to do so. Nor did he request the opportunity to further amend the Amended Complaint.

On December 12, 2018, the Court issued two separate Orders, one of which granted the Motion to Dismiss filed by the CJC and Judge Palumbo (Doc. No. 18), and one of which granted the Motion to Dismiss filed by the Defender Association and Assistant Public Defender Christopher Angelo (Doc. No. 19). That same day, the Court issued an Opinion and Order, granting the Motion to Dismiss filed by Defendants City of Philadelphia, the CFCF, the Philadelphia Prison System, the Philadelphia Sheriff's Department, Warden Gerald May, Officer Obrien, and Sergeant Lebesco. (Doc. Nos. 20, 21.)

On December 22, 2018, Plaintiff Robert Taylor filed the present Motion to Vacate the Court's Orders, pursuant to Federal Rule of Civil Procedure 60(b). (Doc. No. 22.) In the Motion, he argues that the Court erred in granting Defendants' respective Motions to Dismiss and that the Court should vacate those Orders. (Id.) On January 8, 2019, the CJC and Judge Palumbo filed a Response to Plaintiff's Motion (Doc. No. 23), and on January 14, 2019, the City of Philadelphia, Warden Gerald May, Officer Obrien, and Sergeant Lebesco filed a Response to Plaintiff's Motion (Doc. No. 24). The Defender Association and Assistant Public Defender Christopher Angelo did not file a response.

Under Federal Rule of Civil Procedure 60(b), there are six grounds of relief from a final judgment order, that is, six ways to support a motion for reconsideration.

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic);
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6).

"The purpose of a motion for reconsideration . . . is to correct manifest errors of law or fact or to present newly discovered evidence." Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 251 (3d Cir. 2010) (quoting Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (quotation omitted)). Thus, a proper motion for reconsideration "must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." Wiest v. Lynch, 710 F.3d 121, 128 (3d Cir. 2013) (quoting Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010)). However, "[a] motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through—rightly or wrongly.'" In re Blood Reagents Antitrust Litig., 756 F. Supp. 2d 637, 640 (E.D. Pa. 2010) (quoting Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993)). Therefore, "[m]ere dissatisfaction with the Court's ruling . . . is not a proper basis for reconsideration." Progressive Cas. Ins. Co. v. PNC Bank, N.A., 73 F. Supp. 2d 485, 487 (E.D. Pa. 1999). Furthermore, "[b]ecause federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." In re Asbestos Prods. Liab. Litig. (No. VI), 801 F. Supp. 2d 333, 334 (E.D. Pa. 2011) (quoting Cont'l Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995)).

Here, Plaintiff asks the Court to vacate three Orders: (1) the Order granting the Motion to Dismiss filed by the CJC and Judge Palumbo; (2) the Order granting the Motion to Dismiss filed by the Defender Association and Assistant Public Defender Christopher Angelo; and (3) the Order granting the Motion to Dismiss filed by the City of Philadelphia, the CFCF, the Philadelphia Prison System, the Philadelphia Sheriff's Department, Warden Gerald May, Officer Obrien, and Sergeant Lebesco. The Court will address Plaintiff's arguments in turn.

Defendants CJC and the Honorable Frank Palumbo

Plaintiff argues that the Court should vacate its Order which dismissed his claims against the CJC and Judge Palumbo. He first contends that the Court made a mistake in granting Defendants' Motion to Dismiss and argues that his claims for injunctive relief against the CJC and Judge Palumbo should survive based on the doctrines espoused in (1) Pulliam v. Allen, 466

U.S. 522 (1984), and (2) Ex Parte Young, 209 U.S. 123 (1908). (Doc. No. 22 at 3-4.) The Court disagrees.

As noted above, Plaintiff sued the CJC and Judge Palumbo for injunctive and monetary relief, pursuant to Section 1983. The Court dismissed Plaintiff's claims against the CJC and Judge Palumbo, citing Defendants' Eleventh Amendment sovereign immunity. (Doc. No. 18.) Under the Eleventh Amendment, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." Jones v. Sussex Correctional Institute, 725 Fed. App'x 157, 159 (3d Cir. 2017) (quoting Edelman v. Jordan, 415 U.S. 651, 662-63 (1974)). Eleventh Amendment immunity protects not only states, but also state agencies. Fitchik v. New Jersey Transit Rail Operations, 873 F.2d 655, 659 (3d Cir. 1989) (en banc). Relevant here, courts have repeatedly found that the Court of Common Pleas is an arm of the Commonwealth of Pennsylvania, and as such, is entitled to Eleventh Amendment sovereign immunity which would bar a suit against it in federal court. See, e.g., Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 240 n.1 (3d Cir. 2005). Thus, because the CJC is an arm of the Court of Common Pleas, the Court held that it was protected by the Eleventh Amendment and dismissed Plaintiff's Section 1983 claim against it. (Doc. No. 18.)

For similar reasons, the Court dismissed Plaintiff's Section 1983 claim against Judge Palumbo in his official capacity. (Id.) An official-capacity suit against a state official "is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Hence, by suing Judge Palumbo in his official capacity, Plaintiff actually sued the government entity of which Judge Palumbo is an agent—the Court of Common Pleas of Philadelphia. Therefore, the Court also dismissed Plaintiff's claims against Judge Palumbo on Eleventh Amendment grounds. (Doc. No. 18.)

Now, however, Plaintiff contends that the Court erred in dismissing his claim for injunctive relief against the CJC. In his Motion to Vacate Dismissal, he cites to Ex Parte Young, claiming that the case stands for the proposition that state agencies can be sued for injunctive relief. (Doc. No. 22 at 3-4.) But Plaintiff is incorrect. In Ex Parte Young, the United States Supreme Court held that private parties like Plaintiff could sue state officials in their official capacities under Section 1983 for injunctive relief. 209 U.S. at 155-56. Notably, the Court did not extend this doctrine to permit private parties to sue state agencies for injunctive relief pursuant to Section 1983. Consequently, Plaintiff's reliance on Ex Parte Young is unavailing.

Likewise, Plaintiff argues that the Court erred in dismissing his claim for injunctive relief against Judge Palumbo. In support of his argument, he cites to Pulliam, which held that Eleventh Amendment immunity does not bar injunctive relief against a judicial officer. 466 U.S. at 544. But Plaintiff ignores the Federal Courts Improvement Act of 1996 ("FCIA"). Pub. L. No. 104-317, 110 Stat. 3847. After Pulliam, Section 309(c) of the FCIA amended Section 1983 to provide that "'injunctive relief shall not be granted' in an action brought against 'a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable.'" Azubuko v. Royal, 443 F.3d 302, 304 (3d Cir. 2006) (quoting 42 U.S.C. § 1983). In this instance, Plaintiff has not

alleged that a declaratory decree was violated or that declaratory relief is unavailable. Thus, Plaintiff's argument that the Court erred in rejecting his claim for injunctive relief lacks merit.

Plaintiff also argues that "newly discovered evidence" shows that he should not have been arrested on September 22, 2009 for possessing a firearm. (Doc. No. 22 at 2.) The alleged new evidence is a copy of Plaintiff's permit to carry a concealed weapon or firearm. (Doc. No. 22 at 15.) Newly discovered evidence on which a motion for relief from judgment is based must have been in existence at the time of the trial or hearing upon which the decision was based, but the movant must have been unable after some effort to have discovered the evidence before the court's decision. Ulloa v. City of Philadelphia, 692 F. Supp. 481, 483-84 (E.D. Pa. 1988). Further, the evidence must be material—that is, the evidence would have changed the court's decision if it had been introduced. Id.

Here, Plaintiff's argument fails for two reasons. First, introduction of this evidence would not have changed the Court's decision. Nowhere in the Amended Complaint did Plaintiff allege that the September 22, 2009 arrest was illegal or improper. Rather, the subject of the Amended Complaint was the November 16, 2015 arrest. (See Doc. No. 10.) As a result, whether Plaintiff had evidence to dispute his September 22, 2009 arrest would not have changed the Court's decision to dismiss claims related to his November 16, 2015 arrest. Second, even if this evidence were relevant, it is not newly discovered. Plaintiff has not shown that this evidence existed when the Motion to Dismiss was filed, but that after some effort, he could not discover it before the Court rendered a decision. Instead, this evidence appears to have been in his possession since his September 22, 2009 arrest. Consequently, Plaintiff's argument is without merit.

For these reasons, the Court will deny Plaintiff's Motion to Vacate Dismissal as it relates to the Court's Order dismissing Plaintiff's claims against Defendant CJC and Judge Palumbo (Doc. No. 18).

Defendants Defender Association and Assistant Public Defendant Christopher Angelo

Next, Plaintiff contends that the Court erred in dismissing his claims against the Defender Association and Assistant Public Defender Christopher Angelo. He argues that the Court overlooked allegations that on January 23, 2017, he asked the Defenders Association to stop representing him, but they continued to do so. Plaintiff claims that this is evidence that the Defenders Association and Angelo conspired against him to keep him in jail. (Doc. No. 22 at 4-5.) The Court disagrees.

Section 1983 provides that every person who, acting under color of state law, subjects another person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ." 42 U.S.C. § 1983. But public defenders, like those employed at the Defender Association, do not act under color of state law when performing traditional functions of counsel to a defendant in a criminal proceeding. Pittman v. Martin, 569 Fed. App'x 89, 91-92 (3d Cir. 2014). Accordingly, they cannot be sued under § 1983 for their actions as public defenders. Polk Cty v. Dodson, 454 U.S. 312, 325 (1981). As a result, the Court dismissed Plaintiff's claims against these Defendants.

Nevertheless, Plaintiff claims that Defendants forfeited their Section 1983 immunity when they "conspired" with other parties to keep him in jail. (Doc. No. 22 at 4-5.) Public Defenders can be liable under Section 1983 if they conspire to deprive a plaintiff of his state rights with a state actor. See Pittman, 569 Fed. App'x at 91-92. But as explained by the Court in its Order granting Defendants' Motion to Dismiss, Plaintiff failed to plead facts sufficient to show the existence of a conspiracy between Defendants and a state actor. (See Doc. No. 19.) The fact that Defendants continued to represent Plaintiff after he verbally asked them to discontinue their services on January 23, 2017 does not show a conspiracy. A criminal defendant cannot dismiss court-appointed counsel unless he retains another attorney or wishes to represent himself. See Commonwealth v. Johnson, 663 A.2d 730 (Pa. Super. 1998). Here, the Philadelphia County Court of Common Pleas appointed the Defender Association to represent Plaintiff in his violation of probation case. Although Plaintiff asked the Defender Association to stop representing him, he did not retain other counsel and did not express his wish to proceed pro se. Thus, notwithstanding Plaintiff's request, the Defender Association and Assistant Public Defender Angelo could not withdraw from the case. Consequently, their decision to continue representing Plaintiff signals their compliance with the law; it does not demonstrate a conspiracy to keep Plaintiff confined.

For this reason, the Court will deny Plaintiff's Motion to Vacate Dismissal as it pertains to the Court's Order granting the Motion to Dismiss filed by the Defender Association and Assistant Public Defender Christopher Angelo (Doc. No. 19.)

Defendants City of Philadelphia, Warden Gerald May, Officer Obrien, and Sergeant Lebesco

Finally, Plaintiff contends that the Court erred by dismissing his claims against the City of Philadelphia, Warden Gerald May, Officer Obrien, and Sergeant Lebesco. In his Motion to Vacate Dismissal, Plaintiff claims that the Court overlooked allegations in the Amended Complaint and incorrectly concluded that he pleaded insufficient facts. (Doc. No. 22 at 5-10.) He does not bring forth newly discovered evidence and does not claim that the Court made a mistake. In short, he only disagrees with the Court's ultimate decision.

Relief under Federal Rule of Civil Procedure 60(b) is only available in extraordinary circumstances. Ibarra v. W.Q.S.U. Radio Broad Org., 218 Fed. App'x 169, 170 (3d Cir. 2007). A motion under Rule 60(b) cannot "be used as a substitute for appeal, and . . . legal error, without more, cannot justify granting a Rule 60(b) motion." Scott v. Education Mgmt. Corp., No. 14-537, 2015 WL 12912387, at *1 (W.D. Pa. April 9, 2015) (citing Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988)). Here, Plaintiff is using his Motion to Vacate Dismissal as a vehicle to ask the Court to reconsider his previously rejected legal theories. He does not show extraordinary circumstances that require the Court to vacate its Order dismissing Plaintiff's claims against the City of Philadelphia, Warden Gerald May, Officer Obrien, and Sergeant Lebesco. He only repeats the facts alleged in the Amended Complaint. This is not enough.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

For this reason, the Court will deny Plaintiff's Motion to Vacate Dismissal as it pertains to the Court's Order granting the Motion to Dismiss filed by Defendants City of Philadelphia, Warden Gerald May, Officer Obrien, and Sergeant Lebesco (Doc. Nos. 20, 21).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR,

Plaintiff,

v.

THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Defendant.

CIVIL ACTION
NO. 17-3369

ORDER

AND NOW, this 12th day of December 2018, upon consideration of Defendants' Motion to Dismiss for Failure to State a Claim (Doc. No. 14), and in accordance with the Opinion of the Court issued this day, it is **ORDERED** that Defendants' Motion to Dismiss is **GRANTED**. The Amended Complaint (Doc. No. 10) is **DISMISSED** as to Defendants City of Philadelphia, the Curran-Fromhold Correctional Facility, the Philadelphia Sheriff's Office, Warden Gerald May, Officer Obrien, and Sergeant Lebesco.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR,

Plaintiff.

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Defendants.

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TABLE OF CONTENTS

OPINION

Slomsky, J. **December 12, 2018**

I. INTRODUCTION

Plaintiff Robert Taylor, proceeding pro se, brings this suit pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights arising from his arrest on November 16, 2015. (Doc. No. 10.) Defendants are the Commonwealth of Pennsylvania, the Philadelphia District Attorney's Office, the Philadelphia Criminal Justice Center, the Honorable Frank Palumbo, the City of Philadelphia, unnamed Philadelphia Police Officers, the Philadelphia Department of Prisons, the Curran-Fromhold Correctional Facility ("CFCF"), the Defender Association, Warden Gerald May, the Philadelphia Sheriff's Office, Public Defender Christopher Angelo, Philadelphia Police Officer Obrien,[1] and Sergeant Lebesco, a prison official.[2] (Id. at 1-2.)

In the first cause of action in the Amended Complaint, Plaintiff alleges violations of his rights under the First, Fourth, Eighth, and Fourteenth Amendments by all Defendants. (Id. at 10.) In the second cause of action, Plaintiff asserts various state law claims against all Defendants. (Id. at 11.) Plaintiff seeks money damages and injunctive relief.

On June 4, 2018, Defendants City of Philadelphia, Officer Obrien, Warden Gerald May, and Sergeant Lebesco filed the present Motion to Dismiss the Amended Complaint for Failure to

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[1] Although "Obrien" is traditionally spelled "O'Brien," neither Plaintiff nor Defendants use the latter spelling.

[2] On May 15, 2018, Defendants Criminal Justice Center and the Honorable Frank Palumbo filed a Motion to Dismiss the Amended Complaint. (Doc. No. 11.) In another Order issued this day, the Court will grant Defendants Criminal Justice Center and Judge Palumbo's Motion (Doc. No. 11). On May 25, 2018, Defendants Defender Association and Assistant Defender Christopher Angelo filed a Motion to Dismiss the Amended Complaint. (Doc. No. 13.) In another Order issued this day, the Court will grant Defendants Defender Association and Christopher Angelo's Motion (Doc. No 13).

State a Claim. (Doc. No. 14.) In that same Motion, Defendants asked the Court to dismiss Plaintiff's claims against the Curran-Fromhold Correctional Facility and the Philadelphia Sheriff's Office because they are departments within the City of Philadelphia, and not proper parties to the suit. (Id. at 7.) Plaintiff has not filed a response to Defendants' Motion and has not requested additional time to do so. Nor has he requested the opportunity to further amend the Amended Complaint.

Defendants' Motion is now ripe for decision. For reasons stated below, the Court will grant Defendants' Motion (Doc. No. 14) in its entirety and dismiss Plaintiff's claims against the City of Philadelphia, Officer Obrien, Warden Gerald May, and Sergeant Lebesco.

II. BACKGROUND

On September 22, 2009, Plaintiff Robert Taylor was arrested in Philadelphia and charged with various offenses involving the possession of a firearm and making false statements to authorities.[3] Commonwealth v. Taylor, Court Summary, No. CP-51-CR-009569-2010 at 5 (Ct. Com. Pl. Philadelphia, filed July 28, 2010). After a trial in the Philadelphia Court of Common Pleas, Plaintiff was found guilty and sentenced to 11 to 23 months' imprisonment, followed by five (5) years of probation. Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 6-7 (Ct. Com. Pl. Philadelphia, filed July 28, 2010).

On November 16, 2015, Plaintiff was arrested and detained for violating his probation.[4] (Doc. No. 10 at 3.) According to the Amended Complaint, Plaintiff was "unreasonably summoned

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[3] In evaluating Plaintiff's claims under § 1983, the Court may take judicial notice of matters of public record, including documents that are outside the pleadings. See S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd., 181 F.3d 410, 426 (3d Cir. 1999) ("To resolve a 12(b)(6) motion, a court may properly look at public records, including judicial proceedings, in addition to the allegations in the complaint.").

[4] In the Amended Complaint, Plaintiff does not allege that he was arrested for violating his probation. Rather, he contends that he "had not violated any laws precipitating this incident

to stop on the sidewalk by members of the Philadelphia police department," including Officer Obrien and another unnamed officer, but he contends that he "had not violated any laws precipitating this incident stop." (Doc. No. 10 at 3.) After the stop, Plaintiff claims that he was "subjected to unreasonable arrest and unreasonable search and seizure." (Id.) After being taken into custody, Plaintiff alleges that the police shuttled him back and forth between two different police stations, all the while keeping him handcuffed in the back seat of the squad car. He claims that he was "detained without charge or due process."[5] (Id.)

The next day, Plaintiff was transported to the Curran-Fromhold Correctional Facility ("CFCF"), where he was detained pending the outcome of his violation of probation hearing. (Id.) According to the Amended Complaint, the Philadelphia Sheriff's Office hauled him back and forth from the CFCF to the Criminal Justice Center ("CJC") every 60 to 90 days, but the Court of Common Pleas did not hold any violation of probation proceedings until July 12, 2017, the day of his ultimate release. (Id. at 4.)

The Honorable Frank Palumbo, a judge in the Philadelphia County Court of Common Pleas Criminal Division, was assigned to preside over Plaintiff's violation of probation proceeding.

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stop." (Doc. No. 10 at 3.) However, Defendants state that he was arrested for violating his probation. (Doc. No. 14.) The Court will take judicial notice of the public record of Plaintiff's state court proceedings, which shows that he was arrested for a "bench warrant probation violation." Commonwealth v. Taylor, Court Summary No. CP-51-CR-009569-2010 at 5 (Ct. Com. Pl. Philadelphia, filed July 28, 2010); Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 14 (Ct. Com. Pl. Philadelphia, filed July 28, 2010) (using the term "violation of probation arrest warrant").

[5] Plaintiff contends that no charges were ever filed against him, but a review of the state court record shows that on November 19, 2015, the Philadelphia County Adult Probation Unit filed a Gagnon I Summary in his case. In Philadelphia state court, a Gagnon I Summary is filed prior to a probationer's Gagnon I hearing, which operates as a preliminary hearing for his violation of probation. See Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973). Thus, despite Plaintiff's allegations, the public record shows that he was charged with violating his probation.

Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 5. Judge Palumbo continued the violation of probation hearing so that Plaintiff could undergo mental health and competency evaluations. Id. at 1-3. This occurred over the course of several hearings. Plaintiff remained incarcerated at the CFCF and the CJC during these proceedings. He claims that while at the CJC, he was subjected to harsh conditions, overcrowding, and inadequate food and drink. (Doc. No. 10 at 3-4.) Plaintiff's violation hearing ultimately took place on July 12, 2017, when he was finally released. (Id.) He claims that he was detained for about twenty-nine (29) months because Judge Palumbo, the Court of Common Pleas, the Defender Association, and various other defendants conspired to keep him detained.[6] (Id.)

While incarcerated at the CFCF, Plaintiff filed several grievances that complained of injuries he received and prison conditions. (See Doc. No. 10.) In the Amended Complaint, he groups these grievances into four different categories: (1) mail tampering and denial of access to courts; (2) overcrowding and conditions of confinement; (3) religious deprivation and discrimination; and (4) special dietary and medical deprivation.[7] (Id.)

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[6] While detained at the CFCF, Plaintiff filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in the Eastern District of Pennsylvania, challenging his violation of probation arrest and detention. Taylor v. Philadelphia Prison System, Civ. No. 16-2444 (E.D. Pa, filed May 16, 2016). On July 8, 2016, United States Magistrate Judge David R. Strawbridge issued a Report and Recommendation ("R&R"), recommending that the Petition be dismissed. Id. On July 29, 2016, this Court approved and adopted the R&R, and dismissed Plaintiff's Petition. Id. On August 30, 2016, while still at the CFCF, Plaintiff filed a notice of appeal to the United States Court of Appeals for the Third Circuit, requesting a certificate of appealability. Id. The Third Circuit denied his request on December 30, 2016. Id.

[7] In the Amended Complaint, Plaintiff groups his injuries into five categories: (1) his arrest; (2) mail tampering and denial of access to the courts; (3) overcrowding and conditions of confinement; (4) religious deprivation and discrimination; and (5) special dietary and medical deprivation. (Doc. No. 10.) However, as noted here, he only filed grievances in four of these categories. (See id.)

In the mail tampering and denial of access to courts category, Plaintiff claims that the CFCF prevented him from adequately corresponding with this Court and the Court of Appeals for the Third Circuit regarding his § 2241 Petition because prison officials continuously opened and resealed his legal mail before he had the opportunity to read it. (Id. at 5-6.) He contends that he could not verify orders and instructions from the Court because "information [in his mail] was inconsistent and rearranged . . . by prison authorities." (Id. at 5.) He filed four separate grievances with the CFCF regarding this claim and asserts that the prison never remedied the situation. (Id. at 5-6.)

Plaintiff also claims that the CFCF was dangerously overcrowded while he was incarcerated there and that the prison subjected him to "triple celling"—a practice where three or four prisoners are housed in a cell built for two inmates. (Id. at 6-7.) He claims that in lieu of beds or cots, he sometimes had to sleep on a "plastic boat" on the ground. (Id.) According to a grievance filed with the prison, Plaintiff was subjected to triple-celling throughout his nearly two years at the CFCF. (Id. at 27.) What is more, Plaintiff alleges that the overcrowding led to inadequate food, issues with hygiene, and excessive lockdowns. (Id.) He claims that he was sometimes confined to his cell for up to twenty (20) hours a day. (Id. at 6, 27.)

Plaintiff also "put in a grievance for cold air." (Id. at 6.) In the grievance he wrote:

> I am suffering physically from extreme cold air conditioning in the cell and on the housing block. This has been happening for several days. Day and night with no heat only cold air blowing out of air vents. As a result I have to sleep in thermals, sweatshirt and full uniform clothing. Throughout [my] duration in this facility [I] have had to endure cold ventilation conditions.

(Id. at 28.) He notes that these conditions negatively affected his anemia. (Id. at 6.)

Plaintiff also claims that he was subjected to unreasonable strip searches while returning to his cell from the visiting room and other parts of the CFCF. Further, he claims that on June 25,

2017, two prison officials—Sergeant Lebesco and Correctional Officer Smith—"conducted an unreasonable search and assault" on him while he was in his cell and pepper-sprayed him. (Id. at 7.) After the assault, the officers took him to the prison's medical facilities, but Plaintiff claims that the prison medical staff "purposefully" and "deliberately" denied him medical attention for forty-five minutes. (Id.)

In addition, Plaintiff filed five grievances related to "religious deprivation" at the CFCF, claiming that he was denied "free exercise of his religious beliefs, solely because of his Islamic faith." (Id.) He complains that the prison refused to hold Muslim religious services, denied Muslims a space to practice their faith, and blocked all prisoners from praying on the housing block. (Id.) He argues that he was denied these rights while prisoners of other religious faiths were permitted to practice their faiths and given space and time to do so. (Id. at 8.) Additionally, he filed a grievance after prison officials refused to bring "any food or drink whatsoever until 1 to 2 hours after required time to eat and drink" during a period of Islamic religious fasting. (Id.) Plaintiff believes that Warden Gerald May either directed his subordinates to commit these "widespread violations" or that he knew about his subordinates' actions and failed to discipline them. (Id. at 8.)

Finally, Plaintiff filed several grievances complaining about the prison's inattention to his special dietary and medical needs. For example, Plaintiff complained that he needed "vegetarian meals" and nutritious "health shakes" for several health conditions, including anemia, low blood sugar, and thyroid issues, but that the CFCF failed to accommodate him. (Id.) He concedes that at one point the prison granted his requests and provided him with a special dietary accommodation. (Id. at 9.) Additionally, he put in a request for a refill of his asthma inhaler, but claims that the prison delayed granting his request. (Id.) As a result, he claims that he suffered an

asthma attack. (Id.) According to the Amended Complaint, Plaintiff believed that he needed "breathing treatment" to address the asthma attack, but the medical staff at the CFCF disagreed and refused this course of treatment. (Id.)

III. STANDARD OF REVIEW

The motion to dismiss standard under Federal Rule of Civil Procedure 12(b)(6) is set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009). After Iqbal, it is clear that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to defeat a Rule 12(b)(6) motion to dismiss. Id. at 678; see also Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). "To survive dismissal, 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Tatis v. Allied Interstate, LLC, 882 F.3d 422, 426 (3d Cir. 2018) (quoting Iqbal, 556 U.S. at 678). Facial plausibility is "more than a sheer possibility that a defendant has acted unlawfully." Id. (quoting Iqbal, 556 U.S. at 678). Instead, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (quoting Iqbal, 556 U.S. at 678).

Applying the principles of Iqbal and Twombly, the Third Circuit in Santiago v. Warminster Township, 629 F.3d 121 (3d Cir. 2010), set forth a three-part analysis that a district court in this Circuit must conduct in evaluating whether allegations in a complaint survive a Rule 12(b)(6) motion to dismiss:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."

Id. at 130 (quoting Iqbal, 556 U.S. at 675, 679). The inquiry is normally broken into three parts: "(1) identifying the elements of the claim, (2) reviewing the complaint to strike conclusory

allegations, and then (3) looking at the well-pleaded components of the complaint and evaluating 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).

A complaint must do more than allege a plaintiff's entitlement to relief, it must "show" such an entitlement with its facts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009) (citing Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original) (citation omitted). The "plausibility" determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.

Eastern District of Pennsylvania Local Rule 7.1(c) provides that "[u]nless the Court directs otherwise, any party opposing the motion shall serve a brief in opposition . . . within fourteen (14) days after service of the motion and supporting brief. In the absence of timely response, the motion may be granted as uncontested . . . ." E.D. Pa. Local R. 7.1(c). But a motion to dismiss under Rule 12(b)(6) should not be granted "without an analysis of the merits of the underlying complaint, notwithstanding local rules regarding the granting of unopposed motions." Ray v. Reed, 240 Fed. App'x 455, 456 (3d Cir. 2007) (citing Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991)).

IV. ANALYSIS

In the present action, Defendants advance several arguments in support of their Motion to Dismiss the Amended Complaint. They first argue that Defendants CFCF and the Philadelphia Sheriff's Office should be dismissed because they are not proper parties to this suit under 42 U.S.C. § 1983. Additionally, they submit that Plaintiff has not stated a Monell claim against the City of

Philadelphia because (1) Plaintiff has failed to show that any constitutionally protected rights had been violated, and (2) Plaintiff has "failed to allege with any specificity either the policies or customs that would impute liability to the City or to identify a municipal policymaker linked to the offending policies." (Id. at 11, 12-15.) Because Defendants dispute that any constitutional violations occurred, they further argue that all claims should be dismissed against Warden Gerald May, Officer Obrien, and Sgt. Lebesco.

As noted above, Local Rule 7.1 allows a district court to grant a motion as uncontested. But according to the Third Circuit, a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should not be granted "without an analysis of the merits of the underlying complaint." Ray, 240 Fed. App'x. at 456. Consequently, the Court will address Defendant's arguments seriatim.

A. All Claims Against the Curran-Fromhold Correctional Facility and the Philadelphia Sheriff's Office Will Be Dismissed

As an initial matter, Defendants submit that claims against the Philadelphia Sheriff's Office and the Curran-Fromhold Correctional Facility should be dismissed because, as departments within the City of Philadelphia, they do not have a separate corporate existence and are not proper parties to a lawsuit. (Doc. No. 14 at 7.) The Court agrees.

In the Third Circuit, it is well-established that a prison or correctional facility like the CFCF is not a "person" subject to suit under federal civil rights laws. Keys v. Curran-Fromhold Corr. Facility, No. 14-1757, 2014 WL 2039678, at *1 (E.D. Pa. May 15, 2014); Regan v. Upper Darby Tp., No. 06-1686, 2009 WL 650384, at *4 (E.D. Pa. March 11, 2009) (collecting cases). Essentially, the CFCF is not a separate corporate entity apart from the City of Philadelphia, which is the proper party to a suit under § 1983. See White v. Green, No. 9-1219, 2009 WL 3209647, at n.1 (E.D. Pa. October 6, 2009) (citing Jenkins v. Del. Cty. Prison, No. 91-7071, 1992 WL 59130,

at *1 (E.D. Pa. March 20, 1992)). Therefore, suing the CFCF is like suing the City of Philadelphia, which has been named as a Defendant in this case.

Similarly, the Philadelphia Sheriff's Office is not a proper party under § 1983. In § 1983 actions, a police department cannot be sued "merely because it is an administrative arm of the local municipality, and is not a separate judicial entity." Butts v. SCI-Camp Hill, No. 08-2259, 2009 WL 222653, at *1 (M.D. Pa. January 29, 2009) (citing DeBellis v. Kulp, 166 F. Supp. 2d 255, 264 (E.D. Pa. 2001)). Hence, for the purposes of § 1983 liability, the Third Circuit has treated a municipality and its police department as a single entity. See Strunk v. East Coventry Tp. Police Dept., 674 Fed. App'x 221, 225 (3d Cir. 2016); Bonenberger v. Plymouth Tp., 132 F.3d 20, 25 n.4 (3d Cir. 1997). Suing the Philadelphia Sheriff's Office is also like suing the City of Philadelphia, which has been named as a Defendant in this case.

Accordingly, neither the CFCF nor the Philadelphia Sheriff's Office are proper parties to this lawsuit and the Court will dismiss all claims against them. That being said, because CFCF and the Philadelphia Sheriff's Department are municipal departments, all allegations made against them will be attributed to the City of Philadelphia.

B. Plaintiff Fails to State a Monell Claim Against the City of Philadelphia

Plaintiff brings a Monell claim against the City of Philadelphia pursuant to 42 U.S.C § 1983, alleging that the various injuries alleged in the Amended Complaint were a result of the City's policies or customs, or its deliberate indifference to the constitutional rights of its constituents. (Doc. No. 10.)

Section 1983 is a statutory mechanism that allows federal courts to review state and local violations of federal law. In relevant part, the statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction

> thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

A municipality like the City of Philadelphia is not responsible under § 1983 for the random acts of its employees based on the doctrine of respondeat superior. But as set forth in Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658, 694 (1978), a municipality can be sued when its official policy or custom causes an injury to a plaintiff. To bring a Monell claim, a plaintiff must establish that (1) a constitutionally-protected right has been violated, and (2) the alleged violation resulted from municipal policy, custom, or deliberate indifference. Id. at 694-95; Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990).

As to the second requirement necessary to state a Monell claim, the Third Circuit has explained that a policy is made when a decisionmaker with final authority to establish municipal policy issues an official proclamation, policy, or edict. Wright v. City of Philadelphia, 685 Fed. App'x. 142, 146 (3d Cir. 2017) (citing Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990)). Custom, however, is not specifically endorsed or authorized by law. Id. Rather, custom results from policymakers' "acquiescence in a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity." Id. (quoting Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989). Deliberate indifference stems from government inaction, namely the failure to train. Where the plaintiff alleges his injury was caused by a municipality's deliberate indifference, the plaintiff must establish that the city failed to train or supervise city employees on their duty to avoid violating civil rights. City of Canton v. Harris, 489 U.S. 378, 389 (1989). To show the deliberate indifference required for a failure to train claim,

a plaintiff must show "a municipal actor disregarded a known or obvious consequence of his action." Bd. of Cty. Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 410 (1997).

In the present Motion to Dismiss, Defendants submit that Plaintiff has failed to plead a Monell claim against the City of Philadelphia. Specifically, Defendants submit that Plaintiff (1) failed to show that any constitutionally-protected rights had been violated, and (2) "failed to allege with any specificity either the policies or customs that would impute liability to the City or to identify a municipal policymaker linked to the offending policies." (Doc. No. 14 at 12-15.)

For his part, Plaintiff alleges that the City, and its municipal departments, violated his First, Fourth, Eighth, and Fourteenth Amendment rights. (Doc. No. 10 at 10.) As noted previously, he separates his injuries into five distinct categories: (1) his arrest; (2) mail tampering and denial of access to courts; (3) overcrowding and other conditions of confinement; (4) religious deprivation and discrimination; and (5) inadequate medical care resulting from the deprivation of his dietary and medical needs.[8] The Court will address each category in turn and discuss whether Plaintiff

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[8] Although the Amended Complaint broadly invokes the First, Fourth, Eighth, and Fourteenth Amendments, Plaintiff does not specify which amendments apply to each of his injury categories. In any event, a pro se complaint must be liberally construed and held to a less stringent standard than formal pleadings. Estelle v. Gamble, 429 U.S. 97 (1976). Thus, having examined the allegations, the Court will liberally construe the cited amendments to apply in the following manner:

- Plaintiff's Arrest– Fourth Amendment
- Mail Tampering and Denial of Access to Courts – Fourteenth Amendment
- Conditions of Confinement – Fourth, Eighth, and Fourteenth Amendments
- Religious Deprivation and Discrimination – First and Fourteenth Amendments
- Inadequate medical care – Fourteenth Amendment

has established that (1) a constitutionally-protected right has been violated, and (2) the alleged violation resulted from a municipal policy, custom, or deliberate indifference on the part of an identified policymaker with final decision-making authority.

1. Plaintiff Fails to Plead a Monell Claim Regarding the Events of His November 15, 2016 Arrest

Defendants attack Plaintiff's contention that the circumstances surrounding his November 15, 2016 arrest support a Monell claim. First, they argue that the conclusory allegations contained in the Complaint do not sufficiently establish that he was arrested without cause or that the police officer's search of his person was illegal. Second, they submit that Plaintiff has failed to allege with any specificity either the policies or customs that would impute liability to the City or to identify a municipal policymaker linked to the offending policies. For the reasons discussed below, the Court agrees with the positions of the City of Philadelphia.

a. Plaintiff's Allegations Regarding His Arrest, Imprisonment, and the Search and Seizure Do Not Establish a Fourth Amendment Violation

The Fourth Amendment prohibits arrests without probable cause. See Berg v. Cty. of Allegheny, 219 F.3d 261, 269 (3d Cir. 2000). To establish a claim for false arrest and imprisonment, a plaintiff needs to point to facts that plausibly show that defendants lacked probable cause to believe he had committed the offense for which he was arrested. Godfrey v. Pennsylvania, 525 Fed. App'x. 78, 80 (3d Cir. 2013) (citing Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988)). Likewise, to recover money damages for an illegal search and seizure, the plaintiff "must prove, inter alia, that the search and seizure were illegal." Gresh v. Godshall, 170 Fed. App'x. 217, 220 (3d Cir. 2006) (citing Heck v. Humphrey, 512 U.S. 477, 487 n.7 (1994)). A warrantless search is legal if it is supported by probable cause, and probable cause exists when "viewing the totality of the circumstances, 'there is a fair probability that contraband

or evidence of a crime will be found in a particular place.'" Id. at 221 (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

Here, the allegations supporting Plaintiff's false arrest and illegal search and seizure claims can be found in three paragraphs:

> 7. Plaintiff was unconstitutionally falsely arrested, searched, seized, and otherwise false imprisoned by the Philadelphia police department.
>
> 8. On/around November 16, 2015 approximately 10:00 am on the 1-100 block of n.60 street Philadelphia, PA, 19139, plaintiff was unreasonably summoned to stop on the sidewalk by members of the Philadelphia police department. Officer(s) Obrien badge no. 7461 with an accompanying officer. Plaintiff had not violated any laws precipitating this stop.
>
> 9. Plaintiff was then subjected to arrest and unreasonable search and seizure by officers mentioned above without cause. Also his personal property consisting of a bag of hygienics [sic] were seized and never returned.

(Doc. No. 10 at 3) (internal citations omitted).

Plaintiff's conclusory assertions are insufficient to establish a Fourth Amendment violation. While a court at the motion to dismiss stage is required to accept as true all of the allegations in the complaint, it "need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). To sufficiently establish that Defendants violated his Fourth Amendment rights by falsely arresting him and conducting an illegal search and seizure, Plaintiff needed to point to specific facts that Officer Obrien and the unnamed accompanying police officer lacked probable cause to believe he had committed an offense. Significantly, he does not. Rather, he has only pled sparse, conclusory allegations dressed in legal terminology. He claims that he was "unconstitutionally falsely arrested [and] searched" and that the "arrest and unreasonable search" were "without cause" (Doc. No. 10 at 3), but fails to substantiate his claims with plausible facts.

Consequently, Plaintiff's allegations do not support claims of false arrest and imprisonment, and an illegal search and seizure, all on November 16, 2015.

b. Plaintiff Does Not Link His Arrest, Imprisonment, or Search and Seizure Injury to a Policy, Custom, or Deliberate Indifference by a Municipal Policymaker

Furthermore, Plaintiff's allegations do not establish that his arrest injuries and search and seizure injuries were the result of a City policy or custom, or that they were caused by the City's deliberate indifference to the rights of its constituents. Plaintiff only describes isolated incidents in an attempt to impute liability to the City. But as noted above, Monell prohibits liability based solely on the doctrine of respondeat superior. Monell, 436 U.S. at 694. Thus, without more, the City is not responsible for Plaintiff's injuries stemming from his arrest and the search and seizure.

Equally fatal, Plaintiff fails to identify any municipal policymaker responsible for his injuries. A plaintiff cannot state a Monell claim if he "fails to link the alleged offending policies or customs to anyone within [a municipality] who had policy-making authority." Rees v. Office of Children & Youth, 473 Fed. App'x. 139, 143 (3d Cir. 2012). Here, Plaintiff alleges that Officer Obrien and an unnamed accompanying officer falsely arrested him and subjected him to an unreasonable search and seizure. (Doc. No. 10 at 3.) He does not assert that either individual had "policy-making authority" and does not link the incident to someone who does. Consequently, Plaintiff has failed to state a Monell claim against the City of Philadelphia with respect to his arrest, and the search and seizure on November 16, 2015.

2. Plaintiff Fails to State a Monell Claim With Respect to Mail Tampering and Denial of Access to the Court at the CFCF

Next, Defendants submit that Plaintiff has failed to establish a Monell claim with respect to mail tampering and his access to the courts. First, they assert that Plaintiff has failed to plead a constitutional violation because he suffered no actual injury from the mail tampering. (Doc.

No. 14 at 9-10.) Second, they again argue that Plaintiff failed to allege with any specificity either the policy or custom that would impute liability to the City or to identify a municipal policymaker linked to the offending policies. (Id. at 8-9.) The Court is persuaded by their reasoning.

a. Plaintiff's Allegations Regarding Mail Tampering and Denial of Access to the Court Do Not Establish a Fourteenth Amendment Violation

To establish a cognizable access to the courts claim under the Fourteenth Amendment, a prisoner must show that the alleged denial of access caused actual injury. Watson v. Secretary Pennsylvania Dept. of Corr., 567 Fed. App'x. 75, 78 (3d Cir. 2014) (citing Lewis v. Casey, 518 U.S. 343, 352-53 (1996)). Actual injury occurs when a prisoner demonstrates that a "nonfrivolous" and "arguable" claim was lost because of the denial of access to the courts. Id. (citing Christopher v. Harbury, 536 U.S. 403, 415 (2002)). The plaintiff must "describe the underlying arguable claim well enough to show that it is 'more than mere hope.'" Monroe v. Beard, 536 F.3d 198, 205-06 (3d Cir. 2008). The claim must relate to either a direct or collateral challenge to the prisoner's sentence or conditions of confinement, Lewis, 518 U.S. at 355, and the prisoner must establish that no other remedy could compensate for the lost claim. Monroe, 536 U.S. at 415.

Here, Plaintiff contends that he was "denied [access to the courts] and obstructed by prison officials" who "opened and resealed" his legal mail before he had the opportunity to read it. (Doc. No. 10 at 5.) He asserts that this mail tampering prevented him from timely responding to the courts regarding his § 2241 Petition and the subsequent appeal. Indeed, he claims that "[h]e was on a timely filing schedule" but because of the mail tampering "could not respond to the court which brought an order against him." (Id.) Plaintiff also argues that he was "precluded from his right in pursuit of Appeal." (Id. at 6.) He concedes, though, that he managed to file a notice of appeal on August 30, 2016. (Id. at 5.)

Contrary to his assertions, Plaintiff has not alleged a plausible claim that he was denied access to the courts because he has failed to show actual injury. By his own admission, the mail tampering did not prevent him from filing a notice of appeal to the Third Circuit. (Id. at 5.) Furthermore, a review of that appeal shows that Plaintiff was not denied a certificate of appealability because he failed to meet court deadlines; rather, the Third Circuit denied his request because he had not exhausted his state court remedies. Taylor v. Philadelphia Prison System, Civ. No. 16-2444 (E.D. Pa. filed May 16, 2016). For this reason, Plaintiff has not shown that a "nonfrivolous" and "arguable" claim was lost from any mail tampering at the CFCF. Accordingly, Plaintiff has not established that his constitutional rights were violated when CFCF employees opened and resealed his legal mail before he had the opportunity to read it.

b. Plaintiff Does Not Link His Mail Tampering or Access to the Courts Injury to a Policy, Custom, or Deliberate Indifference by a Municipal Policymaker

Even if Plaintiff had demonstrated an actual injury as a result of the prison's mail tampering, the claim fails because he has not established that his injuries were the result of a City policy or custom, or that they were caused by the City's deliberate indifference to the rights of its constituents. Although Plaintiff pleads numerous instances of mail tampering by individual prison employees, he never links these incidents to custom, policy, or a pattern of deliberate indifference. Again, Monell expressly prohibits municipal liability on the basis of respondeat superior. Thus, Plaintiff's failure to attribute the mail tampering to policy, custom, or deliberate indifference on the part of the City is fatal. Furthermore, Plaintiff's mail tampering and access to the courts claim falters because Plaintiff has once again failed to link his injuries to a municipal policymaker. Indeed, he has not identified any individuals that may have tampered with his mail, let alone a municipal policymaker. Accordingly, the Court is persuaded that Plaintiff has not pled a Monell claim against the City with respect to mail tampering and denial of access to the courts.

3. Plaintiff Fails to State a Monell Claim With Respect to Overcrowding and Conditions of Confinement

Defendants next submit that Plaintiff has not stated a claim under Monell with respect to overcrowding and conditions of confinement. Again, they claim that Plaintiff (1) has not stated a constitutional violation, and (2) has failed to allege with any specificity either the policies, customs, or deliberate indifference that would impute liability to the City or to identify a municipal policymaker linked to the offending policies. While the Court finds that Plaintiff has indeed pled constitutional violations with respect to certain conditions of confinement injuries, Defendants argument ultimately prevails because Plaintiff has not demonstrated that a municipal policymaker was responsible for or acquiesced in the imposition of policies or customs that injured him.

a. Plaintiff's Overcrowding and Conditions of Confinement Allegations Establish the First Prong of a Monell Claim

Defendants submit that Plaintiff has not demonstrated that the conditions of his confinement at the CFCF violated the Eighth or Fourteenth Amendments. (Doc. No. 14 at 10-11.) The Eighth Amendment protects prisoners from cruel and unusual punishment. Allah v. Ricci, 532 Fed. App'x. 48, 50-51 (3d Cir. 2013). But as an initial matter, the Eighth Amendment does not apply until an inmate has been both convicted of and sentenced for the crime at hand. See Bistrian v. Levi, 696 F.3d 352, 367 (3d Cir. 2012). Where, as here, a pretrial detainee challenges his conditions of confinement, the court must consider whether there has been a constitutional

violation under the Fourteenth Amendment.[9] Hubbard v. Taylor, 538 F.3d 229, 231 (3d Cir. 2008) ("Hubbard II") (citing Bell v. Wolfish, 441 U.S. 520, 535 (1979)).

To establish a constitutional violation based on conditions of confinement under the Fourteenth Amendment, a pretrial detainee must plausibly allege that the conditions amounted to punishment. See Bell, 441 U.S. at 538. The Supreme Court has explained:

> [I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees.

Id. at 539. Thus, a condition of confinement is unconstitutional if it is either "the result of an express intent to punish" or "if it is not rationally related to a legitimate government purpose." Id. at 538-39. Courts must inquire as to whether the conditions "cause [detainees] to endure [such] genuine privations and hardship over an extended period of time, that the adverse conditions become excessive in relation to the purposes assigned to them." Hubbard v. Taylor, 399 F. 3d 150, 159-60 (3d Cir. 2005) ("Hubbard I") (internal quotation marks and citations omitted). The objective component of an unconstitutional punishment analysis evaluates whether "the deprivation [was] sufficiently serious," and the subjective component asks whether "the officials act[ed] with a sufficiently culpable state of mind[.]" Stevenson v. Carroll, 495 F.3d 62, 68 (3d Cir. 2007) (citing Bell, 441 U.S. at 538-39 n.20), cert. denied, Phelps v. Stevenson, 552 U.S. 1180 (2008).

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[9] Here, Plaintiff was arrested for violating his probation. While detained at the CFCF, he was awaiting his violation of probation hearing in the Philadelphia County Court of Common Pleas and had not yet found to be in violation of his probation. Thus, he was a pretrial detainee when his alleged injuries occurred.

Within this section, Plaintiff alleges constitutional violations that relate to different conditions of his confinement at the CFCF: (1) overcrowding; (2) cold air; (3) strip searches; and (4) a pepper-spray incident. The Court will address each condition of confinement in turn.

i. Plaintiff's Claims Regarding Triple-Celling at the CFCF Sufficiently Establish the First Prong of a Monell Claim

Defendants argue that Plaintiff has failed to establish that overcrowding at the CFCF amounts to a constitutional violation under the Eighth or Fourteenth Amendments. (Doc. No. 14 at 9-10.) But having reviewed Plaintiff's factual allegations on this topic, the Court is not persuaded by Defendants' argument.

To evaluate whether triple-celling is rationally related to the government interest of managing an overcrowded prison, a district court must "look to the totality of the conditions" at the prison at issue, "including the size of the detainee's living space, the length of confinement, the amount of time spent in the confined area each day, and the opportunity for exercise." Hubbard II, 538 F.3d at 233.

Here, Plaintiff alleges that due to severe overcrowding at the CFCF, the prison placed three or four prisoners in his cell, even though it was only built to house two inmates. (Doc. No. 10 at 6.) On August 24, 2016, he filed a grievance with the prison, complaining about this practice. The grievance reads as follows:

> . . . since incarceration [I] have been subject to and put in 3 persons to a cell that is only to have 2 persons in it. Have been forced to stay in this overcrowded condition throughout duration of detention[.] being restricted to stay in cell up to 20 hours a day daily without being let out.

(Id. at 27.) Plaintiff claims that the overcrowding led to insufficient food, restricted movement, excessive lockdowns, and limited opportunities to shower and wash, leading to hygiene issues. (Id. at 6.)

In advocating for dismissal, Defendants rely on Wagner v. Algarin, No. 10-2513, 2010 WL 5136110, at *1, 3 (E.D. Pa. Dec. 16, 2010), a case in which the court granted a motion to dismiss an overcrowding claim. There, the incarcerated plaintiff alleged that he was required to sleep in gyms, classrooms, and "3 and 4 man cells with less than 60 [square feet] allowed per person." Id. at *1. In granting the motion to dismiss, the court held, inter alia, that the plaintiff had not alleged any facts that demonstrated that the conditions amounted to punishment. Id. at *3. The court focused on the fact that the plaintiff failed to plead how long he was housed in such cramped conditions. Id.

Defendants assert that Plaintiff "alleged little more than he was placed in a three-man cell . . . [and] had to sleep on a makeshift bed . . ." and that these "deprivations are no greater than those stated in Wagner . . . ." (Doc. No. 14 at 13.) The Court disagrees. First, Wagner did not squarely address triple-celling. In Wagner, there was no allegation that three or four prisoners were housed in a cell built for only two people. The plaintiff only alleged that he did not have enough space. See Wagner, 2010 WL 5136110, at *1. Further, unlike in Wagner, Plaintiff has pled facts showing that he was subjected to triple-celling for the duration of his confinement, which amounted to almost two years. (Doc. No. 10 at 27.) Additionally, he alleges that he was often confined to his cell for twenty hours a day. (Id.) These injuries far exceed those stated in Wagner.

The facts in this case better align with those in Pichalskiy v. Nutter, No. 15-4704, 2016 WL 7018545, at *2 (E.D. Pa. Nov. 30, 2016). There, the court denied a motion to dismiss a Plaintiff's overcrowding claim, stating:

> Pichalskiy's complaint lists several allegations of unsanitary, unsafe, or otherwise inadequate conditions that give a glimpse of the totality of the circumstances that he experienced. For example, he states he was "forced to live in a 7'x10' cell with two other inmates; the cell was originally designed to hold two people, but due to severe overcrowding a third man sleeps on a plastic 'boat' next to the cells toilet and is exposed to urine and fecal matter." He alleges that inmates were subjected to

> "nearly contin[uous] lockdowns" and that the "PPS population as a whole has increasingly been subjected to extended periods of 'restricted movement' and 'lockdowns.' " Pichalskiy further claims that there was "inadequate 'day room' and recreational space" and that inmates are denied access to programs and services. The facts alleged, construed liberally and taken as true, give enough detail about the circumstances in the prison to survive a motion to dismiss.

Pichalskiy, 2016 WL 7018545, at *2.

Like those pled in Pichalskiy, Plaintiff's allegations are sufficient to plead a constitutional violation under the Fourteenth Amendment. Taken as true, his allegations regarding the duration of the triple-celling and the amount of time he spent confined to his cell make it plausible that these practices are not rationally related to the legitimate government interest of managing an overcrowded prison.

ii. Plaintiff's Claims Regarding Cold Air at the CFCF Sufficiently Establish the First Prong of a Monell Claim

Defendants also argue that Plaintiff's cold air allegation does not violate the Fourteenth Amendment. (Doc. No. 14 at 9-10.) Courts have held that detainees have a right to adequate ventilation and to be free from extreme hot and cold temperatures. See, e.g., Alpheaus v. Camden Cty. Corr. Facility, No. 17-0180, 2017 WL 2363001, at *13 (D.N.J. May 31, 2017). But the Constitution does not guarantee a right to be free from all discomfort. Rhodes v. Chapman, 452 U.S. 337, 349 (1981).

Here, Plaintiff alleges that on November 22, 2016, he "put in a grievance for cold air." (Doc. No. 10 at 6.) In the grievance, he wrote:

> I am suffering physically from extreme cold air conditioning in the cell and on the housing block. This has been happening for several days. Day and night with no heat only cold air blowing out of air vents. As a result I have to sleep in thermals, sweatshirt and full uniform clothing. Throughout [my] duration in this facility [I] have had to endure cold ventilation conditions.

(Id. at 28.) According to the Complaint, the cold air severely impacted Plaintiff's anemia. (Id. at 6.)

In their Motion to Dismiss, Defendants rely on Gardener v. Lanigan, No. 13-7064, 2013 WL 6669230, at *3 (D.N.J. Dec. 18, 2013), a case in which the court found that forcing a prisoner to sleep on a cold floor did not rise to the level of a constitutional violation. Defendants' reliance is misguided. For one, in Gardener, the court analyzed the prisoner's conditions of confinement claim under the Eighth Amendment, and not the Fourteenth. Id. What is more, Gardener addressed a situation that is factually distinguishable from the case at hand.

Other decisions provide better guidance on Plaintiff's cold air conditions of confinement claim. For example, in David v. Yates, the court found that a detainee's cold air claim stated a constitutional violation under the Fourteenth Amendment. No. 15-6943, 2016 WL 5508809, at *7 (D.N.J. Sept. 27, 2016). The court reasoned as follows:

> Plaintiffs allege that their cells were "ice cold" and that once the ventilation system was shut down, twenty degree temperature air was permitted to blow directly into the housing unit. When blankets were distributed, Grohs's wool allergy was not accommodated, and Davis was not provided additional blankets at all. Both plaintiffs allege that the cold temperature caused them to shiver uncontrollably for hours and deprived them of sleep. These allegations sufficiently state a conditions-of-confinement claim under the Fourteenth Amendment.

Id. Compare Yates with Stokelin v. A.C.J.F. Warden, No. 17-3484, 2018 WL 4357482, at *4 (D.N.J. Sept. 13, 2018), where the court analyzed a ventilation claim and came to the opposite conclusion. There, the court found:

> In the instant complaint, Plaintiff fails to allege any facts aside from his assertions that the ventilation system is "outdated" and "no good." Plaintiff does not indicate that the ventilation system is not functioning. Plaintiff does not contend that the temperature is too hot or too cold within the prison. Nor does Plaintiff claim that he is suffering from discomfort or any health problem as a result of the ventilation system. There are no facts put forth that even indicate there is a lack of ventilation, let alone a sufficiently serious problem. Without more, Plaintiff's claim fails to provide sufficient facts to state a claim under either the Eighth or Fourteenth Amendment.

Id.

In the instant case, Defendants claim that Plaintiff "alleged little more than that . . . he was cold." (Doc. No. 14 at 13.) But this assessment completely ignores the substance of Plaintiff's November 22, 2016 grievance, which is attached to the Amended Complaint. In the grievance, he complains that he has difficulty sleeping and needs to wear several layers to stay warm. (Doc. No. 10 at 28.) Further, he alleges that the cold negatively affected his anemia. (Id. at 6.) These allegations align with those alleged in Yates. Thus, the Court finds that it is plausible that the cold air and lack of heat amount to punishment, and that they do not rationally relate to any legitimate government purpose.

iii. Plaintiff's Allegations Regarding Strip Searches at the CFCF Do Not Establish a Fourth or Fourteenth Amendment Violation

Although Plaintiff complains of strip searches in the conditions of confinement section of the Amended Complaint (Doc. No. 10 at 6-7), Defendants do not address these allegations in their Motion to Dismiss. In any event, the Court has independently reviewed Plaintiff's strip search allegations and is not persuaded that these allegations violate the Constitution.

The strip search of a pretrial detainee may form the basis of a § 1983 claim through the Fourth or Fourteenth Amendments. To raise a Fourth Amendment claim, the detainee must allege that the strip search was unreasonable. See Payton v. Vaughn, 798 F. Supp. 258, 261-62 (E.D. Pa. 1992). Because prisons have a legitimate government interest in maintaining safety and keeping contraband out of prisons, strip searches do not violate the Fourth Amendment where officials conduct searches in a reasonable manner to maintain security and to prevent the introduction of contraband or weapons in the facility. Florence v. Bd. of Chosen Freeholders of Cty. of Burlington, 621 F.3d 296, 309-11 (3d Cir. 2010); Millhouse v. Arbasak, 373 Fed. App'x. 135, 137 (3d Cir. 2010) (holding that routinely strip-searching inmates when entering and exiting their cells does not violate the Constitution where the search is reasonable).

Inmates do not have a right to be free of strip searches. Bell, 441 U.S. at 558. Even allegations that a strip search was degrading or embarrassing fail to state a constitutional violation. Moreover, courts have found that strip searches in the presence of other inmates are not unreasonable in light of time constraints and safety concerns. See DeFilippo v. Vaughn, No. 95-909, 1996 WL 355336, at *2 (E.D. Pa. June 24, 1996). Further, strip searches can be conducted without probable cause provided they are conducted in a reasonable manner. Ostrander v. Horn, 145 F. Supp. 2d 614, 620 (M.D. Pa. 2001) (citing Bell, 441 U.S. at 52).

In this case, Plaintiff has not sufficiently pled that the strip searches at the CFCF amounted to Fourth Amendment violations. He claims that he was routinely searched when "going and coming from visits or any services in the facility." (Doc. No. 10 at 29.) But it is not unreasonable for staff to check for contraband via visual body cavity searches when a prisoner moves through restricted areas of a correctional facility or returns from seeing visitors. See Small v. Wetzel, 528 F. App'x 202, 207 (3d Cir. 2013) (citing Florence, 566 U.S. at 328); Millhouse, 373 Fed. App'x. at 137.

Significantly, "there is no Fourth Amendment violation if a plaintiff cannot show that the strip search [was] conducted in an unreasonable manner." Barber v. Jones, No. 12-2578, 2013 WL 211251, at *8 (D.N.J. Jan. 18, 2013). While Plaintiff has claimed that these strip searches were "unreasonable," he has not pled facts sufficient to support that claim. The mere fact that he was strip searched in front of other inmates is not unreasonable considering the legitimate government concerns relating to maintaining safety, protecting officers, and keeping contraband out of prisons. His allegations in no way show that prison officials moved beyond the scope of what was reasonable. Compare McMillan v. Hughes, No. 17-13435, 2018 WL 3945467, at *6 (D.N.J. Aug. 16, 2018) (finding a strip search unreasonable where the prison officials conducted the search in

front of others, made degrading comments about his body, and threatened his safety during the search). Consequently, the Court is not persuaded that Plaintiff's strip search allegations state a constitution violation under the Fourth Amendment.

Turning to his due process argument, Plaintiff has not stated a claim under the Fourteenth Amendment. First, there is a legitimate prison safety objective for conducting routine strip searches. "Ensuring security and order at the institution is a permissible and nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both." Bell, 441 U.S at 561. Second, routine strip searches are reasonably related to a prison's legitimate safety goals. In Bell, the Court held that the routine strip searches did not violate due process because there was no evidence that they were excessive responses to legitimate security needs such that they rose to the level of punishment. Id. As noted above, the objective component of the unconstitutional punishment analysis evaluates whether "the deprivation [was] sufficiently serious" and the subjective component asks whether "the officials act[ed] with a sufficiently culpable state of mind[.]" Stevenson, 495 F.3d at 68 (citing Bell, 441 U.S. at 538-39 n.20).

Analyzing the objective factors, there are no facts showing that the manner or duration of Plaintiff's strip searches extended beyond a routine safety search and thus cannot be considered "sufficiently serious" intrusions. Although Plaintiff complains about the frequency of the searches and the fact that they were conducted in front of other inmates, the allegations in the Complaint do not set forth any circumstances that indicate that these strip searches were arbitrary or excessive punishments. He has not pled that they were unrelated to legitimate safety concerns.

Looking to the subjective factors, Plaintiff has not pled any facts to show a culpable state of mind by any members of the CFCF staff. There are no allegations that the searches were meant to punish him or that they were conducted in an unreasonably abusive manner in violation of

Plaintiff's due process rights. See DeFillipo, 1996 WL 355336, at *3 ("Here, plaintiff does not allege that the [strip] search was conducted for an illegitimate or unjustified purpose, nor does he allege that [the correctional officer] executed the search in an inappropriate or abusive manner.").

Therefore, even accepting Plaintiff's allegations as true and construing them liberally, Plaintiff has not shown any facts in the Amended Complaint to support his claim that the strip searches were punitive in nature. For that reason, he has not pled a violation of the Fourteenth Amendment with respect to his strip search claims.

iv. Plaintiff's Claims Regarding the Pepper Spray Incident at CFCF Do Not Establish a Fourteenth Amendment Violation

Finally, Defendants argue that Plaintiff has failed to plead a constitutional violation with respect to the pepper spray incident that took place June 25, 2017. (Doc. No. 14 at 13.) They contend that the claim fails because the one paragraph allegation "was again conclusory [and] provided no factual context to suggest the use of force was not necessary . . . ." (Id.)

Excessive force claims brought under the Fourteenth and Eighth Amendments are analyzed under the same standard. This type of claim "includes both an objective component, whether the deprivation of a basic human need is sufficiently serious, and a subjective component, whether the officials acted with a sufficiently culpable state of mind." Gay v. Stevens, No. 10-6354, 2011 WL 5276535, at *4 (D.N.J. Nov. 2, 2011) (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)). The objective component turns on context and corresponds to "contemporary standards of decency." Id. (citing Hudson v. McMillian, 503 U.S. 1, 8 (1992)). The crux of the subjective component is the principle that "only the unnecessary and wanton infliction of pain implicates" the Constitution. Id. (citing Farmer v. Brennan, 511 U.S. 825, 834 (1994)).

When evaluating the subjective component of an excessive use of force claim, a district court must determine "whether force was applied in a good faith effort to maintain or restore

discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320-21 (1986). To determine whether force was used in "good faith" or "maliciously and sadistically," the district court should examine several factors:

> (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by prison officials; and (5) any efforts made to temper the severity of a forceful response.

Gay, 2011 WL 5276535, at *5 (quoting Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir. 2000)). Accordingly, not all use of force is "excessive" and rises to the level of a constitutional violation. Id.

In paragraph 43 of the Amended Complaint, Plaintiff alleges an excessive force claim under the Eighth or Fourteenth Amendment:

> On/around July 7, 2017 Plaintiff put in grievance for incident that occurred on June 25, 2017[.] On/around 9:45 pm c/o officer[] Sgt. Lebesco and c/o A. Smith conducted an unreasonable search and assault on Plaintiff/Petitioner in his cell[.] [F]ollowing the strip search c/o A. Smith at the directive of Sgt. Lebesco discharged his weapon at Plaintiff of chemical spray into his facial and eyes without provocation; [h]e was kept in restraint for approximately 45 minutes in this state while suffering injury . . . ."

(Doc. No. 10 at 6.)

On the subject of the use of pepper spray in prisons, the Third Circuit Court of Appeals has held the following:

> [the] use of tear gas is not "a per se violation of the Eighth Amendment...." Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984). Rather, "[t]he use of mace, tear gas or other chemical agent of the like nature when reasonably necessary to prevent riots or escape or to subdue recalcitrant prisoners does not constitute cruel and inhuman punishment." Soto v. Dickey, 744 F.2d 1260, 1270 (7th Cir. 1984). See also Michenfelder v. Sumner, 860 F.2d 328, 336 (9th Cir. 1988) (policy allowing use of taser guns on inmate who refused to submit to a strip search does not constitute cruel and unusual punishment); Spain v. Procunier, 600 F.2d 189, 195 (9th Cir. 1979) (the use of tear gas "in small amounts may be a necessary prison technique if a prisoner refuses after adequate warning to move from a cell or upon other

> provocation presenting a reasonable possibility that slight force will be required."); Clemmons v. Greggs, 509 F.2d 1338, 1340 (5th Cir. 1975) (the use of tear gas when reasonably necessary to subdue recalcitrant prisoners does not violate the Eighth Amendment).

Passmore v. Ianello, 528 Fed. App'x. 144, 147-48 (3d Cir. 2013).

In Gay, a case similar to the one at hand, the court granted a motion to dismiss an excessive force claim where the plaintiff failed to sufficiently allege malicious or sadistic force. Gay, 2011 WL 5276535, at *4. There, the plaintiff claimed that, unprovoked, one officer sprayed him in the eye with pepper spray, another officer hit him in the eye, and yet another officer "pushed his thumb in the same eye that [the first officer] had sprayed pepper spray into." Id. But the court determined that these allegations were not enough to plead the subjective component of an excessive force claim. Id. The court explained its finding, writing "[Plaintiff] has failed to allege any facts that would demonstrate that the force was excessive under the circumstances or that the force was applied maliciously and sadistically, as opposed to in a good faith effort to restore order. The mere assertion that force was used against a prisoner is not sufficient to state a claim for an Eighth Amendment violation." Id.

Compare the allegations pled in Gay to those pled in Mueller v. Centre County, where the court found that the plaintiff sufficiently pled a plausible excessive force claim:

> I was violently extricated from cell # 6 in block A-1 by C.E.R.T. Team at C.C.C.F. on 8-4-09. For no reason other than retribution for my complaint to State Police about incident on 7-25-09. I did not disobey any orders. I did not refuse to cuff up to exit cell. I did not resist. But I was still rushed by C.E.R.T. Team wearing gas masks & helmets. I was pinned against wall between cell 5 & 6 and held there to breathe tear gas and pepper spray causing me much pain a[nd] burning in my eyes, throat and lungs. They pointed paintball gun & TASER gun at me. Then put me back in cell # 6 and pinned me to the floor and cut my clothes off and left me naked, coughing, sneezing, choking & vomiting from tear gas. My requests for medical assistance were ignored, until difficulty breathing and back spams [spasms] from fractured vertib[r]ae from incident # 1 caused me to pass out. Deputy Hite and McClellan ordered cell extraction. Capt. Perryman supervised. Lt. Ananea filmed

> incident. Lt. Stine led C.E.R.T. Team and held TASER. C.O. Peters had paintball gun.

No. 09-1880, 2009 WL 4912305, at (M.D. Pa. Nov. 23, 2009).

Having compared the above-cited cases to the facts alleged in the Amended Complaint, the Court is persuaded that Plaintiff's threadbare pepper spray allegations are more factually analogous to those pled in Gay than those pled in Mueller. Although Plaintiff claims that the use of force was "unreasonable" and "without cause," he does not point to facts to substantiate his claims. Without more, merely claiming that something is unreasonable does not make it so. Further, Plaintiff has not demonstrated through factual allegations that the use of pepper spray was malicious or sadistic. Thus, the Court is persuaded that the pepper spray allegations do not state a constitutional violation.

b. Plaintiff Fails to Sufficiently Link His Conditions of Confinement Injuries to a Policy, Custom, of Deliberate Indifference by a Municipal Policymaker

As noted above, to plead a Monell claim against a municipality, a plaintiff must sufficiently establish that an alleged constitutional violation was the result of municipal policy, custom, or deliberate indifference. Here, Plaintiff does not explicitly state whether the triple-celling or cold air were prison policy or custom, or the result of the prison's deliberate indifference to prisoners' needs. While other courts within the Circuit have held that triple-celling amounts to a prison policy, Plaintiff has not alleged that the practice was wide-spread or that other prisoners were affected. See, e.g., Burgos v. City of Philadelphia, 270 F. Supp. 3d 788, 796 (3d Cir. 2017) (where plaintiffs explicitly stated that the City maintained a prison-wide policy of triple-celling); Lopez v. City of Philadelphia, No. 13-6571, 2017 WL 2869495 (E.D. Pa. July 5, 2017) (same).

In any event, Plaintiff's conditions of confinement claim fails because he has not sufficiently linked any alleged policies or customs to a municipal policymaker. Within this section,

he mentions Warden Gerald May, claiming that he was the "custodian" of the CFCF while Plaintiff was detained there. But this singular factual averment is not enough. For the purposes of § 1983, a municipal policymaker is an individual who possesses "final, unreviewable discretion to make a decision or take an action." Andrews v. City of Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990). "[I]t is incumbent upon [a plaintiff] to show that a policymaker is responsible either for the policy or, through acquiescence, for the custom." Id. at 1480. Plaintiff has not done so by merely stating that Warden May was the "custodian."

In Peele v. Delaney, No. 12-4877, 2017 WL 467347, at *3-4 (E.D. Pa. Feb. 3, 2017), the court denied the defendants' motion to dismiss a § 1983 claim based on overcrowding where the plaintiff sufficiently pled that the warden of the prison was responsible for the policy at issue. There, the court wrote:

> Plaintiff provides more than just boilerplate allegations to establish the defendant's actual knowledge. Plaintiff specifically alleges that every day at CFCF, multiple times per day, the guards take a count of the number of inmates in the cells. (Id.) This tally is then reported from the guards, up the chain of command to the sergeant, then to the lieutenant/shift commander, and finally to the deputy or Warden Delaney. (Id.) These facts support a plausible claim that defendant had actual knowledge of and acquiesced in the triple (and sometimes quadruple) celling. See Chavarriaga v. N.J. Dep't Corr., 806 F.3d 210, 222 (3d Cir. 2015) ("A plaintiff makes sufficient allegations of a defendant's personal involvement by describing the defendant's participation in or actual knowledge of and acquiescence in the wrongful conduct.").

(Id. at *3.) Similarly, in Burgos, the court found that the plaintiff had sufficiently pled a Monell claim where he pointed to facts that the policymakers inspected cells and were required to sign off on conditions. 270 F. Supp. 3d at 796.

Here, Plaintiff's singular allegation stands in stark contrast to those found to be sufficient in Peele and Burgos. Aside from being the "custodian" at the CFCF while Plaintiff was detained, there are no other allegations showing that Warden May had any connection whatsoever to the

incidents alleged in the conditions of confinement section of the Amended Complaint. Thus, for the reasons stated here, Plaintiff has failed to state a Monell claim against the City of Philadelphia under § 1983 for injuries arising from his conditions of confinement at the CFCF.

4. Plaintiff Has Failed to State a Monell Claim With Respect to His Religious Deprivation and Discrimination Allegations

Next, Defendants argue that Plaintiff has failed to plead a Monell claim with respect to his injuries arising from religious deprivation and discrimination at the CFCF. First, they contend that his allegations do not amount to First or Fourteenth Amendment violations. (Doc. No. 14 at 11.) Second, they again submit that Plaintiff has failed to allege any policy, custom, or deliberate indifference or sufficiently identify a municipal policymaker so as to impute liability to the City. For the reasons discussed below, the Court finds that Plaintiff has alleged a First and Fourteenth Amendment violation regarding his right to assemble and practice his religion, but that he has failed to plead the involvement of a municipal policymaker. For this reason, his Monell claim will be dismissed.

a. Plaintiff's Religious Deprivation and Discrimination Claims Sufficiently Establish the First Prong of a Monell Claim

First, Defendants contend that Plaintiff's religious deprivation and discrimination allegations do not state a constitutional violation. Plaintiff alleges two sets of incidents: first, he claims that during a period of religious fasting, prison officials failed to deliver his meals on time, and second, he claims that throughout his detention, he was prevented from praying while other religions were not. The Court will discuss each incident in turn.

i. The Prison's Delay in Delivering Plaintiff His Meals During Periods of Religious Fasting Does Not Violate the First Amendment

Here, Plaintiff alleges that while he was fasting during daylight hours for Islamic holy days, prison employees at the CFCF failed to bring him "any food or drink whatsoever until 1 to 2 hours

after required time to eat and drink." (Doc. No. 10 at 7.) On the subject of a detainee's First Amendment right to the free exercise of religion, the Third Circuit has stated the following:

> Inmates have a First Amendment right to the free exercise of their religions, but imprisonment necessarily results in some restrictions on the practice of religion. O'Lone v. Shabazz, 482 U.S. 342, 348–49, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987). Limits on the free exercise of religion arise from valid penological objectives, including deterrence of crime, rehabilitation of prisoners, and institutional security. See id. at 348, 107 S.Ct. 2400. Under the First Amendment, regulations or policies that infringe upon an inmate's right to religious freedom need only pass a reasonableness test. Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987).

Ford v. Bureau of Prisons, 570 Fed. App'x. 246, 249 (3d Cir. 2014). "The threshold question in any First Amendment . . . case is whether the prison's challenged policy or practice has substantially burdened the practice of the inmate-plaintiff's religion." See Robinson v. Superintendent Houtzdale SCI (3d Cir. 2017) (per curiam) (citing Washington v. Klem, 497 F.3d 272, 277-78 (3d Cir. 2007)). "'When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.'" Garraway v. Lappin, 490 Fed. App'x. 440, 445 (3d Cir. 2012) (quoting Turner v. Safely, 482 U.S. 78, 89 (1978)).

Additionally, prisons must accommodate an inmate's sincerely held religious belief regarding a need for a particular diet. Ford, 570 Fed. App'x. at 249 (citing DeHart v. Horn, 227 F.3d 47, 52 (3d Cir. 2000)). If a religious belief is sincerely held, the district court must then evaluate the reasonableness of any regulations restricting or impinging upon that religious belief. This involves weighing the following four factors:

> first, whether the regulation bears a "valid, rational connection" to a legitimate and neutral governmental objective; second, whether prisoners have alternative ways of exercising the circumscribed right; third, whether accommodating the right would have a deleterious impact on other inmates, guards, and the allocation of prison resources generally; and fourth, whether alternatives exist that "fully

> accommodate[ ] the prisoner's rights at de minimis cost to valid penological interests."

Sutton v. Rasheed, 323 F.3d 236, 252 (3d Cir. 2003).

Advocating for dismissal, Defendants rely on Ford v. Bureau of Prisons, where the Third Circuit Court of Appeals affirmed the dismissal of a First Amendment religious deprivation claim. (Doc. No. 14 at 11-12.) In Ford, a Muslim inmate sued the prison where he was housed because on two occasions "the [prison] failed to provide him with a meal after he fasted from sunrise to sundown on two Holy Days . . . ." 570 Fed. App'x. at 248. There, the court held that the prison's failure to provide meals on two occasions did not amount to an unreasonable or substantial burden on the plaintiff's religious rights.

Here, Plaintiff's allegations do not rise to the level of those found to be insufficient in Ford. Plaintiff merely complains that his meals were delayed after his religious fasting, not that he was completely denied food or drink. (Doc. No. 10 at 7-8.) This delay does not amount to an unreasonable or substantial burden on the practice of his religion. Thus, this set of allegations does not state a First Amendment violation.

ii. Plaintiff's Claims that the CFCF Prevented Him from Practicing Islam Establish the First Prong of a Monell Claim

Plaintiff also submits that prison employees prevented him from practicing his religion at the CFCF. He alleges that members of other religious faiths were given preferential treatment. While detained, he filed several grievances to that effect. His allegations implicate the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

For their part, Defendants argue that this set of allegations fails because Plaintiff has not stated "specific instances, times, places, or individuals involved . . . ." (Doc. No. 14 at 14.) See also Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) ("The Third Circuit has held that a civil

rights complaint is adequate where it states the conduct, time, place, and persons responsible.") But this argument completely ignores Plaintiff's factual averments. Within the attached grievances, Plaintiff clearly pleads the conduct that occurred, when the conduct occurred, and where it occurred. On June 3, 2016, Plaintiff filed the following grievance:

> Currently ongoing—[t]here is no provided area for me to make my daily religious prayers, which is afforded to all those in institution of religious status everyday throughout the day. There is also barring and non-allowance of praying on the housing block, which is clearly against institutional policy.

(Doc. No. 10 at 33.) On March 3, 2017, Plaintiff complained of the following:

> Religious Friday service which is to be held weekly did not take place. The belief and exercise of my religious faith have [sic] been denied me. Even for period of up to (two) 2 months without taking place. There is [sic] also no daily provisions made or allowed for my everyday prayers of assembly. There is no provided . . . access to a minister of my religion. Other religions in institution have this and are provided religious prayers and service area which they attend leaving . . . the housing area for up to (3) three times a day.

(Id. at 36.) While not artfully pleaded, Plaintiff, proceeding pro se, has pled the time, conduct, and place of his allegations with appropriate specificity.

Having examined these allegations, the Court is persuaded that Plaintiff's factual allegations not only pass muster under Iqbal and Twombly, but also state a plausible First Amendment violation. As noted above, the key inquiry for a First Amendment claim is whether the regulation or practice substantially burdens the practice of religion. In this case, Plaintiff's allegations go far and above the "substantial burden" standard. Indeed, he asserts that he has been totally barred from practicing his Islamic faith at the CFCF. Taking his allegations as true, he has pled a First Amendment violation.

Turning to whether these allegations violate the Equal Protection Clause, a plaintiff bringing an equal protection claim must allege that he was treated differently than other similarly situated inmates, and that this different treatment was the result of intentional discrimination based

on his membership in a protected class, such as religious affiliation. Hassan v. City of New York, 804 F.3d 277, 295 (3d Cir. 2015) (citing Washington v. Davis, 426 U.S. 229 (1976)). A successful equal protection claim requires the plaintiff to sufficiently allege discriminatory purpose by showing that the defendant took the challenged action "at least partially because the action would benefit or burden an identifiable group." Doe ex rel. Doe v. Lower Merion Sch. Dist., 665 F.3d 524, 548 (3d Cir. 2011).

Here, Plaintiff alleges that as a Muslim, he was afforded treatment different from similarly situated prisoners who were members of other religions. Taking as true Plaintiff's allegations that other religions were permitted to practice their religions but Plaintiff, a Muslim, was not, it is plausible that these allegations amount to intentional discrimination based on religion under the Equal Protection Clause.

b. Plaintiff Has Failed to Link His Alleged Religious Deprivation and Discrimination Injuries to a Policy, Custom, or Deliberate Indifference by a Municipal Policymaker

Second, Defendants argue that even if Plaintiff's allegations stated a constitutional violation, he has failed to sufficiently plead a policy, custom, or deliberate indifference or properly identify a municipal policymaker with final decision-making authority. Construed liberally, it appears that Plaintiff attempts to plead that his religious deprivation injuries were the result of a policy or custom. He alleges the following:

> 53. The warden has causal connection by history of widespread violations putting warden on notice of the need to correct the deprivation and he failed to do so. The Practice "Custom or Policy" of the warden resulted in violating the constitutional rights of Plaintiff.
>
> 54. Supporting inference that the warden directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.

(Doc. No. 10 at 8.) Essentially, he contends that Warden Gerald May, who was warden of the CFCF while Plaintiff was detained there, had a "[c]ustom or [p]olicy" of ignoring prisoners' religious rights and that he failed to train or supervise his subordinates on how not to violate prisoners' First Amendment rights. It is unclear from the pleadings whether every prisoner of Islamic faith was prevented from worshipping or whether Plaintiff was the only individual affected.

Viewed alone, these two paragraphs do not sufficiently state a policy or custom. They appear to be nothing more than formulaic recitations of law. But examined within the context of the rest of the religious deprivation allegations at set forth above and construed liberally, Plaintiff has sufficiently pled that the CFCF either had a policy or custom that disallowed Muslims from practicing their faiths. The allegations in the Amended Complaint give rise to the inference that these incidents stemmed from "an official proclamation, policy, or edict" or "acquiescence in a longstanding practice or custom which constitutes the 'standard operating procedure.'"

Where Plaintiff falters is the sufficiency of his allegations of Warden May's personal involvement. As noted above, a plaintiff cannot establish a Monell claim if he "fails to link the alleged offending policies or customs to anyone within [a municipality] who had policy-making authority." Rees v. Office of Children & Youth, 473 Fed. App'x. 139, 143 (3d Cir. 2012). For the purposes of § 1983, a municipal policymaker is an individual who possesses "final, unreviewable discretion to make a decision or take an action." Andrews v. City of Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990). As a threshold matter, "it is incumbent upon [a plaintiff] to show that a policymaker is responsible either for the policy or, through acquiescence, for the custom." Id. at 1480.

In the present action, Plaintiff has not made this showing. Plaintiff claims that "the warden directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so." This singular averment is a far cry from demonstrating with facts that Warden May was responsible for the policy or acquiesced to it. It is nothing more than a legal conclusion, which is not entitled to the assumption of truth. Only one allegation possibly links Warden May to this policy or custom—the fact that Plaintiff submitted several religious deprivation grievances. But under Third Circuit precedent, merely receiving grievances is generally insufficient to establish the knowledge needed to plead a Monell claim. Sutton v. City of Philadelphia, 21 F. Supp. 3d 474, 486 (E.D. Pa. May 20, 2014) (citing Rode, 845 F.2d at 1208). Moreover, the Amended Complaint is devoid of any allegations that Warden May is the final decisionmaker for CFCF prison policy and custom. Thus, without more, Plaintiff has failed to plead a Monell claim against the City of Philadelphia with respect to religious deprivation and discrimination because he has not sufficiently linked the policy or custom causing his injuries to a municipal policymaker with final decision-making authority

5. Plaintiff Has Failed to State a Monell Claim With Respect to His Inadequate Medical Care Allegations

Finally, Defendants submit that Plaintiff has failed to establish a Monell claim with respect to any deprivation of his special dietary or medical needs. First, they argue that he has not pled a constitutional violation. (Doc. No. 14 at 12-13.) Second, they once again assert that Plaintiff has failed to allege with any specificity either the policies, customs, or deliberate indifference that would impute liability to the City or to identify a municipal policymaker linked to the offending policies. (Id. at 8-9.)

a. Plaintiff's Inadequate Medical Care Allegations Fail to Establish a Fourteenth Amendment Violation

Defendants argue that Plaintiff's inadequate medical care claim fails under the Eighth Amendment. (Doc. No. 14 at 14-15.) As an initial matter, Plaintiff's claim falls under the Fourteenth Amendment, and not the Eighth, because Plaintiff was a pretrial detainee at the time of his injuries. In any event, Defendants' failure to cite to the Fourteenth Amendment in their Motion to Dismiss is harmless because the United States Supreme Court has held that the Fourteenth Amendment "affords pretrial detainees protections 'at least as great as the Eighth Amendment protections available to a convicted prisoner.'" Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 581 (3d Cir. 2003) (quoting City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244 (1983)). Accordingly, in previous cases, the Third Circuit has applied Eighth Amendment case law to evaluate whether a claim for inadequate medical care by a pretrial detainee is sufficiently plausible under the Fourteenth Amendment. See, e.g., Lenhart v. Pennsylvania, 528 Fed. App'x. 111, 115 (3d Cir. 2013).

To state a claim for inadequate medical care under the Eighth or Fourteenth Amendments, a plaintiff must establish a deliberate indifference to a serious medical condition. See Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). The standard set forth in Estelle has two prongs: (1) the prisoner's medical needs must be serious, and (2) deliberate indifference on the part of prison officials. Id. A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Monmouth Cty. Corr. Institutional Inmates v. Lanzaro, 834 F.3d 326, 347 (3d Cir. 1987) (internal quotations marks and citations omitted). Additionally, a serious medical condition is one for which the denial of treatment causes "unnecessary and wanton infliction of pain" or permanent disability or loss. Id.

Deliberate indifference requires that a defendant "knows of and disregards an excessive risk to an inmate's health or safety." Dominguez v. Governor of Pennsylvania, 574 Fed. App'x. 63, 65 (3d Cir. 2014). The prison official "must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and draw the inference." Natale, 318 F.3d at 582. However, "[n]either a prisoner's subjective dissatisfaction with the care provided nor his disagreement with medical staff's professional judgment is . . . sufficient to establish deliberate indifference." Davis, v. Jail, No. 15-8154, 2016 Wl 676374, at *3 (D.N.J. Feb. 18, 2016) (citing Hairston v. Dir. Bureau of Prisons, 563 Fed. App'x. 893, 895 (3d Cir. 2014)).

In this case, Plaintiff's inadequate medical care claim includes three sets of injuries. First, he claims that he became lightheaded and lost weight due to the prison's denial of "health shakes" and "vegetarian meals" apparently prescribed for his low blood sugar, thyroid issues, and anemia. (Doc. No. 10 at 8.) Second, he contends that the prison neglected to refill his asthma inhaler and as a result he suffered an asthma attack. (Id. at 9.) When experiencing the asthma attack, he claims that the prison refused him necessary breathing treatment. (Id.) Third, he claims that after he was pepper-sprayed by Sgt. Lebesco, the prison made him wait 45 minutes in handcuffs before treating him. (Id.) For their part, Defendants submit that Plaintiff's inadequate medical claim fails because he has not shown that prison officials were deliberately indifferent to his medical needs. (Doc. No. 14 at 12-13.) The Court agrees.

Whether or not his injuries amount to serious medical needs, those claims fail because Plaintiff has not demonstrated deliberate indifference under Estelle. Regarding his claimed injuries stemming from his dietary needs, Plaintiff's own pleadings demonstrate that the prison did not "disregard an excessive risk to [his] health or safety." Indeed, after Plaintiff filed

grievances, he concedes that the prison attempted to comply with his nutritional plan. (Doc. No. 10 at 9.)

With regard to the inhaler incident, Plaintiff's own allegations again show that the prison lacked deliberate indifference. Although he was not allowed an inhaler when he was first detained, the prison eventually granted his request. (Id.) That his inhaler was not filled on time does not amount to a "culpable state of mind" or show that the prison officials' actions constituted anything more than mere negligence. The "inadvertent failure" to provide medical care cannot be said to be "an unnecessary or wanton infliction of pain." Estelle, 429 U.S. at 105. Plaintiff further objects to the medical staff's decision that he did not require "breathing treatment" after his asthma attack. But deliberate indifference cannot be based on mere difference of medical opinion. See Joh v. Suhey, 709 Fed. App'x. 729, 731 (3d Cir. 2017). With respect to medical decisions, "prison authorities are accorded considerable latitude in the diagnosis and treatment of prisoners." Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993). A federal court will "disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment." Inmates of Allegheny Cty. Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). That Plaintiff did not agree with the medical staff's decision is not enough to show deliberate indifference. Further, he does not allege that the medical staff's decisions were wrong or incorrect. Without having a medical degree, he simply asserts that he needed a certain treatment that was not provided. This is not enough to satisfy Estelle.

On the subject of the pepper spray incident, Plaintiff only alleges that the prison "refused treatment" for forty-five (45) minutes. (Doc. No. 10 at 9.) He does not state whether the prison officials completely failed to treat him. In Joh, the Third Circuit held that a nurse's delay in treating a broken finger for over an hour did not amount to deliberate indifference. Joh, 709 Fed. App'x.

at 731. Again, disagreement with a medical professional's legitimate opinion or decision cannot form the basis of deliberate indifference under Estelle. See id. And while Plaintiff alleges that the medical staff "purposefully" and "deliberately" delayed his care, he does not allege any facts to support this contention. Accordingly, the Court is persuaded that Plaintiff has not pled medical care claims that amount to constitutional violations.

b. Plaintiff Fails to Allege that His Inadequate Medical Care Injuries Were the Result of a Policy, Custom, or Deliberate Indifference by a Municipal Policymaker

In any event, Plaintiff's inadequate medical care claim fails because he has not pled any facts linking his injuries to a City policy or custom or to the City's deliberate indifference. He only pleads isolated incidents committed by individual prison employees and tries to impute liability to the entire City. Monell prohibits this kind of pleading. Even if Plaintiff did point to some policy, custom, or deliberate indifference, he names no municipal policymaker with final decision-making authority. In fact, the inadequate medical care section of the Amended Complaint does not contain a single name or identity of any specific individual involved in Plaintiff's injuries. Thus, Plaintiff's inadequate medical care claims fail because he has not pled constitutional violations and because he has failed to allege a policy, custom, or deliberate indifference by any City policymaker.

C. Plaintiff Fails to State a Claim under § 1983 Against Warden Gerald May

Defendants also argue that Plaintiff fails to state a claim against Warden Gerald May under § 1983. They submit that Plaintiff has not established that Warden May was personally involved in any constitutional violations or that he is responsible on the basis of supervisory liability. (Doc. No. 14 at 9-10.) The Court agrees.

State officials are not subject to liability under § 1983 when sued in their official capacities because the suit is essentially against the state itself. Will v. Mich. Dept. of State Police, 491 U.S.

58, 71 (1989). State officials can, however, be held responsible for actions taken in their individual capacities in two situations. First, a plaintiff can establish liability by showing that the state official was personally involved in the alleged constitutional deprivation. Second, a plaintiff can demonstrate liability by showing that the state official was acting in a supervisory capacity. Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981); Baker v. Monroe Twp., 50 F.3d 1186, 1190 (3d Cir. 1995).

Supervisory liability can be pled in two ways. A.M. ex rel. J.M.K. v. Luzerne Cty. Juvenile Det. Ctr., 372 F.3d 572, 586 (3d Cir. 2004). First, "personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Argueta v. U.S. Immigration and Customs Enforcement, 643 F.3d 60, 72 (3d Cir. 2011) (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)). This can be established "by showing a supervisor tolerated past or ongoing misbehavior." Id. (quoting Baker, 50 F.3d at 1191 n.3). To plead acquiescence, "the supervisor must contemporaneously know of the violation of a plaintiff's rights and fail to take action." Anderson v. City of Philadelphia, Civ. A. No. 16-5717, 2017 WL 550587, at *4 (E.D. Pa. Feb. 10, 2017) (citing Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997)). Significantly, "[a]llegations of 'actual knowledge and acquiescence . . . must be made with appropriate particularity.'" Id. (omission in original) (quoting Rode, 845 F.2d at 1207). And "[a]lthough a court can infer that a defendant had contemporaneous knowledge of wrongful conduct from the circumstances surrounding a case, the knowledge must be actual, not constructive." Chavarriaga v. N.J. Dep't of Corr., 806 F.3d 210, 222 (3d Cir. 2015) (citing Baker, 50 F.3d at 1194).

Second, a supervisor can be liable under § 1983 if he "implements a policy or practice that creates an unreasonable risk of a constitutional violation on the part of the subordinate and the supervisor's failure to change the policy or employ corrective practices is a cause of this

unconstitutional conduct." Argueta, 643 F.3d at 72 (citing Brown v. Muhlenberg Twp., 269 F.3d 205, 216 (3d Cir. 2001)). Claims of failure to train or supervise are "generally considered a subcategory of policy or practice liability." Barkes v. First Corr. Med., Inc., 766 F.3d 307, 316 (3d Cir. 2014), rev'd on other grounds sub. nom. Taylor v. Barkes, 135 S. Ct. 2042 (2015) (per curiam). To be held liable on a claim of failure to supervise:

> The plaintiff must identify a supervisory policy or practice that the supervisor failed to employ, and then prove that: (1) the policy or procedures in effect at the time of the alleged injury created an unreasonable risk of a constitutional violation; (2) the defendant-official was aware that the policy created an unreasonable risk; (3) the defendant was indifferent to that risk; and (4) the constitutional injury was caused by the failure to implement the supervisory practice or procedure.

Id. at 317 (citing Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989)). "[I]t is not enough for a plaintiff to argue that the constitutionally cognizable injury would not have occurred if the superior had done more than he or she did." Brown, 269 F.3d at 216 (quoting Sample, 885 F.2d at 1118). Instead, "the plaintiff must identify specific acts or omissions of the supervisor that evidence deliberate indifference and persuade the court that there is a 'relationship between the identified deficiency and the ultimate injury.'" Id. (quoting Sample, 885 F.2d at 1118).

As noted above, Plaintiff only mentions Warden May in reference to his conditions of confinement injuries and his religious deprivation injuries. In the conditions of confinement section, Plaintiff only asserts that Warden May was the "custodian" of the CFCF while he was detained there. (Doc. No. 10 at 6.) In the religious deprivation section, he alleges the following:

> 53. The warden has causal connection by history of widespread violations putting warden on notice of the need to correct the deprivation and he failed to do so. The Practice "Custom or Policy" of the warden resulted in violating the constitutional rights of Plaintiff.
>
> 54. Supporting inference that the warden directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.

(Id. at 8.) He makes no allegations that Warden May was involved in any of his other injuries.

In this case, Plaintiff has not pled facts showing that Warden May was personally involved in the alleged religious deprivation or the overcrowding. In the conditions of confinement section, Plaintiff merely mentions that Warden May was the "custodian" of the CFCF, but does not allege any personal involvement. (See id. at 6.) Likewise, in the religious deprivation section, Plaintiff concludes that Warden May knew of the "widespread violations" but failed to remedy the situation. (Id. at 8.) But this allegation is nothing more than a legal conclusion, which is not entitled to the assumption of truth. See Argueta, 643 F.3d at 74 (explaining that the court must identify "those allegations that, because they are no more than conclusions, are not entitled to any assumption of truth").

Furthermore, Plaintiff fails to state a claim against Warden May through supervisory liability. First, the Complaint fails to include sufficient facts showing that Warden May either directed, or knew of and acquiesced in, the conduct that took place. Instead, the Amended Complaint is chock-full of legal conclusions couched as factual allegations. Plaintiff broadly contends that Warden May "directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so." but makes no attempt to substantiate that contention with facts. (See Doc. No. 10 at 8.) Nor does he plead facts that show Warden May tolerated past or ongoing misbehavior.

Second, Plaintiff has failed to sufficiently plead a policy or custom that Warden May implemented that created a risk of constitutional violations. As noted supra, Plaintiff has not plausibly alleged that the "[c]ustom or [p]olicy" cited in paragraph 53 of the Amended Complaint caused any constitutional violations, let alone that it even existed. Thus, because Plaintiff has pled no factual conduct at all on the part of Warden May, and because Warden May cannot be held

liable for the random acts of others through respondeat superior. Plaintiff's claims against Warden May will be dismissed.

D. Plaintiff Fails to State a Claim under § 1983 Against Officer Obrien

Defendants also submit that Plaintiff fails to state a claim against Officer Obrien under § 1983. They argue that neither the arrest nor the search and seizure amounted to constitutional violations, and thus, Officer Obrien cannot be held liable for any alleged injuries. (Doc. No. 14 at 5-7.) They further add that Plaintiff has not sufficiently pled Officer Obrien's role in the arrest and the search and seizure under the auspices of Iqbal and Twombly. (Id.) For the reasons that follow, the Court agrees.

As noted above, the Fourth Amendment prohibits arrests without probable cause. See Berg, 219 F.3d at 269. To establish a claim for false arrest and imprisonment, a plaintiff needs to point to facts that plausibly show that defendants lacked probable cause to believe he had committed the offense for which he was arrested. Godfrey, 525 Fed. App'x. at 80 (citing Dowling, 855 F.2d at 141). Likewise, to recover money damages for an illegal search and seizure, the plaintiff "must prove, inter alia, that the search and seizure were illegal." Gresh, 170 Fed. App'x. at 220 (citing Heck, 512 U.S. at 487 n.7). A warrantless search is legal if it is supported by probable cause, and probable cause exists when "viewing the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" Id. at 221 (quoting Gates, 462 U.S. at 238.)

Here, though, Plaintiff only pleads conclusory allegations peppered with legal buzzwords. He claims that he was "unreasonably summoned" and subject to "arrest and unreasonable search and seizure" without pointing to facts that show how and why those incidents were in fact unreasonable. (Doc. No. 10 at 3.) Even viewing the allegations of the Amended Complaint liberally, the circumstances of his arrest are unclear. Equally unclear is the role Officer Obrien

played in his "unreasonable" arrest and search and seizure. In paragraph 8 of the Amended Complaint, Plaintiff states that two Philadelphia police officers stopped him on the day in question: Officer Obrien and "an accompanying officer." (Id.) In paragraph 9, he writes that he was subject to "arrest and unreasonable search and seizure by officers mentioned above without cause." (Id.) Those are the only references to Officer Obrien in the Amended Complaint. As Defendants emphasize, these threadbare references are not enough. Plaintiff does not make clear which officer arrested him or which officer searched his person. He does not explain why the officers' conduct was problematic. Applying the principles of Twombly and Iqbal as noted supra, Plaintiff does not sufficiently allege a Fourth Amendment violation against Officer Obrien. Even construing the allegations in the light most favorable to Plaintiff, the facts do not establish a constitutional violation. As a result, the Court will dismiss the § 1983 claim against Officer Obrien.

E. Plaintiff Fails to State a § 1983 Claim Against Sergeant Lebesco

Although Defendants ask the Court to dismiss Plaintiff's claims as to Sgt. Lebesco, the Motion does not explicitly advance any arguments on his behalf. (See Doc. No. 14.) In fact, Sgt. Lebesco's name is mentioned only once, within Defendants' argument that Plaintiff failed to plead a constitutional violation with respect to his conditions of confinement. They write:

> Plaintiff did allege under his "Conditions of Confinement" heading that a correctional officer, A. Smith, discharged pepper spray at Plaintiff. But this one paragraph allegation was again conclusory, provided no factual context to suggest the use of force was unreasonable, and did not allege that Sgt. Lebesco, or any other named Defendant, was the individual who pepper-sprayed Plaintiff. For these reasons, Plaintiff's Fourteenth and/or Eighth Amendment claims concerning the conditions of his confinement should be dismissed.

(Doc. No. 14 at 13.) In any event, because the pepper spray incident does not amount to a constitutional violation under the Eighth or Fourteenth Amendment, Sgt. Lebesco cannot be held liable for it under § 1983.

F. All State Law Claims Will Be Dismissed Pursuant to 28 U.S.C. § 1367

Plaintiff also brings several state law claims against Defendants. (See Doc. No. 10 at 11.) Under 28 U.S.C. § 1367(c)(3), a district court is permitted to dismiss supplemental state law claims if all of the federal claims over which it has original jurisdiction have been dismissed. See 28 U.S.C. § 1367(c)(3); see also Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) ("[w]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative jurisdiction for doing so"). Because the Court will grant Defendants' Motion to Dismiss Plaintiff's § 1983 claims, it will decline to exercise supplemental jurisdiction over his pendant state law claims pursuant to § 1367(c)(3). Accordingly, Plaintiff's state claims will be dismissed without prejudice to his ability to refile in state court.

V. CONCLUSION

For the foregoing reasons, Defendants' uncontested Motion to Dismiss Plaintiff's Amended Complaint for Failure to State a Claim (Doc. No. 10) will be granted in its entirety. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR,

Plaintiff,

v.

THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Defendant.

CIVIL ACTION
NO. 17-3369

ORDER

AND NOW, this 12th day of December 2018, upon consideration of Defendants Criminal Justice Center and the Honorable Frank Palumbo's uncontested Motion to Dismiss the Amended Complaint (Doc. No. 11), it is **ORDERED** that Defendants' Motion to Dismiss (Doc. No. 11) is **GRANTED**. The Amended Complaint is dismissed as to Defendants Criminal Justice Center and the Honorable Frank Palumbo.[1]

[1] On April 23, 2018, Plaintiff Robert Taylor, proceeding pro se, filed an Amended Complaint pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights arising out of his arrest on November 16, 2015. (Doc. No. 10.) He also brings various state law claims. (Id.) Plaintiff names twelve (12) defendants, including the Philadelphia Criminal Justice Center ("CJC") and the Honorable Frank Palumbo, a judge on the Court of Common Pleas of Philadelphia County, Criminal Division. On May 15, 2018, Defendants CJC and Judge Palumbo filed the present Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Doc. No. 11.) Plaintiff has not filed a response and has not requested additional time to do so.

On September 22, 2009, Plaintiff was arrested in Philadelphia and charged with various offenses involving the possession of a firearm and making false statements to authorities. Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 5 (Ct. Com. Pl. Philadelphia, filed July 28, 2010). After a trial, he was found guilty and sentenced to a county prison sentence and probation. Id. at 6-7. On November 16, 2015, Plaintiff was arrested and detained for violating his probation. Id. at 19; (Doc. No. 10 at 3.) Judge Palumbo was assigned to Plaintiff's case. At various points during the proceedings, which were held at the CJC, Judge Palumbo continued Plaintiff's violation of probation hearing so that Plaintiff could undergo mental health and competency evaluations. Id. at 20-31.

Plaintiff remained in custody at the Curran-Fromhold Correctional Facility and at the Criminal Justice Center throughout the proceedings. Id. Finally, on July 12, 2017, Plaintiff was released from custody. Id. at 31; (Doc. No. 10 at 4.)

As it pertains to Defendants CJC and Judge Palumbo, the Amended Complaint alleges that Judge Palumbo conspired with other defendants to keep him imprisoned. (Doc. No. 10 at 4.) Specifically, Plaintiff contends that "Judge Palumbo is in clear absence of all jurisdiction. In connection with commonwealth (CJC) court system have [sic] provided and fabricated uncertified Court information regarding Plaintiff." (Id.) The Complaint does not state which information was supposedly falsified. Additionally, Plaintiff contends that while detained at the CJC, he was subjected to harsh conditions, inadequate food, and overcrowding. (Id.)

Defendants now move to dismiss the Amended Complaint, arguing that the Court lacks subject matter jurisdiction to hear Plaintiff's claims and that Plaintiff has failed to state a claim against Defendants CJC and Judge Palumbo upon which relief can be granted. (Doc. No. 11.) Defendants do not discuss in the Motion or memorandum of law why the Court lacks subject matter jurisdiction, but for the reasons set forth infra, the Court will grant the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismiss the Amended Complaint as to Defendants CJC and Judge Palumbo.

The motion to dismiss standard under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009). After Iqbal it is clear that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to defeat a Rule 12(b)(6) motion to dismiss. Id. at 678; see also Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). "To survive dismissal, 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Tatis v. Allied Interstate, LLC, 882 F.3d 422, 426 (3d Cir. 2018) (quoting Iqbal, 556 U.S. at 678). *Facial plausibility* is "more than a sheer possibility that a defendant has acted unlawfully." Id. (quoting Iqbal, 556 U.S. at 678). Instead, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (quoting Iqbal, 556 U.S. at 678).

A complaint must do more than allege a plaintiff's entitlement to relief, it must "show" such an entitlement with its facts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009) (citing Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original) (citation omitted). The "plausibility" determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.

Eastern District of Pennsylvania Local Rule 7.1(c) provides that "[u]nless the Court directs otherwise, any party opposing the motion shall serve a brief in opposition . . . within

fourteen (14) days after service of the motion and supporting brief. In the absence of timely response, the motion may be granted as uncontested . . . ." E.D. Pa. Local R. 7.1(c). But a motion to dismiss under Rule 12(b)(6) should not be granted "without an analysis of the merits of the underlying complaint, notwithstanding local rules regarding the granting of unopposed motions." Ray v. Reed, 240 Fed. App'x 455, 456 (3d Cir. 2007) (citing Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991)). Accordingly, the Court will analyze the merits of Plaintiff's claims against Defendants CJC and Judge Palumbo.

As an initial matter, Plaintiff names the Philadelphia Criminal Justice Center as a Defendant in this suit, but it appears that his allegations pertain to the Court of Common Pleas of Philadelphia that is housed within the CJC, and not the building itself. Thus, the Court will proceed as if Defendant intended to sue the Court of Common Pleas of Philadelphia County.

Defendant CJC submits that as a state agency, it is entitled to Eleventh Amendment sovereign immunity from Plaintiff's § 1983 and state law claims. (Doc. No. 11 at 6-8.) The United States Supreme Court has consistently held that, under the Eleventh Amendment, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." Jones v. Sussex Correctional Institute, 725 Fed. App'x. 157, 159 (3d Cir. 2017) (quoting Edelman v. Jordan, 415 U.S. 651, 662-63 (1974)). Eleventh Amendment immunity protects not only states, but also state agencies. Fitchik v. New Jersey Transit Rail Operations, 873 F.2d 655, 659 (3d Cir. 1989) (en banc). A State may waive its sovereign immunity, College v. Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666, 675-76 (1999), and in some circumstances, Congress may abrogate it by appropriate legislation. Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 59 (1996). "But absent waiver or valid abrogation, federal courts may not entertain a private person's suit against a State." Virginia Office for Protection and Advocacy v. Stewart, 563 U.S. 247, 253-54 (2011).

Courts have repeatedly found that the Court of Common Pleas is an arm of the Commonwealth of Pennsylvania, and as such, is entitled to Eleventh Amendment sovereign immunity which would bar a suit against it in federal court. See Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 240 n.1 (3d Cir. 2005); Malarik v. Court of Common Pleas of Beaver Cty, Pennsylvania, 145 Fed. App'x. 756, 757 (3d Cir. 2005); Reiff v. Philadelphia Cty. Court of Common Pleas, 827 F. Supp. 319, 322-24 (E.D. Pa. 1991). Thus, in the present action, the Criminal Justice Center, as part of the Court of Common Pleas of Philadelphia, is a state agency protected by the Eleventh Amendment. Additionally, the Court of Common Pleas has not waived its sovereign immunity by consenting to be a party in this suit. Consequently, the Criminal Justice Center is an improper defendant and all claims against this Defendant will be dismissed.

Next, Defendant Palumbo submits that any claims against him in his official capacity are subject to dismissal. A state official sued in his official capacity is not a "person" for the purposes of § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71. An official-capacity suit against a state official "is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." Id. (citation omitted). Hence, by suing Judge Palumbo in his official capacity, Plaintiff

actually sues the government entity of which Judge Palumbo is an agent—the Court of Common Pleas of Philadelphia. As explained above, the Court of Common Pleas is a state agency and is entitled to Eleventh Amendment sovereign immunity. Thus, Plaintiff's claims against Judge Palumbo in his official capacity fail.

Defendant Palumbo also submits that any claims against him in his individual capacity are barred by the doctrine of absolute judicial immunity. (Doc. No. 11 at 8-10.) It is a well-settled principle of law that monetary and injunctive relief against judicial officers under § 1983 is strictly limited by the doctrine of judicial immunity. See Figueroa v. Blackburn, 208 F.3d 435, 440 (3d Cir. 2000). Judicial immunity can be overcome in two circumstances: (1) "a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity" and (2) "a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction." Mireles v. Waco, 502 U.S. 9, 10-11 (1991) (internal citations omitted).

To determine whether an act falls within the range of judicial action, a court must consider "the nature of the act itself, i.e., whether it is a function normally performed by a judge, and . . . the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362 (1978). As discussed above, all of Plaintiff's claims involve actions undertaken while Judge Palumbo was presiding over Plaintiff's alleged violation of probation in the Court of Common Pleas of Philadelphia. Although Plaintiff objects to the manner in which Judge Palumbo ruled during the proceedings, including decisions to continue Plaintiff's violation of probation detainer for mental health and competency evaluations, all of these actions constitute "judicial acts," functions normally performed by judges.

With respect to the second inquiry, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump, 435 U.S. at 356-37. Judicial immunity is not forfeited where a judge has committed "grave procedural errors," id. at 359, or where a judge has conducted a proceeding in an "informal and ex parte manner." Forrester v. White, 484 U.S. 219, 227 (1988). A judge is even immune where, as here, a plaintiff alleges he engaged in a conspiracy to deprive him of his constitutional rights. See Dennis v. Sparks, 449 U.S. 24, 27-28 (1980). "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Stump, 435 U.S. at 356.

To the extent that Plaintiff maintains that Judge Palumbo acted in "clear absence of all jurisdiction" (Doc. No. 10 at 4), Judge Palumbo sits on the Court of Common Pleas of Philadelphia, which is a court of general jurisdiction in the Commonwealth of Pennsylvania. See 42 Pa. C. S. § 931(a). In Pennsylvania, "the court of common pleas . . . have original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas." Id. Here, Plaintiff takes issue with various judicial rulings that led to his continued detention and claims that Judge Palumbo conspired with other defendants to keep him in jail. (Doc. No. 10 at 4.) But based on the authorities cited above, Judge Palumbo did not act in absence of jurisdiction.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

Regardless of whether his rulings were in error or even allegedly malicious. Judge Palumbo certainly had jurisdiction to make them. Thus, he is protected by the doctrine of judicial immunity. Accordingly, Plaintiff's claims against Defendant Palumbo in both his individual and official capacity fail and all claims against this Defendant will be dismissed.

Finally, even if Defendants CJC and Palumbo were not immune from this suit, Plaintiff has failed to establish that Defendants conspired to imprison him unlawfully. To demonstrate the existence of a conspiracy under § 1983, a plaintiff needs to show that two or more conspirators reached an agreement to deprive him of a constitutional right under color of law. See Godfrey v. Pennsylvania, 525 Fed. App'x. 78. 80-81 (3d Cir. 2013). Here, Plaintiff merely contends that "Judge Frank Palumbo is given to inference of conspiring with defendants to violate civil rights of Plaintiff . . . ." (Doc. No. 10 at 4.) He makes no other mention of Defendants' role in this supposed conspiracy and pleads no facts to support his position. Conclusory allegations such as these are insufficient from a pleading perspective. See Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 178-79 (3d Cir. 2010) (conclusory allegations of an agreement to conspire do not meeting the pleading standards; instead, a plaintiff is required to plead specific facts addressing the time the agreement was made, the exact parties to the agreement, and the object of the conspiracy). Consequently, Plaintiff has failed to plead a conspiracy claim with the necessary particularity and his claims against the CJC and Judge Palumbo fail for this reason too.

For the foregoing reasons, the Court will grant Defendants' Motion to Dismiss the Amended Complaint (Doc. No. 11) as it pertains to Defendants CJC and Judge Palumbo.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR.

Plaintiff,

v.

THE COMMONWEALTH OF PENNSYLVANIA, et al.,

Defendant.

CIVIL ACTION
NO. 17-3369

ORDER

AND NOW, this 12th day of December 2018, upon consideration of Defendants Defender Association and Assistant Defender Christopher Angelo's uncontested Motion to Dismiss the Amended Complaint (Doc. No. 13), it is **ORDERED** that Defendants' Motion to Dismiss (Doc. No. 13) is **GRANTED**. The Amended Complaint is dismissed as to Defendants Defender Association and Assistant Defender Christopher Angelo.[1]

[1] On April 23, 2018, Plaintiff Robert Taylor, proceeding pro se, filed an Amended Complaint pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights arising out of his arrest on November 16, 2015. (Doc. No. 10.) He also brings various state law claims. (Id.) Plaintiff names twelve (12) defendants, including the Defender Association and Assistant Defender Christopher Angelo. (Id.) On May 25, 2018, Defendants Defender Association and Christopher Angelo filed the present Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 13.) Plaintiff has not filed a response and has not requested additional time to do so.

On September 22, 2009, Plaintiff was arrested in Philadelphia and charged with various offenses involving the possession of a firearm and making false statements to authorities. Commonwealth v. Taylor, Docket No. CP-51-CR-009569-2010 at 5 (Ct. Com. Pl. Philadelphia, filed July 28, 2010). After a trial, he was found guilty and sentenced to a county prison sentence and probation. Id. at 6-7. On November 16, 2015, Plaintiff was arrested and detained for violating his probation. Id. at 19; (Doc. No. 10 at 3.) At various points during the proceedings, the Court of Common Pleas of Philadelphia continued Plaintiff's violation of probation hearing so that Plaintiff could undergo mental health and competency evaluations. Id. at 20-31. Plaintiff remained in custody at the Curran-Fromhold Correctional Facility and at the Criminal Justice Center throughout the proceedings. Id. In

February 2016, the Court of Common Pleas appointed Assistant Defender Christopher Angelo from the Defender Association's Mental Health Unit to represent Plaintiff. (Doc. No. 13 at 4.) He continued to do so until Plaintiff was finally released from custody on July 12, 2017. (Id.; Doc. No. 10 at 4.)

The Amended Complaint only references the Defender Association in two paragraphs. In Paragraph 22, Plaintiff contends that "The Philadelphia public defenders association conspired with defendants to misrepresent Plaintiff as to have him further detained in prison." (Doc. No. 10 at 4.) He does not plead specific facts addressing the time the agreement was made, the exact parties to the agreement, or how the object of the conspiracy was allegedly carried out. Then, in Paragraph 23, Plaintiff states "On/around January 23, 2017 Plaintiff sent a formal termination in writing to The Philadelphia public defenders association for any possible alleged representation of Plaintiff for which he never authorized or had knowledge thereto." (Id.)

Defendants now move to dismiss the Amended Complaint as it relates to them, arguing that Plaintiff has failed to state a claim against Defendants Defender Association and Christopher Angelo upon which relief can be granted. (Doc. No. 13.) The motion to dismiss standard under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009). After Iqbal it is clear that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to defeat a Rule 12(b)(6) motion to dismiss. Id. at 678; see also Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). "*To survive dismissal, 'a complaint must contain sufficient factual* matter, accepted as true, to state a claim to relief that is plausible on its face.'" Tatis v. Allied Interstate, LLC, 882 F.3d 422, 426 (3d Cir. 2018) (quoting Iqbal, 556 U.S. at 678). Facial plausibility is "more than a sheer possibility that a defendant has acted unlawfully." Id. (quoting Iqbal, 556 U.S. at 678). Instead, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (quoting Iqbal, 556 U.S. at 678).

A complaint must do more than allege a plaintiff's entitlement to relief, it must "show" such an entitlement with its facts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009) (citing Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original) (citation omitted). The "plausibility" determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.

Eastern District of Pennsylvania Local Rule 7.1(c) provides that "[u]nless the Court directs otherwise, any party opposing the motion shall serve a brief in opposition . . . within fourteen (14) days after service of the motion and supporting brief. In the absence of timely response, the motion may be granted as uncontested . . . ." E.D. Pa. Local R. 7.1(c). But a motion to dismiss under Rule 12(b)(6) should not be granted "without an analysis of the merits of the underlying complaint, notwithstanding local rules regarding the granting of

unopposed motions." Ray v. Reed, 240 Fed. App'x 455, 456 (3d Cir. 2007) (citing Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991)). Accordingly, the Court will analyze the merits of Plaintiff's claims against Defendants Defender Association and Christopher Angelo.

Defendants first submit that the Defenders Association and its employees are immune from Plaintiff's § 1983 and state law claims. (Doc. No. 13 at 5.) Section 1983 is a statutory mechanism that allows federal courts to review alleged state and local violations of federal law. The statute provides that every person who, acting under color of state law, subjects another person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ." 42 U.S.C. § 1983. Public defenders, like those employed at the Defenders Association, do not act under color of state law when performing traditional functions of counsel to a defendant in a criminal proceeding. Pittman v. Martin, 569 Fed. App'x. 89, 91-92 (3d Cir. 2014). Accordingly, they cannot be sued under § 1983 for their actions as public defenders. Polk Cty v. Dodson, 454 U.S. 312, 325 (1981).

Public defenders can, however, be liable under § 1983 if they conspired with a state actor to deprive the plaintiff of federal rights. See Pittman, 569 Fed. App'x at 91-92 (citing Tower v. Glover, 467 U.S. 914, 916 (1984). Here, Plaintiff merely contends that "[t]he Philadelphia public defenders association conspired with defendants to misrepresent Plaintiff as to have him further detained in prison." (Doc. No. 10 at 4.) He makes no other mention of the other Defendants' roles in this supposed conspiracy and pleads no facts to support his position. Conclusory allegations such as these are insufficient from a pleading perspective. See Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 178-79 (3d Cir. 2010) (conclusory allegations of an agreement to conspire do not meet the pleading standards; instead, a plaintiff is required to plead specific facts addressing the time the agreement was made, the exact parties to the agreement, and the object of the conspiracy). Thus, Plaintiff has failed to plead the existence of a conspiracy with the necessary particularity and his claims against the Defenders Association and Assistant Defender Christopher Angelo therefore fail.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

For the foregoing reasons, the Court will grant Defendants' Motion to Dismiss the Amended Complaint (Doc. No. 13) as it pertains to Defendants Defender Association and Assistant Defender Christopher Angelo.

APPENDIX

APPEAL,STANDARD

United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:17-cv-03369-JHS
Internal Use Only

TAYLOR v. THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE et al
Assigned to: HONORABLE JOEL H. SLOMSKY
all others Case: 2:19-cv-05731-JHS
related Case: 2:17-cv-03368-JHS
Case in other court: USCA, 17-03507
USCA, 19-01542
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 07/27/2017
Jury Demand: None
Nature of Suit: 550 Prisoner Petitions: Civil Rights
Jurisdiction: Federal Question

Plaintiff

ROBERT TAYLOR

represented by **ROBERT TAYLOR**
PP#946529
7901 STATE ROAD
PHILADELPHIA, PA 19136
PRO SE

V.

Defendant

THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE

Defendant

THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC)
TERMINATED: 12/12/2018

represented by **MARTHA GALE**
ADMINISTRATIVE OFFICE OF PA COURTS
1515 MARKET STREET
SUITE 1414
PHILADELPHIA, PA 19102
215-560-6300
Email: legaldepartment@pacourts.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

FRANK PALUMBO
CURRENTLY OFFICIAL JUDGE
TERMINATED: 12/12/2018

represented by **MARTHA GALE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

THE CITY OF PHILADELPHIA
TERMINATED: 12/12/2018

represented by **ANDREW POMAGER**
CITY OF PHILADELPHIA LAW DEPARTMENT
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA 19102
215-683-5446
Email: andrew.pomager@phila.gov
TERMINATED: 12/12/2018
LEAD ATTORNEY

Defendant

OBRIEN
CURRENTLY CITY OF PHILADELPHIA POLICE OFFICER #7461
TERMINATED: 12/12/2018

represented by **ANDREW POMAGER**
(See above for address)
TERMINATED: 12/12/2018
LEAD ATTORNEY

Defendant

UNNAMED AND UNKNOWN CITY OF PHILADELPHIA POLICE OFFICERS

Defendant

THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF)
TERMINATED: 12/12/2018

Defendant

GERALD MAY
CURRENTLY WARDEN
TERMINATED: 12/12/2018

represented by **ANDREW POMAGER**
(See above for address)
TERMINATED: 12/12/2018
LEAD ATTORNEY

Defendant

THE PHILADELPHIA SHERIFFS OFFICE
TERMINATED: 12/12/2018

Defendant

THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION
TERMINATED: 12/12/2018

represented by **DENNIS T. KELLY**
DEFENDER ASSOCIATION OF PHILADELPHIA
1441 SANSOM STREET
PHILADELPHIA, PA 19102
215-568-3190
Email: DKelly@philadefender.org
TERMINATED: 12/12/2018
LEAD ATTORNEY

Defendant

CHRIS ANGELO
CURRENTLY PUBLIC DEFENDER
TERMINATED: 12/12/2018

represented by **DENNIS T. KELLY**
(See above for address)
TERMINATED: 12/12/2018
LEAD ATTORNEY

Defendant

SGT. LEBESCO
PRISON OFFICIAL
TERMINATED: 12/12/2018

represented by **ANDREW POMAGER**
(See above for address)
TERMINATED: 12/12/2018
LEAD ATTORNEY

Date Filed	#	Docket Text
07/27/2017	1	COMPLAINT against CHRIS ANGELO, GERALD MAY, OBRIEN, FRANK PALUMBO, THE CITY OF PHILADELPHIA, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC), THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE, THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF), THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION, THE PHILADELPHIA SHERIFFS OFFICE, UNNAMED AND UNKNOWN CITY OF PHILADELPHIA POLICE OFFICERS (Filing fee $ 400 receipt number 163283.), filed by ROBERT TAYLOR. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet, # 3 Envelope)(rt) (Entered: 07/28/2017)
07/27/2017		(Court only) ***Set Flag Standard Case Management Track (rt) (Entered: 07/28/2017)
07/27/2017		Summons Issued as to CHRIS ANGELO, GERALD MAY, OBRIEN, FRANK PALUMBO, THE CITY OF PHILADELPHIA, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC), THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE, THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF), THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION, THE

		PHILADELPHIA SHERIFFS OFFICE. Ten Forwarded To: Pro Se on August 2, 2017 (as of July 27, 2017). (rt) (Entered: 08/02/2017)
08/09/2017	2	PLAINTIFF ROBERT TAYLOR'S STATEMENT.(jpd,) (Entered: 08/10/2017)
08/15/2017		Summons and envelope returned from the U.S. Postal Service addressed to PLAINTIFF ROBERT TAYLOR for the following reason: REFUSED BECAUSE OF TAPE ON BACK. (jpd) (Entered: 08/16/2017)
09/27/2017	3	MOTION TO THE COURT, filed by ROBERT TAYLOR. EXHIBITS, CERTIFICATE OF SERVICE..(sg,) (Entered: 09/28/2017)
10/11/2017	4	ORDER THAT THE PETITIONS FILED IN THESE MATTERS ARE DISMISSED WITHOUT PREJUDICE TO PETITIONER FILING PETITION FOR HABEAS CORPUS RELIEF OR A CIVIL RIGHTS COMPLAINT; THE CLERK OF CORUT SHALL PROVIDE PETITIONER WITH THIS COURT'S CURRENT FORMS FOR FILING A PETITION FOR HABEAS CORPUS RELIEF PURSUANT TO 28 U.S. SEC. 2241 AND 2254, FOR FILING A CIVIL RIGHTS COMPLAINT AND APPLICATIOINS TO PROCEED IN FORMA PAUPERIS FOR EACH OF THE FOLLOWING FORMS; THE CLERK OF COUST SHALL CLOSE THESE MATTERS FOR ALL PURPOSES INCLUDING STATISITCAL AND THERE IS NO CAUSE TO ISSUE ACERTIFICATE OF APPEALABILTY. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 10/11/12. 10/12/17 ENTERED AND COPY OF ORDERS AND FORMS MAILED TO PRO SE PLAINTIFF.(jpd,) (Entered: 10/12/2017)
10/11/2017		(Court only) ***Deadlines terminated., ***Documents terminated: 1 Complaint,, filed by ROBERT TAYLOR, 3 MOTION for Order filed by ROBERT TAYLOR. (jpd,) (Entered: 10/12/2017)
10/11/2017		(Court only) ***Civil Case Terminated. (mk,) (Entered: 10/13/2017)
10/12/2017	5	MEMORANDUM AND/OR OPINION. SIGNED BY HONORABLE MITCHELL S. GOLDBERG ON 10/11/17. 10/12/17 ENTERED AND COPIES MAILED TO PRO SE PLAINTIFF. (jpd) (DOCKETED IN ERROR SEE 17CV-4290) (Main Document 5 replaced on 10/12/2017) (jpd,). (Entered: 10/12/2017)
11/08/2017	6	NOTICE OF APPEAL as to 5 Memorandum and/or Opinion by ROBERT TAYLOR. FILING FEE NOT PAID Copies to Judge, Clerk USCA, Appeals Clerk (jpd,) (Entered: 11/15/2017)
11/17/2017	7	NOTICE of Docketing Record on Appeal from USCA re 6 Notice of Appeal filed by ROBERT TAYLOR. USCA Case Number 17-3507 (dmc,) (Entered: 11/22/2017)
11/22/2017		USCA Appeal Fees received $ 505 receipt number 169332 re 6 Notice of Appeal filed by ROBERT TAYLOR (sg,) (Entered: 11/24/2017)
04/05/2018	8	ORDER of USCA as to 6 Notice of Appeal filed by ROBERT TAYLOR THAT TAYLOR'S MOTION TO VACATE DISTRICT COURT'S ORDER DATED 10/11/17 DISMISSING HIS CASE IS GRANTED IN PART AND

		DENIED IN PART. TO THE EXTENT THAT ONE IS REQUIRED THE REQUEST FOR A CERTIFICATE OF APPEALABILITY IS DENIED. (jpd) (Entered: 04/05/2018)
04/05/2018		(Court only) ***Case Reopened (mk,) (Entered: 04/06/2018)
04/12/2018	9	ORDER THAT PLAINTIFF ROBERT TAYLOR IS GRANTED LEAVE TO AMEND HIS COMPLAINT; ETC.. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 4/11/18. 4/12/18 ENTERED AND COPIES MAILED TO PRO SE.(jl,) (Entered: 04/12/2018)
04/23/2018	10	AMENDED COMPLAINT against CHRIS ANGELO, GERALD MAY, OBRIEN, FRANK PALUMBO, THE CITY OF PHILADELPHIA, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC), THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE, THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF), THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION, THE PHILADELPHIA SHERIFFS OFFICE, UNNAMED AND UNKNOWN CITY OF PHILADELPHIA POLICE OFFICERS, SGT. LEBESCO., filed by ROBERT TAYLOR.(jpd,) (Entered: 04/24/2018)
04/23/2018		11 Summons Issued as to CHRIS ANGELO, GERALD MAY, OBRIEN, FRANK PALUMBO, SGT. LEBESCO, THE CITY OF PHILADELPHIA, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC), THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE, THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF), THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION, THE PHILADELPHIA SHERIFFS OFFICE. Forwarded To: PLAINTFF on 4/25/18 (jpd,) (Entered: 04/25/2018)
05/15/2018	11	MOTION to Dismiss *Plaintiff's Amended Complaint* filed by FRANK PALUMBO, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC).Memorandum and Certificate of Service.(GALE, MARTHA) (Entered: 05/15/2018)
05/15/2018	12	AFFIDAVIT of Service by Robert Taylor re: mailed Summons & Complaint upon Commonwealth of PA, Commonwealth of PA District Attorney's Office, Commonwealth Court Phila, Criminal Justice Center, Judge Frank Palumbo - Criminal Justice Center, The City of Philadelphia - City of Philadelphia Law Dept., City of Philadelphia Police Officer O'Brien #7461, The Philadelphia Prison System/Dept. of Prison Curran-Fromhold Correctional Facility (CFCF), Warden Gerald May (CFCF), Sgt. Lebesco - Prison Official (CFCF), The Philadelphia Sheriff's Office, The Phila. Public Defenders Association, Chris Angelo (Public Defender), by U.S. Mail on 5/8/18 (fdc) Modified on 5/16/2018 (lisad,). (Entered: 05/15/2018)
05/25/2018	13	MOTION to Dismiss filed by CHRIS ANGELO, THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION. Motion, Memorandum of Law,

		Certificate of Service, Exhibit A. (Attachments: # 1 Exhibit)(KELLY, DENNIS) Modified on 5/25/2018 (lisad,). (Entered: 05/25/2018)
06/04/2018	14	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by GERALD MAY, OBRIEN, SGT. LEBESCO, THE CITY OF PHILADELPHIA.Memorandum.(POMAGER, ANDREW) (Entered: 06/04/2018)
06/05/2018	15	CERTIFICATE of Service re 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by ANDREW POMAGER on behalf of GERALD MAY, OBRIEN, SGT. LEBESCO, THE CITY OF PHILADELPHIA(POMAGER, ANDREW) Modified on 6/6/2018 (lisad,). (Entered: 06/05/2018)
06/07/2018	16	PLAINTIFF ROBERT TAYLOR'S REQUEST FOR DEFAULT, DEFAULT JUDGMENT. (jpd,) Modified on 6/11/2018 (lisad,). (Entered: 06/08/2018)
06/22/2018	17	RESPONSE in Opposition to Plaintiff's Request for Default by GERALD MAY, OBRIEN, SGT. LEBESCO, THE CITY OF PHILADELPHIA re 16 Request for Default Judgment . Certificate of Service. (POMAGER, ANDREW) Modified on 6/25/2018 (lisad,). (Entered: 06/22/2018)
12/12/2018	18	ORDERED THAT DEFENDANTS MOTION TO DISMISS (DOC. NO. 11) IS GRANTED. THE AMENDED COMPLAINT IS DISMISSED AS TO DEFENDANT CRIMINAL JUSTICE CENTER AND THE HONORABLE FRANK PALUMBO SIGNED BY HONORABLE JOEL H. SLOMSKY ON 12/12/18. 12/13/18 ENTERED AND COPIES MAILED TO PRO SE AND E-MAILED. (jpd) Modified on 12/14/2018 (lisad,). (Entered: 12/13/2018)
12/12/2018		(Court only) *** Party FRANK PALUMBO (CURRENTLY OFFICIAL JUDGE) and THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC) terminated. (jpd,) (Entered: 12/13/2018)
12/12/2018		(Court only) ***Motions terminated: 11 MOTION to Dismiss *Plaintiff's Amended Complaint* filed by FRANK PALUMBO, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC). (jpd,) (Entered: 12/13/2018)
12/12/2018	19	ORDERED THAT THE DEFENDANTS' MOTION TO DISMISS (DOC. NO.13) IS GRANTED. THE AMENDED COMPLAINT IS DISMISSED AS TO DEFENDANTS DEFENDER ASSOCIATION AND ASSISTANT DEFENDER CHRISTOPHER ANELO. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 12/12/18.12/13/18 ENTERED AND COPIES MAILED TO PRO SE PLAINTIFF AND E-MAILED.(jpd,) Modified on 12/14/2018 (lisad,). (Entered: 12/13/2018)
12/12/2018		(Court only) *** Party CHRIS ANGELO (CURRENTLY PUBLIC DEFENDER) and THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION terminated., *** Attorney DENNIS T. KELLY terminated. (jpd,) (Entered: 12/13/2018)
12/12/2018	20	

		MEMORANDUM AND/OR OPINION. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 12/12/18. 12/13/18 ENTERED AND COPIES MAILED TO PRO SE PLAINTIFF AND E-MAILED. (jpd) (Entered: 12/13/2018)
12/12/2018	21	ORDERED THAT DEFENDANTS MOTION TO DISMISS IS GRANTED. THE AMENDED COMPLAINT IS DISMISSED AS TO DEFENDANTS CITY OF PHILADELPHI, C.F.C.F. THE PHILADLEPHIA SHERIFF'S OFFICE, WARDEN GERALD MAY, OFFICER OBRIEN AND SERGEANT LEBESCO. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 12/12/18. 12/13/18 ENTERED AND COPIES MAILED TO PRO SE PLAINTIFF AND E-MAILED.(jpd,) (Entered: 12/13/2018)
12/12/2018		(Court only) *** Party SGT. LEBESCO (PRISON OFFICIAL), THE CITY OF PHILADELPHIA, THE PHILADELPHIA PRISON SYSTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF), THE PHILADELPHIA SHERIFFS OFFICE, GERALD MAY (CURRENTLY WARDEN) and OBRIEN (CURRENTLY CITY OF PHILADELPHIA POLICE OFFICER #7461) terminated., *** Attorney ANDREW POMAGER terminated. (jpd,) (Entered: 12/13/2018)
12/27/2018	22	PLAINTIFF ROBERT TAYLOR'S MOTION TO VACATE JURISDICTION,CERTIFICATE OF SERVICE.(jpd,) (Entered: 12/28/2018)
01/08/2019	23	RESPONSE to Motion re 22 MOTION to Vacate *Dismissal* filed by FRANK PALUMBO, THE COMMONWEALTH COURT PHILADELPHIA CRIMINAL JUSTICE CENTER (CJC). (GALE, MARTHA) (Entered: 01/08/2019)
01/14/2019	24	RESPONSE in Opposition re 22 MOTION to Vacate filed by GERALD MAY, OBRIEN, SGT. LEBESCO, THE CITY OF PHILADELPHIA. (POMAGER, ANDREW) (Entered: 01/14/2019)
02/15/2019	25	ORDER DENYING 22 MOTION TO VACATE. SIGNED BY HONORABLE JOEL H. SLOMSKY ON 2/14/19. 2/19/19 ENTERED AND COPIES MAILED TO PRO SE PLF AND E-MAILED. (va,) (Entered: 02/19/2019)
03/04/2019	26	NOTICE OF APPEAL as to 25 Order on Motion to Vacate by ROBERT TAYLOR. Filing fee $ 505.00, receipt number PPE193663. Copies to Judge, Clerk USCA, Appeals Clerk (jpd,) (Entered: 03/07/2019)
03/12/2019	27	NOTICE of Docketing Record on Appeal from USCA re 26 Notice of Appeal filed by ROBERT TAYLOR. USCA Case Number 19-1542 (dmc,) (Entered: 03/12/2019)

EXHIBIT (A)

APPELLANT

60(B) MOTION

THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR

PLAINTIFF

v.

THE COMMONWEALTH OF PENNSYLVANIA et al.,

DEFENDANT

CASE NO: 2:17-cv-03369

CIVIL ACTION NO.17-3369

MOTION TO VACATE

JURISDICTION

1. JURISDICTION HAS BEEN ESTABLISHED IN THIS CASE. THIS IS PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE RULE 60.(B)(1),(6) RELIEF FROM A JUDGMENT OR ORDER, AND RULE 7.(B) (1) MOTIONS.

2. Plaintiff, Movant Has Brought This Motion To Vacate Order To Dismiss His Civil Action By THE COURT. Citing **FOMAN v. DAVIS, 371 U.S. 178, 181 (1962).** Plaintiff, Movant's Motion For 42 U.S.C. s. 1983 Claim Was Dismissed In Its Entirety Summarily For Foregoing Reasons That Plaintiff, Movant Did Not File A Response To Defendants Motion To Dismiss And For Failure To State A Claim For Relief. Thus Was Delivered Throughout THE COURTS Opinion, Inter Alia.

FACTS AND GROUNDS

3. Plaintiff, Movant Brings This Motion On The Grounds That His 42 U.S.C. s. 1983 Claim Was Filed By Way Of A Motion And Defendants Motion Was In Response To it. Plaintiffs

s.1983 Claim Exhibited Attachments In Support Of His Claim. In opposite All But One Of Defendants Responded With This Requirement, As Plaintiff Was Not Required To Respond To A Respond At This Point The Court Should Have Ordered For Discovery Of Evidence. In Accord with Federal Rules Of Civil Procedure, To Further Bring Forth Material Facts To Uphold The Claim, And To Suffice Any Other Inquiries THE COURT May Have Had. Also To See If There's Any Merit To Defendants. Instead Plaintiff, Movant Believes THE COURT Advocated For Defendants By Not Proceeding With This Procedure. Plaintiff, Movant Believes THE COURT Erred.

4. It Has Been Ruled That A Complaint Filing is Not Subject To Dismissal On The Ground That There Is A Failure To State A Claim Upon Which Relief Can Be Granted. Unless it Appears Beyond Doubt That The Plaintiff Can Prove No Set Of Facts In Support Of His Claim Which Would Entitle Him To Relief. CITING: **CONLEY v. GIBSON, 355 U.S. 41,45-46 78 S.CT. 99,101, 2 L.ED. 2D 80.**

5. Plaintiff, Movant Further Provides Grounds With Factual Evidence To Merit His Claim.THE COURT Granted Motion to Dismiss(Doc No.18) To The Commonwealth Court And Its Judge, For Various reasons The Plaintiff, Movant Will Address. Defendants Give Claim To Plaintiffs September 22, 2009 Arrest Commonwealth v. Taylor Doc.No. CP-51-Cr-009569-2010 For Various Firearm Offenses . As Already Contended Plaintiff, Movant States He Was Never Formally Charged. At The Time Of The Arrest Plaintiff Possessed A Valid Permit To Carry Firearms See (EXHIBIT (A) Firearms License). Plaintiff Was Also Undergoing a Commonwealth Court Civil Administrative hearing Proceeding In recognition Of Firearms Rights In Which He Was Deemed Eligible by The State But Was Awaiting A

Final Judgment. Plaintiff Avers This Arrest Was To Interfere And Strip Him Of His Rights Prior To. These Facts Present Grounds Of Extraordinary Circumstances.

6. The Proceeding Regarding Arrest Went Forth , Which Plaintiff Avers Was Flagrantly and Patently Unconstitutional. After A Trial Plaintiff Was Ruled Against. Two Timely Post Verdict Motions Followed On Behalf Of Plaintiff Resulting In Extraordinary Relief Being Granted Dismissing Alleged Charges. A City Ordinance Violation For (VUFA) M1 Was Imposed For A Term Of 11 in A Half To 23 Months Which Plaintiff Completed See (EXHIBIT (B) PRISON STATUS SHEET).

7. Plaintiff Did Not Have Probation as Defendants were Aware Of Yet Fabricated This To False Arrest And Imprison Plaintiff On The Date Of November 16, 2015 In Efforts To Make Him An Unlawful Citizen and Further Violate His Rights.

8. Plaintiffs Contention That Judge Palumbo Is in Clear Absence Of All Jurisdiction. In Connection With Commonwealth Court (CJC) Court System Have Conspired , Provided, And Fabricated Uncertified Court Information Regarding Plaintiff. This Has Been Supported With Aforementioned Facts In Paragraphs 5. And 6. Defendants Further Falsified Information Of Mental Health To Keep Plaintiff Detained, as Their Records Have Plaintiff Transferred To Norristown Mental Health Institution During Imprisonment Period But Plaintiff Spent his Entire Duration Of Detention at The (CFCF) Facility Citing: **PULLIAM v. ALLEN, 466 U.S. 522.** *HELD judicial Immunity Is Not A Bar To Prospective, Injunctive* Relief Against A Judicial Officer. Judicial Immunity Does Not Extend To Injunctive , Equitable Relief. These Facts Inter Alia As Well As All Else That Has Been Brought Against Defendants. Therefore Violating The Fourth, Eighth, And Fourteenth Amendment Rights Of

Plaintiff And His 42 U.S.C. s. 1983 Claim Is Entitlement To Vacate Dismissal And Grant His Civil Action.

9. As For The Commonwealth of Pennsylvania, The Commonwealth Court (CJC) Motion To Dismiss Being granted For Reason That Action cannot Be Brought Against The State Claiming Eleventh Amendment Immunity. Plaintiff, movant Contends on grounds: First In Violation Of His Rights In Specifically The Fourth, Eighth, And Fourteenth Amendments To THE UNITED STATES CONSTITUTION, Plaintiff, Movants 42 U.S.C. s.1983 Claim Seeks Injunctive And Equitable Relief Against The State Not Monetary Damages. Therefore The Eleventh Amendment Claim Does Not Apply. Second Injunctive, Equity Actions Against State And State Officials Bars Eleventh Amendment As A Defense. Set Forth In **EX PARTE YOUNG 209,U.S. 123 (1908).**

10. THE COURT Granted Motion To Dismiss (Doc. No. 19) For Defender Association And Public Defender Chris Angelo. Plaintiff, Movant Contends On Grounds: THE COURT Overlooked The fact That Immediately After Being Detained Plaintiff Verbally Informed Defender association Not to Represent Him. After later Finding That This Had Not Been Adhered To. Plaintiff, movant gave Formal Written Termination On Date January 23, 2017. Public defender Disregarded And Continued To pose as Representative For Plaintiff. Whereby Removing Traditional Functions Of Counsel, Thus Becoming A State actor under Color Of State Law. Citing: **TOWER v. GLOVER, 467 U.S. 914 (1984).** Plaintiff Was Locked Away In Confinement, And Clearly Could Not have Been There At The Time Of Conspired Agreements, But The Constitutional And Civil Violations That Took Place Could Not Have Been Done In The Manner Carried out Unless The Defendants Worked In Concert To Do So.

By The Actions Of The Defender Association And Its Public Defender Plaintiffs Fourth And Fourteenth Rights were Violated as Well Aforementioned 42 U.S.C. s. 1983 Claim. And Met State Claims Of Obstruction, Falsifying information, Providing False information, And all Other Counts Linked By Conspiracy.

11. The Monell Claim Plaintiff, Movant Brought Against The City Of Philadelphia Is To The City Of Philadelphia (Municipality) Itself To Be Held accountable For the Deprivation of rights And Inappropriate Actions Of Its Agencies, And Subordinates. THE COURT Granted Motion To Dismiss (Doc. No. 20) To Defendants The City Of Philadelphia et al., Plaintiff, Movant Contends On Grounds: Officer Obrien Made An Unlawful Arrest On Plaintiff. As Already Stated Plaintiff Violated No Laws Neither Did He Have Probation. See Paragraphs 5. And 6. Of This Motion. Therefore Violating The Fourth And Fourteenth Amendment Rights Of Plaintiff, And 42 U.S.C. s. 1983 Claim. Plaintiffs Property Was Taken By Defendant He Was Cuffed, Harassed And Held in Police Car For Hours. The Defendant Incurred Counts Of Kidnapping, robbery, Defamation, Invasion Of Privacy, False Light Privacy, Intentional Infliction Of Emotional Distress, And Torture.

12. THE COURT Took Notice Of Public Records And Documents Outside The Pleadings. These records Were Unfactual And Heavily Favored The State As It Was There Records. When discovery Should Have Been In Order under The federal Rules Of Civil Procedure.

13. THE COURT Granted Motion To Dismiss (Doc. No. 20) To Defendants The Philadelphia Prison System, (CFCF), The Philadelphia Sheriffs Office, Warden Gerald May, And Official Lebesco. Plaintiff, Movant Contends On Grounds: Defendant Philadelphia Prison System (CFCF) Held Plaintiff By False Imprisonment, Uncharged Through Fabricated Documents

And In Violation Of His Due Process, In Conspiracy With The Commonwealth Court. Plaintiff was Alleged To Have Been Deemed Mentally Incompetent And Transferred To A Mental Institution, But Was Actually Being Held At (CFCF) The Entire Time. Records Clearly Show This To Be True. This Was Also Done To Avoid Having To Release Plaintiff Under Pre Detainee Due Process. Pennsylvania Law Does Not Authorize The Holding Of Prisoners Without Being Charged. The Sheriffs Office Participated By Taking Plaintiff To The Commonwealth Court Within Specific Number Of Days To Meet Requirements Of Being Brought In, So As To Restart Incarceration Period, As Well As The Civil Violations Plaintiff Suffered In Sheriffs Custody While Held In Commonwealth Court Aforementioned In 42 U.S.C. s. 1983 Claim.

14. Thou THE COURT Seems To Acknowledge Conditions Of Confinement That Plaintiff, Movant Brought Forth, THE COURT Disagrees As To The Severity Of The Claim inter Alia.

15. Plaintiffs mail tampering, And Denial Of Access To The Court. Stated A Cause For Relief By The First And Fourteenth Amendments To The UNITED STATES CONSTITUTION, And plaintiffs 42 U.S.C. s. 1983 Claim On Grounds: The Actual Injury Sustained Was By Having To Remained Falsely Imprisoned Under The Conditions By Which plaintiff Was Held Under. Here THE COURT Overlooks The Fact That Plaintiffs Appeal Regarding His 28 U.S.C. s. 2241 Filing, And The THIRD CIRCUIT COURTS Response To it Was Confiscated By The (CFCF), As Well As His Filing Fee. At That Time The Rule Was not In Place To Transfer Appeals To The District Court. Due To Plaintiff Directly Sending Appeal To The THIRD CIRCUIT Unknowingly, it Was sent Back With Instructions By The CIRCUIT COURT BUT Plaintiff Never received This Citing: **HOUGHTON v. SHAFER, 392 U.S. 639,20 L.ED. 2D. 1319 88**

S.CT. 2119 (1968). See Paragraphs 24-35 Of Plaintiffs 42 U.S.C. s. 1983 Claim And Grievances On This Incident. His Appeal And Filing Fee Was Taken By (CFCF) Barring His Appeal THE COURT Mistakenly Overlooked This Fact.

16. Plaintiffs Overcrowding And Conditions Of Confinement Stated a Cause For Relief By The Fourth, Eighth, And Fourteenth Amendments To THE UNITED STATES CONSTITUTION, And Plaintiffs 42 U.S.C. s. 1983 Claim On Grounds: As For The Triple Celling, And Cold Air Conditions Suffered By Plaintiff That THE COURT Agrees Met Standards Of Constitutional Violations Relief Should Be Granted Accordingly. The Strip Searches That Plaintiff Suffered, Underwent Were Unjustified And Unrelated To Legitimate Safety Concerns. Plaintiff Was Routinely Strip Searched Throughout each Month On Housing Block Randomly, With No Infractions Precipitating From Him or His Cellmates. Plaintiff As Well As Entire Housing Block Would Be Strip Searched even If Someone Else Had Allegedly Done Something Unrelated To Plaintiff Whatsoever. Plaintiff Addresses This Practice In 42 U.S.C. s. 1983 Claim (EXHIBIT (B) GRIEVANCE DATED 10-25-2016).

17. PLAINTIFFS Pepper Spray Incident At (CFCF) State A Cause For Relief By The Eighth, And Fourteenth Amendments To The UNITED STATES CONSTITUTION, AND plaintiffs 42 U.S.C. s. 1983 Claim On Grounds: Plaintiff Was Not In a Physical Altercation With a Inmate Or Official When Defendants Confronted him To Warrant Plaintiff To Be Chemically Sprayed. In Fact Plaintiff Was Ordered From His Bunk He Complied, Then Was Ordered To Strip Down He Complied, And Then Sprayed Without Provocation. Plaintiff Was cuffed And Taunted By Supervising Sgt. Defendant as To Now Knowing The Effect Of The Weapon. After Being Held In Medical In Handcuffs For approx. 45 mins. With Painfully Burning Eyes

As Plaintiff Had An Allergic Reaction To The Chemical Spray. Plaintiff Was Told He Would Not Get Decontamination Treatment, And Was Taken To The Confinement Block Untreated Still suffering From injuries. See 42 U.S.C. s. Claim (EXHIBIT (D) Grievance Dated 7-7-2017). Amounting To Counts Of Assault, Battery, Intentional Infliction Of Emotional Distress, And Torture. This Clearly Establishes Culpability 1. The Disregard, And Unreasonableness Before The act, 2. The Purpose Of Wanting To Inflict injury as Well As Carrying It Out. 3. The Maliciousness That Took Place Afterwards Of Cruel And Unusual Punishment Not Allowing Plaintiff To Receive Treatment Care. THE COURT Overlooked These Facts.

18. The Eighth, And Fourteenth Amendment Violations Are widespread Throughout The (CFCF), Philadelphia Prison System. Evident By Records Of Incidences, And Cases Brought Before THIS COURT.

19. Plaintiffs Religious And Discrimination Claims State A Cause For Relief. By The First And Fourteenth Amendments To The UNITED STATES CONSTITUTION, And Plaintiffs 42 U.S.C. s.1983 Claim On grounds: This Is an Ongoing Widespread Practice At (CFCF) Under The Supervision Of Warden Gerald may. By Being An Agency Unit And Official Of The City Of Philadelphia Therefore Come Under The Monell Claim. Plaintiffs Religious Food Dietary Is A Must Citing: **CRUZ v. BETO, SUPRA.** ; **US. EX REL. WOLFISH v. LEVY, S.D.N.Y. 1977, 439 F.SUPP. 114 AFFIRMED 573 F.2D 118.** Plaintiffs Dietary needs were Never Met At (CFCF), This Was The Case For All Inmates Of Muslim Faith. During His Detention The Food Plaintiff Was Given He could Only Eat Parts Or None At All Due To It Not Being Of His Religious Diet, leaving Plaintiff Malnourished With Severe Weight Loss. Plaintiff Claims That The (CFCF) Prevented Him From Practicing Islam. THE COURT Deemed That Plaintiff

Did Establish First, And Fourteenth Amendment Constitution Violation Claims (Doc. No.20. (4)a. ii). Monetary, and Injunctive Relief Should Be Granted Accordingly.

20. Plaintiffs Medical And Dietary Deprivations Claim State a Cause For Relief By The Eighth, And Fourteenth Amendments To The UNITED STATES CONSTITUTION, And Plaintiffs 42 U.S.C. s. 1983 Claim On Grounds: The Three Sets Of Injuries Where THE COURT Decided Against Plaintiff.(Doc. No.20 (5) a.) Here The Plaintiff Did Not Start Receiving Health Shakes, or asthma inhaler Until After A Year Of Being Incarcerated, Plaintiff was Forced To suffer In His Condition. And even After Finally Providing Plaintiff With These Needs (CFCF) medical Abruptly Stopped Issuing to Plaintiff. Plaintiff Only Received it For a Matter Of Months Approx. Two months, While Plaintiff Had Been Incarcerated For Nearly Two Years. Thirdly THE COURT Overlooked The fact That Regarding Pepper Spray Incident Plaintiff Did State That Prison officials Failed To Treat him Completely. See 42 U.S.C. s. Claim (EXHIBIT (D) Greivance Dated 7-7-2017). This Is An Ongoing Practice Of The Philadelphia Prison System Which is a Arm of The City Of Philadelphia. The Suffering Plaintiff Endured Amounted To Intentional infliction Of emotional Distress, Intentional Infliction of Starvation, Medical Neglect, Torture, And Aforementioned Constitutional violations.

21. Plaintiff, Movants Motion For Default Against The City Of Philadelphia et al., (Doc. No.16.) This Was Brought Due To Plaintiff, Movants Calculations That Defendant Had Responded After 21 Days Elapsed. But Since Plaintiff Movant Does Not Know Exactly When THE COURT Started Count Of Days Plaintiff, Movant Concedes To THE COURTS Decision On This Matter.

22. Plaintiffs 42 U.S.C. s. 1983 Claim, And Malicious Prosecution Under The Laws Of The Commonwealth Of Pennsylvania. Against Defendant Commonwealth District Attorneys Office Should Be Granted. The Defendant did not Respond By Motion. Plaintiff, Movant Is Entitled To Monetary Damages, And Injunctive Relief as To Enjoin Any Further Prosecution.

WHEREFORE, Plaintiff, movant Moves For THE COURT To Grant The Following Relief:

a. Vacate Dismissal Order

b. Accordingly Grant Plaintiffs 42 U.S.C. s. 1983 Amended Complaint

RESPECTFULLY SUBMITTED

12-26-18 Robert Taylor TO THE COURT:

DATE ROBERT TAYLOR

P.O.BOX 12524

PHILADELPHIA, PA, 19151

THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR

Plaintiff

v.

THE COMMONWEALTH OF PENNSYLVANIA et al.,

Defendant

CASE NO: 2:17-cv-03369

CIVIL ACTION NO. 17-3369

ORDER

AND NOW This _____Of _____, 2018, Plaintiffs Motion To Vacate Dismissal, And Plaintiff, Movants 42 U.S.C. s. 1983 Amended Complaint Relief Is Granted.

BY THE COURT,

_____

J.

VERIFICATION

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746-UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY.

I Verify That Facts Set Forth Are True And Correct To The Best Of Personal Knowledge, Information And Belief. "I Declare Or Verify Under Penalty Of Perjury That The Foregoing Document Is True And Correct."

Executed On 12-26-18 Robert Taylor

DATE ROBERT TAYLOR

CERTIFICATE

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 – UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY.

I certify that facts set forth are true and correct to the best of personal knowledge, information and belief. "I declare or certify under penalty of perjury that the foregoing is true and correct.

Executed on 12-26-18 Robert Taylor

DATE ROBERT TAYLOR

EXHIBIT

(A)

CONCEALED WEAPON OR FIREARM LICENSE
STATE OF FLORIDA

TAYLOR, ROBERT A
8139 ARCH ST
PHILADELPHIA, PA 19150

[redacted] M [redacted]

W 275[redacted] 06/23/09

CHARLES H. BRONSON
COMMISSIONER

Direct Inquiries To:

Florida Department of Agriculture & Consumer Services
Division of Licensing, P.O. Box 6687
Tallahassee, FL 32314-6687
850-245-5691

Some Personal Information On License Has Been Omitted To Comply With The Courts Requirements Regarding Privacy Of Identity.

EXHIBIT
(B)

PAROLE DATA SHEET

Inmate's Name: Robert A Tucker PP #: 946529 Inst #: 1202241

You have recently been ordered by the Court to serve a sentence in the Philadelphia Prison System. Your sentence can either have a minimum and maximum term, or be for a flat term.

Your specific sentence for bill and term # (M1) ↔ CP51CR0005569201 0 is: 11½ - 23

Minimum date: 12-24-12 Maximum date: 12-24-13

Earliest possible ET/GT date: 8-25-12

Special stipulations: N/A

There are three ways to be released before your maximum date. They are:

1. **EARLY PAROLE:** This is when the Judge releases you at any time before your minimum sentence. Generally, you need to show that you have earned this privilege through your behavior or special circumstances.
2. **EARNED TIME/GOOD TIME:** This is when you get credit off your minimum sentence for good behavior and participation in work assignments and programs. The most credit you can use is two days off per week in jail. You can also lose credits for disciplinary infractions.
3. **REGULAR PAROLE:** This is when the Judge releases you sometime between your minimum date and your maximum date.

<u>WITHIN 72 HOURS OF PAROLE BY THE JUDGE, YOU MUST REPORT TO THE INTAKE UNIT OF THE PHILADELPHIA ADULT PROBABATION DEPARTMENT, ROOM B-01 AT THE CRIMINAL JUSTICE CENTER, 1301 FILBERT STREET (215-683-7567).</u>**

THE BETTER YOUR ADJUSTMENT AND YOUR EFFORTS TO MAKE POSITIVE CHANGES, THE BETTER YOUR CHANCES OF GOING HOME EARLY!!!

A progress report to accompany an Early Parole petition will be prepared by your social worker if requested by the Defender Association of Philadelphia. You should write to the Alternative Sentencing Unit at the Defenders Association after the disposition of all your open matters. Review the Defender Association pamphlet in the Law Clinic. Your social worker will meet with you at this time to review parole procedures and your eligibility for parole consideration.

Your specific ~~EARLY PAROLE REVIEW~~ Adjustment Report DATE is: 11-26-12

Be sure to contact me, or your current Social Worker, at this date to start this review.

I have read, or had read to me, the information above and understand my responsibilities about Parole.

Signature of Inmate Date

Signature of Social Worker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENT WAS SERVED BY CERTIFIED MAIL THIS DATE OF 12-26-18 TO:

NAME: DENNIS T. KELLY

ADDRESS: PHILADELPHIA DEFENDERS ASSOCIATION
1441 SAMSON STREET
PHILADELPHIA, PA, 19102

Robert Gaylor
SIGNATURE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENT WAS SERVED BY CERTIFIED MAIL THIS DATE OF 12-26-18 TO:

NAME: ANDREW POMAGER

ADDRESS: CITY OF PHILADELPHIA, LAW DEPARTMENT
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA, 19102

Robert Taylor

SIGNATURE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENT WAS SERVED BY CERTIFIED MAIL THIS DATE OF 12-26-18 TO:

NAME: MARTHA GALE

ADDRESS: ADMINISTRATIVE OFFICE of PA COURTS
1515 MARKET STREET SUITE 1414
PHILADELPHIA, PA, 19102

Robert Layla

SIGNATURE

EXHIBIT (B)

APPELLANT

42 U.S.C. s.1983

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR
P.O. BOX 12524
PHILADELPHIA, PA, 19151

Plaintiff

V.

THE COMMONWEALTH OF PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA
DISTRICT ATTORNEYS OFFICE
3 s. PENN SQUARE
PHILADELPHIA, PA, 19107

THE COMMONWEALTH COURT
PHILADELPHIA CRIMINAL
JUSTICE CENTER (CJC)
1301 FILBERT STREET
PHILADELPHIA PA 19107
AND
CURRENTLY OFFICIAL
JUDGE FRANK PALUMBO

THE CITY OF PHILADELPHIA
C/O CITY OF PHILADELPHIA
LAW DEPARTMENT
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA, 19102
AND
CURRENTLY CITY OF PHILADELPHIA POLICE
OFFICER OBRIEN #7461 AND UNNAMED
AND UNKNOWN CITY OF PHILADELPHIA
POLICE OFFICERS

CASE NO.2-17-cv-03369

CIVIL ACTION NO.17-3369

MOTION TO THE COURT

AMENDED

COMPLAINT
JURISDICTION

1. This Action Arises Under The First. Fourth, Eighth, And Fourteenth Amendments To THE CONSTITUTION OF THE UNITED STATES, And Action Is Brought Pursuant To 42 U.S.C. s 1983 Jurisdiction Is Based on 28 U.S.C. s 1331 and 1343 (1), (3), (4) And The Aforementioned Statutory Provision. Plaintiff Further Invokes The Supplemental Jurisdiction Of This Court To Hear And Adjudicate State Law Claims Pursuant to 28 U.S.C. s 1367 (a) To Hear And Adjudicate State Law Claims. Pursuant 28 U.S.C. s 1746. And Of The Federal Rules Of Civil Procedure Rules 3, 4 (a) (1), (b), (c) (1), Rule 7 (b) (1) Motions. And Rule 15. Amended

THE PHILADELPHIA PRISON SYSTEM/
DEPARTMENT OF PRISONS
CURRAN-FROMHOLD
CORRECTIONAL FACILITY (CFCF)
7901 STATE ROAD
PHILADELPHIA, PA, 19136
AND
CURRENTLY WARDEN GERALD MAY
AND PRISON OFFICIAL SGT.
LEBESCO

THE PHILADELPHIA SHERIFFS OFFICE
LAND TITLE BUILDING
100 s. BROAD STREET
PHILADELPHIA, PA, 19110

THE PHILADELPHIA PUBLIC DEFENDERS
ASSOCIATION
1441 SAMSON STREET
PHILADELPHIA, PA, 19102
AND
CURRENTLY PUBLIC DEFENDER
CHRIS ANGELO

DEFENDANT (S)

PARTIES

2. Plaintiff, Robert Taylor who has a current address of P.O. box 12524 Philadelphia, PA 19151

3. Defendant The Commonwealth of Pennsylvania.

4. Defendant The Commonwealth Court (CJC) Criminal Justice Center, which employs official and currently Commonwealth Court judge referred to in the caption above.

5. Defendant The City Of Philadelphia is a Municipality Of The Commonwealth Of Pennsylvania and owns, operates, manages, directs, and controls The Philadelphia Police Department which employs the currently City Of Philadelphia Police Officer and unnamed and unknown City of Philadelphia Police Officers, The Philadelphia Prison System/Department Of Prisons which employs (CFCF) and its warden and Prison Officials, The Philadelphia Sheriffs Office, And The Philadelphia Public Defenders Association and Currently Public Defender referred to in the caption above.

6. Defendants The Commonwealth Of Pennsylvania, The City Of Philadelphia, The Philadelphia Prison System/Department Of Prisons, The Philadelphia Sheriffs Office, The Commonwealth Court Philadelphia Criminal Justice Center, The Philadelphia Public Defenders Association. Also the currently Judge is an Official and employee of The Commonwealth Philadelphia Criminal Justice Center, The City Of Philadelphia Police Officer, And unnamed and unknown City Of Philadelphia Police Officers are employees Of The Philadelphia Police Department, (CFCF). The warden and Prison Officials referred to in the caption above are employees of The Philadelphia Prison System/Department of Prisons. The Public Defender referred to in the caption above is a employee of The Philadelphia Public Defenders Association, And at all times relevant to the facts, statements and averments of this complaint were acting under color of state law, And are being sued in their official and individual capacities. CITING: MONELL v. DEPARTMENT OF SOCIAL SERVICES OF CITY OF NEW YORK, N.Y. 1978, 98 S.CT. 2018, 43 U.S. 658, 56 L.ED. 2D 611.

FALSE ARREST, IMPRISONMENT

7. Plaintiff was unconstitutionally falsely arrested, searched, seized, and otherwise false imprisoned by the Philadelphia police department.

8. On/ around November 16, 2015 approximately 10:00 am on the 1-100 block of n. 60 street Philadelphia, Pa, 19139, plaintiff was unreasonably summoned to stop on the sidewalk by members of the Philadelphia police department. Officer (s) Obrien badge no. 7461 with an accompanying officer. Plaintiff had not violated any laws precipitating this incident stop.

9. Plaintiff was then subjected to arrest and unreasonable search and seizure by officers mentioned above without cause. Also his personal property consisting of a bag of hygienics were seized and never returned. CITING: SEXTON v. GIBBS, D.C. TEX 1970, 327 F. SUPP. 134 AFFIRMED 446 F.2D 904 CERTIORARI DENIED 92 S. CT. 733, 404, U.S. 1062, 30 L.ED. 2D 751.

10. Plaintiff was then taken to 18 police district without being charged then brought out and taken to 19 police district station parking lot. Where he was held in handcuffs in back of police vehicle for approximately 3 hours never entering station while arresting officers conversed with other officers including superior ranked officer.

11. During this incident stop Plaintiff was subjected to harassing unwarranted questioning and undue pain and duress from being handcuffed in police vehicle for hours.

12. Plaintiff was then taken back to 18 police district where he was detained without charge or due process.

13. On/around November 17, 2015 Plaintiff was then imprisoned at the (CFCF) curran-fromhold correctional facility under pp no. 946529

14.Throughout incarceration Plaintiff has been hauled back and forth to (CJC) The criminal justice center every 60-90 days by the Philadelphia sheriffs office, for which no criminal proceedings have ever taken place until the day of his release nearly 2 years later.

15. Judge Frank Palumbo is given to inference of conspiring with defendants to violate civil rights of Plaintiff under pretense of providing false information to keep him in prison. Plaintiff has never had a criminal case before said Judge or criminal proceeding before his detention, after nearly 2 years on July 12, 2017 Plaintiff had proceeding not having criminal charges or case he was released under alleged probation for which there were no documents furnished certified or otherwise, Plaintiff contends against this allegation.

16. Judge Frank Palumbo is in clear absence of all jurisdiction. In connection with commonwealth (CJC) court system have provided and fabricated uncertified Court information regarding Plaintiff.

17. Plaintiff while detained at (CJC) has been subjected to harsh condition of inadequate food and drink. And overcrowded cold cells for which he had to stand for hours unable to sit even thou there were other empty cells available.

18. Plaintiff having anemia, asthma, and other medical problems has had to undergo these confinement conditions for up to 8 hours while in the custody of The Philadelphia sheriffs.

19. The Philadelphia Sheriffs Office has conspired with defendants to violate civil rights of Plaintiff.

20. The commonwealth (CJC) court system, (CFCF) prison and its aforementioned officials has conspired to allege detainment under mental health. To unconstitutionally and unlawfully keep Plaintiff further imprisoned. CITING: RUHLMAN v. ULSTER COUNTY DEPPARTMENT OF SOCIAL SERVICES, N.D.N.Y. 2002, 234 F.SUPP. 2D 140.

21. Plaintiff was never determined mentally incompetent. Or actually admitted to a mental health facility or furnished with any written notice or certified documents thereof.

22. The Philadelphia public defenders association conspired with defendants to misrepresent Plaintiff as to have him further detained in prison.

23. On/around January 23, 2017 Plaintiff sent a formal termination in writing to The Philadelphia public defenders association for any possible alleged representation of Plaintiff for which he never authorized or had knowledge thereto.

MAIL TAMPERING - DENYING ACCESS TO THE COURT

24. Plaintiff was denied and obstructed by prison authorities and other conspiring entities of his right to petition and access to the court. Inmate mail is not to be opened outside of the presence of inmate as Held. CITING: WOLFF v. MCDONNELL. U.S. NEB. 1974, 94 S. CT. 2963, 418 U.S. 539, 41 L.ED. 2D 935, 710.

25. On/around may 19, 2016 Plaintiff filed petition pursuant to 28 U.S.C. s 2241 Habeas Corpus to this court. Submitted May 4, 2016 typed up and resubmitted later with form of court. CASE NO: 2:16-cv-02444-JHS and CIVIL ACTION NO: 16-CV-2444.

26. On/around June 24, 2016 Plaintiff put in grievance for court mail tampering. As this incident occurred numerous times prior to this date. Plaintiff was given his court mail opened and resealed back prior to receiving even bearing clerks name unusually stamped outside front of envelope.

27. On/around July 14, 2016 Plaintiff put in grievance for court mail tampering. Document(s) came from this court for action in his petition. Mail was opened and tampered with before arrival to Plaintiff.

28. On/around August 8, 2016 Plaintiff put in grievance for court tampering. Documents arrived from this court opened and resealed back. Plaintiff seen unit management official on/around July 19, 2016 about this obstruction and violation. But this problem was never rectified.

29. Plaintiff could not verify orders and instructions with certainty from The Court or Clerk of Court as information therein was inconsistent and rearranged due to this tampering and intrusion by prison authorities. Mail from courts, inspection is limited to locating contraband, it does not entail reading an enclosed letter. Reiterated in case CITING: TAYLOR v. STERRETT, C.A.5 (TEX.) 1976, 532 F.2D 462.

30. In reference to paragraphs 24-29 above. Plaintiff was precluded from his constitutional and civil rights. He was on a timely filing schedule therefore could not respond to the court which brought about an order against him. Violating the rights of Plaintiff to unrestricted private correspondence with The Court.

31. On/around August 30, 2016 Plaintiff Filed notice of appeal on U.S.C.A. Appeal form (10/1/04), and typed up detailed Appeal with exhibits and a money order for filing fee to The U.S. COURT OF APPEALS - THIRD CIRCUIT. Refuting by facts as to respondents not being required by court rules to answer certifying show of cause of his detention, in the report and recommendation of U.S. Magistrate Hon. Judge Strawbridge.

32. Also brought on appeal was the constitutional and civil rights violation by interfering with court correspondence that resulted in adoption and order of U.S. District Court Hon. Judge Slomsky.

33. On/around September 16, 2016 Plaintiff put in grievance for mail tampering and interception. Mail document(s) from U.S. Court in response to his appeal was brought clearly opened and tampered with. Legal Court mail sheet was purposely provided with out name of Plaintiff. These Court documents, as well as the Appeal with filing fee payment were confiscated and never returned back to The Court or given to Plaintiff.

34. Plaintiff was precluded from his right in pursuit of Appeal. CITING: HOUGHTON v. SHAFER, 392 U.S. 639, 20 L. ED. 2D 1319, 88 S.CT. 2119 (1968).

35. In reference to paragraphs 1-34 above see EXHIBIT (A).

OVERCROWDING - CONDITIONS OF CONFINEMENT

36. Since and throughout duration of detention of Plaintiff at (CFCF) institution which Warden Gerald May is Custodian. He has been held unconstitutionally.
CITING: U.S. EX REL. WOLFISH v. LEVI, S.D.N.Y. 1977, 439 F.SUPP. 114 AFFIRMED 573 F.2D 118 CERTIORARI GRANTED 99 S.CT. 76, 439 U.S. 816, 58 L. ED. 2D 107 REVERSED ON OTHER GROUNDS 99 S.CT. 1861, 441 U.S. 520, 60 L. ED. 2D 447.

37. On/around August 24, 2016 Plaintiff put in grievance for overcrowding. He has been subjected to severe overcrowded conditions. Being put in 3 inmates to a cell triple-celling which are only to hold 2 inmates and even 4 inmates to a cell quadruple-celling. And have over periods been forced to confinement in this manner for up to twenty or more hours out of a twenty-four hour period.

38.While in this overcrowded condition the third person lays down on the floor in a plastic "boat." Otherwise subjective harsh dehumanizing conditions of confinement.

39. On/around November 22, 2016 Plaintiff put in grievance for cold air, during which having been in severe cold temperature, suffering from anemia, everyday he has had to endure this intolerable condition.

40. Due to this overcrowding and other reasons there is lack of sufficient amount of healthy, and efficiently prepared food, minute portions of food are served on very small trays inadequate for adult inmates, excessive lockdowns and restrictions of movement for activities, corporal punishment which adds on more to lock-ins, when inmates are let out at times are abruptly rushed back in cells for no reason as a way of toying with the inmates, also causes hygiene problems as it limits opportunities to shower and wash, thus shocking the conscience.

41. On/around October 25, 2016 Plaintiff put in grievance for unreasonable searching. Plaintiff was subjected to in cell strip search in front of other inmates with no precipitation prior, this is a monthly prison practice occurrence, visiting searches are of the same manner, he is also put to unnecessary aggravated invasive body searches coming and going throughout the institution.

42. There is also searching being practiced in the institution by non-male officers which practice aggravates rather than mitigates disparity of prison environment and society at large, even as there are metal detectors and male correctional officers along corridors and routes.

43. On/around July 7, 2017 Plaintiff put in grievance for incident that occurred on June 25, 2017 On/around 9:45 pm c/o officers Sgt. Lebesco and c/o A. Smith conducted an unreasonable search and assault on Plaintiff/Petitioner in his cell, following the strip search c/o A. Smith at the directive of Sgt. Lebesco discharged his weapon at Plaintiff of chemical spray into his facial and eyes without provocation; He was kept in restraint for approximately 45 minutes in this state while suffering injury, otherwise assault.

44. The actions and directives of the sergeant establish pellucid facts of connection between supervising official and constitutional deprivation.

45. In reference to paragraphs 36-44 above see EXHIBIT (B).

RELIGIOUS DEPRIVATION, DISCRIMINATION, AND DENIAL OF FREE EXERCISE

46. Plaintiff has been subjected to religious deprivation, denial of service and free exercise of his religious beliefs, solely because of his Islamic faith. CITING: CRUZ v. BETO, TEX 1972, 92 S.CT. 1079, 405 U.S. 319, 31 L.ED. 2D 263.

47. On/around March 17, 2016 Plaintiff put in grievance for religious dietary deprivation, he is continually denied proper food of his religious mandate, institution is required to provide religious inmate his dietary. Also CITING: U.S. EX REL. WOLFISH v. LEVI, S.D.N.Y. 1977, 439 F. SUPP. 114 AFFIRMED 573 F.2D 118. In respect to diet.

48. On/around June 3, 2016 Plaintiff put in grievance for denial of religious exercise, he has been blocked and denied religious worship and assemblage on the housing block by prison authorities with no institutional infractions precipitating this infringement.

49. On/around June 10, 2016 Plaintiff put in grievance on deprivation of religious provisions. This occurred during his religious month of observance, 30 day abstention from food and drink during the day not only was he not provided his religious food Plaintiff was also subjected to excessive lockdowns, restricted to cell, and not brought any food or drink whatsoever until 1 to 2 hours after required time to eat and drink. Having gone all day without this provision. And otherwise caused to unduly suffer.

50. On/Around December 21, 2016 Plaintiff put in grievance for continual religious deprivation. Plaintiff is supposed to be provided reasonably for religious tenets. While the other religious faiths are provided space, area, and a religious chaplain for their religion therefore allowed to leave housing block up to 3 times a day for religious exercise. Plaintiff and his religious beliefs are discriminated against and not afforded same opportunities, provisions.

51. On/around March 3, 2017 Plaintiff put in grievance for deprivation of religious service. Once a week service is to be held which he has been so deprived of that Plaintiff has went months without one. This service is a mandatory requirement of his religious faith.

52. Plaintiff has to go through disparaging and harassing conduct of prison officials to attend service or not even attend at all. As non-male correctional officers perform body pat-frisk searches, which is against religious beliefs of Plaintiff to have this physical contact with the opposite sex. These religious issues have been effective since aforementioned date, throughout 2017 until present.

53. The warden has causal connection by history of widespread violations putting warden on notice of the need to correct the deprivation and he failed to do so. The Practice "Custom or Policy" of the warden resulted in violating the constitutional rights of Plaintiff.

54. Supporting inference that the warden directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.

55. In reference to paragraphs 46-54 above see EXHIBITS (C).

SPECIAL DIETARY AND MEDICAL DEPRIVATION

56. Plaintiff has medical special dietary needs regarding proper nutritious food, supplements and vitamins of which he has been refused service and purposely denied of this provision, and of serious medical needs.

57. On/around January 1, 2016 Plaintiff put in grievance. Plaintiff was treated deliberately indifferent to special dietary needs. He sought issuance of vegetarian meals, nutritious health shakes and vitamins for considerable health condition. That brought about severe weight loss, lightheadedness and sickly condition, as he suffers from low blood sugar, thyroid, and anemia.

58. On/around December 26, 2016 Plaintiff put in sick call request. To doctor for his needs of medical special dietary as he was unable to eat soy meat and regular served trays. Due to his malnutrition and physical condition he fell approximately 40 pounds below weight during that period.

59. Only after going more than a year of being disregarded and ignored was Plaintiff issued partial special dietary for his issues. But (CFCF) medical was still deliberately indifferent to the needs of Plaintiff.

60. On/around February 19, 2017 Plaintiff put in sick call request. For medical to stop issuing food packs with meat, as Plaintiff was prescribed vegetarian diet and could only eat vegetarian meals.

61. On/around February 22, 2017 Plaintiff put in sick call request for prescribed health shakes. Plaintiff was informed he had been prescribed health shakes for his physical condition back in November 2016. But (CFCF) would not administer special dietary shakes to Plaintiff.

62.On/around March 12, 2017 Plaintiff put in grievance to Aramark. The (CFCF) food and special dietary distributor for deprivation of food and special dietary. For which deprivation caused severe illness and worsened condition of Plaintiff.

63. Plaintiff has been deprived of serious medical needs. He has natural born asthma breathing condition. That (CFCF) medical has on documented records. (CFCF) medical refused to allow him a required breathing inhaler for more than a year since initial incarceration. On/around November 18, 2016 Plaintiff was issued breathing medication thereafter was abruptly stopped. CITING: ESTELLE v. GAMBLE, 429 U.S. 97,97 S.CT. 285, 50 L.ED. 2D 251 (1976.)

64. On/around April 17, 2017 Plaintiff put in sick call request for breathing inhaler refill. He was empty and suffering from severe shortness of breathe, and had already been refused refill by medical.

65. On/around April 21, 2017 Plaintiff put in grievance for incident referred to in paragraph 64. Above on April 17, 2017. Plaintiff had to go to medical emergency for asthma attack after being ignored by medical.

66. On/around April 21, 2017 Plaintiff put in grievance for following incident referred to in paragraph 65. Above. For being denied emergency medical treatment. He required breathing treatment for an asthma attack. But was refused treatment in disparaging manner by triage medical.

67. On/around July 7, 2017 Plaintiff put in grievance for medical denial relating to incident that occurred on June 25, 2017 on/around 10:00 pm. Plaintiff was brought into medical unit clearly injured suffering excruciating pain in area of face and eyes, blinded, and having chemical allergic reaction caused by chemical spray of prison officials. For approximately 45 min(s) Plaintiff remained in medical unit handcuffed behind his back in this way, and was purposely, deliberately refused decontamination and medical attention.

68. (CFCF) and its medical unit have been deliberately indifferent to the needs of Plaintiff by improper treatment mistreatment, and non-treatment purposely to cause mental and physical anguish.

69. In reference to paragraphs 56-68 above see EXHIBIT (D).

70. The incidents described above as a result of confinement at (CFCF) prison. Plaintiff over the past 2 years has been put to conditions conducive to torture.

FIRST CAUSE OF ACTION - 42 U.S.C. s 1983

71. Plaintiff incorporates paragraphs 1-70 above as though fully set forth herein by reference.

72. As a direct and proximate result of the defendants conduct. Which was committed under color of state law. Plaintiff was deprived of his Right To Access to The Court, To Petition For Redress Of Grievance, To Freedom Of Religion, To Be Free From False Arrest, Unreasonable And Excessive Force, Unlawful Seizure, False Imprisonment, Cruel And Unusual Punishment, Deprivation Of Life Liberty Or Property, Right To Due Process Clause, Equal Protection Of The Laws Clause, And Rights, Privileges, And Immunities Clause. As a result of the Defendants conduct Plaintiff suffered violation of his rights under The Laws and THE CONSTITUTION OF THE UNITED STATES, In particular, The First, Fourth, Eighth, And Fourteenth amendments thereof, and 42 U.S.C. s 1983.

73. As a direct and proximate result of the acts of the defendants, Plaintiff has suffered and continues to suffer severe emotion distress, loss of freedom and liberty, loss of enjoyment of life, and economic loss. All to his detriment and harm.

74. Defendants have by the above described actions deprived Plaintiff of Rights secured by The First, Fourth, Eighth, and Fourteenth Amendments to THE UNITED STATES CONSTITUTION in violation of 42 U.S.C. s 1983.

WHEREFORE, Plaintiff Requests The Following Relief:

a. Compensatory Damages; Amount Of 23,000,000 (Twenty Three Million Dollars).

b. Punitive Damages; Amount Of 3,000,000 (Three Million Dollars).

c. Reasonable Fees And Costs; Amount Of 1,310 (One Thousand Three Hundred Ten Dollars).

d. Such Other And Further Relief As Appears Reasonable And Just;

e. Enjoining And Enforcement On Defendants;

f. Order By The Court As To Each Defendant And As To Each Count.

SECOND CAUSE OF ACTION
SUPPLEMENTAL STATE CLAIMS

75. Plaintiff incorporates paragraphs 1-74 above as though fully set forth herein.

76. The acts and conduct of the Defendants, in this cause of action constitute Assault, Battery, Kidnapping, Robbery, Defamation, Invasion Of Privacy, Including False Light Privacy, Intentional Infliction Of Emotional Distress, Intentional Infliction Of Starvation, Medical Neglect, Torture, Falsifying Information, Providing False Information, Tampering, Tampering With Public Records/Information, Mail Tampering, Obstruction, And Malicious Prosecution Under The Laws Of The Commonwealth Of Pennsylvania. And This Court Has Supplemental Jurisdiction To Hear And Adjudicate State Law Claims.
WHEREFORE, Plaintiff Requests The Following Relief:

a. Compensatory Damages; Amount Of 23,000,000 (Twenty Three Million Dollars).

b. Punitive Damages; Amount 3,000,000 (Three Million Dollars).

c. Reasonable Fees And Costs; Amount 1,310 (One Thousand Three Hundred Ten Dollars).

d. Such Other And Further Relief As Appears Reasonable And Just;

e. Enjoining And Enforcement On Defendants;

b. Order By The Court As To Each Defendant And As To Each Count.

Respectfully Submitted, TO THE COURT:

APRIL 19, 2018
DATE

Robert Taylor

ROBERT TAYLOR
P.O. Box 12524
Philadelphia, PA, 19151

VERIFICATION

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 – UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY.

I verify that facts set forth are true and correct to the best of personal knowledge, information and belief. "I declare or verify under penalty of perjury that the foregoing document is true and correct."

Executed on APRIL 19, 2018 Robert Taylor

DATE ROBERT TAYLOR

Rev 10.2009

CERTIFICATE

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 – UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY.

I certify that facts set forth are true and correct to the best of personal knowledge, information and belief. "I declare or certify under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 19, 2018 Robert Taylor

DATE ROBERT TAYLOR

EXHIBIT
(A)

Philadelphia Prison System

Inmate Grievance Form

Name Robert TAYLOR Housing Unit B2-1

Prison Photo Number 946529

Description of Grievance (Include date and time of incident)

DATE JUNE 24th 2016 /on/AROUND 6:30PM

I Received my OFFICIAL MAIL FROM COURT And the Letter(MAIL) WAS opened And Resealed with TAPE BACK PRIOR TO ARRIVAL And me signing FOR MAIL. This Problem has happened 3(TIMES) incidents BEFORE this incident OF THE SAME opened MAIL BEFORE ARRIVING TO MY PERSON.

Action Requested by Inmate

THAT NO FURTHER opening OF MY court MAIL happen AGAIN And FOR this violation to stop.

Relayed Above Aforementioned to An official when this Happened Before

Inmate's Signature

Robert Taylor

6-24-2016

(Date)

CFCF
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services

Name Robert TAYLOR Housing Unit B 2-1

Inmate Number Police Photo Number 946529

Description of Grievance, Incident or problem
(include date and time of incident)

HAVE Again received my U.S. court mail From the clerk/office of clerk opened and TAmpered with Before ARRIVAL and signing FOR it. This hAS occured starting initially in April 19th 2016 About Then on DATE (5-21-16) (5-27-16) (6-24-16) (7-14-16). Also I WAS delAYed in Receiving this MAIL. This is a problem which causes Errors And impedes my response and Reception of NotiFicAtion

Action Requested by Inmate.

Requesting Action Be tAke N To stop this violAtion And the indivisuAls or other responsible entities Be held AccountAble

Note: Continuation of Grievance - Page 2 Yes No

Describe how and when you tried to resolve this Grievance informally.

At Time of Reception issue WAS brought up with officials

Date that you are depositing this Grievance in a grievance box

Robert Taylor 7-14-16

(Signature of Grievant) (Date)

1. Administration 2. Warden 3. Inmate's Receipt of Filing

Philadelphia Prison System

DC
HOC
PICC

Inmate Grievance Form

Check box only if grievance is regarding Medical Services

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

ON OR About 930 pm DATE 8-8-16 I Received court MAIL opened And reseAled BACK. I have received my MAIL previously open And TAmpered with seveRAL TimeS.

Action Requested By Inmate

ThAt court MAIL And documents ARRived secure And UnTAmpered with And Hold those responsible ACCOUNTABLE

See: Continuation of Grievance - Page 2 Yes No

Describe how and when you tried to resolve this Grievance informally.

On July 19 2016 Last gRieVANce on This MATTer seeN officer in UNit MANAGEment WAS Told it would Be checked into

Date that you are depositing this Grievance in a grievance box:

Robert Taylor AUG/8-9-16

(Signature of Grievant) (Date)

Distribution: 1. Deputy Warden for Administration 2. Warden 3. Inmate's Receipt of Filing

Philadelphia Prison System

Inmate Grievance Form

CFCF ✓
DC
HOC
PICC

Check box only if grievance is regarding Medical Services

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number Police Photo Number 946529

Description of Grievance (Include Date and Time of Incident)

COURT MAIL WAS BROUGHT IN FOR ME THIS MAIL WAS CLEARLY OPENED AND RESEALED BACK WITH TAPE. THERE WAS A LEGAL MAIL SHEET FOR ME TO SIGN BUT MY NAME WAS NOT ON THE LEGAL SHEET I WAS INSTRUCTED TO SIGN UNDER ANOTHER PERSONS NAME I REFUSED TO DO THAT AND I WAS TOLD I WOULD NOT RECEIVE MY MAIL AS RESULT OF THIS I DID NOT RECEIVE MY COURT MAIL.

Action Requested by Inmate

FOR THIS VIOLATION AND TAMPERING OF MAIL TO STOP THE DELAYING AND HOLDING OF MY MAIL AND THE WITHHOLD OF MY LEGAL COURT MAIL TO STOP AND TO BE GIVEN MY COURT MAIL

See Continuation of Grievance - Page 2 Yes No

Describe how and when you tried to resolve this Grievance informally.

RELAYED INFORMATION AFORMENTIONED AT TIME OF INCIDENT

Date that you are depositing this Grievance in a grievance box here:

Robert Taylor 9-16-16

(Signature of Grievant) (Date)

TO: THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION
1441 SAMSON STREET
PHILADELPHIA, PA, 19102

FROM: ROBERT TAYLOR #946529
7901 STATE ROAD
PHILADELPHIA, PA, 19136

I hereby state that I have not retained or requested a lawyer/counsel with the public defenders association. If any lawyer/counsel from this association assumed representation of ROBERT TAYLOR #946529 it was without my knowledge or consent. And I inform the public defenders association that it does not represent ROBERT TAYLOR #946529 in any actions or said matters of court. If you may have a need to send anything in regard to this it can be sent to my mailing address.

AT: ROBERT TAYLOR
P.O. BOX 12524
PHILADELPHIA, PA, 19151

Robert Taylor — JANUARY 23, 2017

ROBERT TAYLOR — DATE

OFFICE OF THE CLERK

MARCIA M. WALDRON

UNITED STATES COURT OF APPEALS

TELEPHONE

21400 UNITED STATES COURTHOUSE
601 MARKET STREET

Website: http://www.ca3.uscourts.gov

Resident

Philadelphia, PA 19151

We are returning money order #23502868648 in the amount of $400.00 which represents

District Court for the Eastern District of PA..

order was also made out to the wrong court.

Very truly yours,

Records

EXHIBIT
(B)

CFCF
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ☐

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number _____ Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

overcrowded celling
on/Around August 23, 2016 7:50 Am since incarceration
HAVE Been subjected to And put in 3 (Three) Persons To
a cell that is only to have 2 persons in it. HAVE Been
Forced To stAY in this overcrowded condition throughout
dueAtion of Detention being Restricted to stAY in cell up to
20 hours a dAY DAily without Being Let out.

Action Requested by Inmate:

Address this mAtter to oFFicials throughout My Detention
ActionRequested to be brought out oF this condition
And not Be put BACk in it.

See: Continuation of Grievance - Page 2 Yes ☐ No ☐

Describe how and when you tried to resolve this Grievance informally.

Brought mAtter to officials during My Petention

Date that you are depositing this Grievance in a grievance box:

Robert Taylor 8-24-16

(Signature of Grievant) (Date)

ASD
CFCF ✓
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ☐

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

November 21, 2016 6:44 PM

I Am SUFFERING PHYSICALLY FROM EXTREME COLD AIR CONDITIONING IN THE CELL AND ON THE HOUSING BLOCK. THIS HAS BEEN HAPPENING FOR SEVERAL DAYS. DAY AND NIGHT WITH NO HEAT ONLY COLD AIR BLOWING OUT OF AIR VENTS. AS RESULT I HAVE TO SLEEP IN THERMALS, SWEATSHIRT AND FULL UNIFORM CLOTHING. THROUGHOUT DURATION IN THIS FACILITY HAVE HAD TO ENDURE COLD VENTILATION CONDITIONS

Action Requested by Inmate:

REQUEST THAT HEAT TO BE ISSUED FROM VENT SYSTEM. AND CELL TO BE REGULATED AT ROOM TEMPERATURE

See: Continuation of Grievance - Page 2 Yes ☐ No ☐

Describe how and when you tried to resolve this Grievance informally.

RELATED THIS TO OFFICIALS WITHIN DAYS OF GRIEVANCE

Date that you are depositing this Grievance in a grievance box:

Robert Taylor 11-22-16

(Signature of Grievant) (Date)

ASD ✓
CFCF ☐
DC ☐
HOC ☐
PICC ☐

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ☐

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number _____ Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

ON/AROUND October 22, 2016 8:00 PM I WAS SUBJECTED TO STRIP SEARCH IN CELL IN FRONT OF TWO OTHER INMATES. I did NOTHING TO PRECIPITATE THIS UNWARRANTED SEARCH. I HAVE BEEN PUT TO THESE STRIP SEARCHES WHICH VIOLATE AND INVADE MY PRIVACY AT LEAST ONCE A MONTH SINCE ENTERING THIS FACILITY. I ALSO AM SUBJECTED TO PHYSICAL BODY SEARCHES WHEN GOING AND COMING FROM VISITS OR ANY SERVICES IN THE FACILITY.

Action Requested by Inmate:

FOR THESE VIOLATIONS TO BE DISCONTINUED AND STOPPED

See: Continuation of Grievance - Page 2 Yes ☐ No ☐

Describe how and when you tried to resolve this Grievance informally.

BROUGHT THIS VIOLATION ISSUE FORTH TO OFFICIAL SINCE DETENTION BEGAN.

Date that you are depositing this Grievance in a grievance box:

Robert Taylor 10-25-16

(Signature of Grievant) (Date)

Attachment 3 5.10.a

PHILADELPHIA DEPARTMENT OF PRISONS

INMATE GRIEVANCE FORM

✓

ROBERT TAYLOR
946529

HOUSING UNIT: D1-1
INTAKE NUMBER: 15 22426

Description of Grievance, Incident or Problem
(Include date, time of incident)

JUNE 25, 2017
on/Around Time 9:45 pm

UNREASONABLE SEARCH, SEIZURE And ASSAULT

GRIEVANT WAS APPROACHED BY OFFICERS, SUPERVISOR SGT. LEBESCO And C/O A. SMITH in his cell GRIEVANT WAS UNREASONABLY STRIP SEARCHED with cell door open And housing Block open FOR ACTIVITY where he could CLEARLY Be seen BY others in this MANNER Following the SEARCH SGT. LEBESCO ORDERED C/O A. SMITH To discharge his chemical WEAPON At GRIEVANT. GRIEVANT WAS SPRAYED in FACIAL AREA particularly in his eyes GRIEVANT WAS handcuffed Behind his BACK And made TO SUFFER UNDER RESTRAINT resulting in IRREPARABLE INJURY In violation of GRIEVANTS constitutional And statutory Rights secured BY The Fourth, Eighth, and Fourteenth Amendments

TERMINATION of Both Employees

INITIATED FORMAL Direct Resolve

July 7, 2017

Robert Taylor

July 7, 2017

EXHIBIT
(c)

ASD
CFCF
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ☐

Name Robert TAYLOR Housing Unit B2-1 cell 4

Intake Number _____ Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

HAVE Not been receiving PROPER Food ACCORDING to MY Religion. AND I AM Not ABLE TO PROPERLY PRACTICE, IMPLEMENT MY RELIGIOUS duties because OF OVER CROWDED cells and Living conditions. THERE HAS been NO ALLOCATED ROOMS OR SPACE PROVIDED. HAVE MADE PRIOR REQUESTS, MENTION, NOTICE OF this. STILL NO ACTION HAS been TAKEN

This HAS OCCURED STARTING FROM INCARCERATION UP to CURRENT DATE

Action Requested by Inmate:

ISSUEANCE of VEGETARIAN, AND PROPER DIETARY MEALS, THE ENDING OF PROHIBITING RELIGIOUS PRACTICES, EXCERCISE THEREOF AND PROVIDING THE ALLOCATION OF SPACE AND AREA.

See: Continuation of Grievance - Page 2 Yes ☐ No ☑

Describe how and when you tried to resolve this Grievance informally:

ADDRESS ADMINISTRATION DURING MONTH OF DECEMBER AND JANUARY 2015 AND 2016

Date that you are depositing this Grievance in a grievance box:

3-17-16

(Signature of Grievant) (Date)

CFCF ✓
DC
HCC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number 946529 Police Photo Number

Description of Grievance (Incident or Problem)
Include date and time of incident)

JUNE 3, 2016
CURRENTLY on going - There is NO Provided area FOR me TO MAKE my daily Religious PRAYERS, which is aFFORded to all those in institution of Religious status EVERYDAY throughout the dAY. There is also BARRING and NON-ALLOWANCE OF PRAYING on the housing Block. Which is clearly AGAINST institutional policy.

TO go TO PROPER area TO perFORM religious duties / PRAYERS a number of times a dAY as required and on housing Block when it's open FOR ACTIVIES.

See Continuation of Grievance - Page

Description of Action Requested by Inmate

Brought this to OFFICIALS

Date that you are depositing this Grievance in Unit Officer's Box

6-3-16

Robert Taylor
(Signature of Grievant)

(Date)

CFCF ✓
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Name Robert TAYLOR B2-1

Inmate Number 946529

DUE To my religious practice And Doctrine Am currently observing And Implementing my religious dietary of Not eating and drinking during daylight hours. Since beginning my Religious Practice of this Food dietary I have Not been Receiving meals on time At sundown and have been served meals 1 to 2 hours After meal (food) is due to be Eating Also have Not Received healthy nutritious sufficient meals (Food) in Accordance with Practice and belief of Religious dietary. This began And has been happening starting from Dates on/Around 6-6-2016 to 6-10-2016 currently

Serve nutritious sufficient meals According to religious beliefs prior to daylight ending so I may be able to eat As soon As required

mentioned to facility officials At start of religious practice

Robert Taylor 6-10-2016

ASD
CFCF ✓
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ___

Name ROBERT TAYLOR Housing Unit B2-1

Intake Number _____ Police Photo Number 946529

Description of Grievance, Incident or Problem
(include date and time of incident)

12-20-16

current continues Problem

Being Denied Proper area For religious services and PRAYERS. The institution Provides designated Proper areas For these Religious duties everyday a number of times a day For All those of Religious status. Holding cells are inAppropriate and inAdequate For these Duties, PRAYERS as there is overcrowded conditions which there's no room and it is AgAinst my Religion To pRAY next To a toilet. As well as other issues Barring Prohibiting, Non-Allowance and discouragement from Religious PRAYER or services on the housing Block ARE clearly AgAinst institutional Policy.

Action Requested by inmate:

Proper Area to Perform Religious duties, PRAYERS EAch dAy the Amount of times a dAy as required and Non-interference on housing Block when open For Activities.

See: Continuation of Grievance - Page 2 Yes ___ No ___

Describe how and when you tried to resolve this Grievance informally:

Brought this To oFFicials. Also address these issues in JUne of 2016.

Date that you are depositing this Grievance in a grievance box:

Robert Taylor — (Signature of Grievant)

December 21, 2016 — (Date)

[illegible]

[illegible] ROBERT TAYLOR

[illegible] 916529

HOUSING UNIT B2-1

INMATE NUMBER 1522426

[illegible] only if grievance is regarding Medical Services

Description of Grievance [illegible]

MARCH 3, 2017
2:24 Pm

Institutional Deprivation of Religious exercise

Religious Friday service which is to Be held weekly DID not TAKE place. This Belief And exercise of my Religious Faith have Been Denied me. Even for periods of up to (TWO) 2 months without taking place. There is also no daily provisions made or allowed for my everyday prayers or assembly. There is no provided or access to a minister of my Religion. other Religions in institution have this And are provided Religious prayers and service area which they attend leaving off the Housing Area for up to (3) three times a day. There has And is constant continual institutional discrimination And harassment, infringement of my Religion

Action Requested by Inmate:

DAILY ACCESS TO AREA FOR PRAYERS And service, Religious minister for my Religion in The Institution, And for Religious mandatory service to take place weekly

[illegible] of Grievance [illegible] No

[illegible]

mentioned this to officials prior to this GRIEVANCE

[illegible] MARCH 3, 2017

[illegible] Robert Taylor

[illegible] MARCH 3, 2017

[illegible]

EXHIBIT
(D)

CFCF
DC
HOC
PICC

Philadelphia Prison System

Inmate Grievance Form

Check box only if grievance is regarding Medical Services ☐

Name (Armband Name) Robert TAYLOR Housing Unit B2-1 cell 9

Intake Number _____ Police Photo Number 946529

Description of Grievance, Incident or Problem:
(include date and time of incident)

This matter is regarding medical, HAVE Requested And need Vegetarian meals And Health shakes Also multivitamins w/minerals. HAVE An Immune thyroid condition which Requires this Proper dietary I HAVE been losing weight, passing out And continuesly getting sick

Action Requested by Inmate:

issueing Veggie meals shake, mutivitamins/minerals - and Diet Teas

See: Continuation of Grievance - Page 2 Yes ☐ No ☐

Describe how and when you tried to resolve this Grievance informally.

Sent request form in to medical Explained Also went in was seen And Explaind All this Threw out month of Dec. 2015

Date that you are depositing this Grievance in a grievance box:

Robert Taylor 1/1/16

(Signature of Grievant) (Date)

SICK CALL REQUEST

Check one: Dental ✓ Medical Mental Health

Name: ROBERT TAYLOR (Print Name) Inmate I.D. Number 946529

Social Security No.

Housing Unit: B2-1

Medical Problem (be specific): To The Doctor. I cannot EAt The Regularly served Food which makes me sick. NOR ANY soy meat. HAve Brought this Notice since EntRance in FAcility. To dAte I hAve Lost 40 pounds And Am struggling with my health. Need And Request SpeciAL DietARy trAys of vegetARian meALs, which you Approve For these circumstAnces. Respectfully requested

Inmate's Signature Robert Taylor Date: 12-26-16 Time: 10:25

FOR MEDICAL UNIT USE ONLY

Disposition:

Provider's Signature: Date: Time:

86-146

SICK CALL REQUEST

Check one: Dental ✓ Medical Mental Health

Name: ROBERT TAYLOR (Print Name) Inmate I.D. Number 946529

Social Security No.

Housing Unit: B2-1

Medical Problem (be specific): I HAVE BEEN RECEIVING MY SPECIAL DIETARY SANDWITCH PACK WITH MEAT. I AM PRESCRIBED UNDER VEGETARIAN NO MEAT AS LABELED. RESPECTFULLY REQUEST THAT CHEESE (VEG) BE ISSUED IN MY SANDWITCH PACK SO THAT I MAY EAT AS REQUIRED WITHOUT MEAT

Inmate's Signature Robert Taylor Date: 2-19-17 Time: 5:36 PM

FOR MEDICAL UNIT USE ONLY

Disposition:

Provider's Signature: Date: Time:

86-146

SICK CALL REQUEST

Check one: Dental ✓ Medical Mental Health

Name: ROBERT TAYLOR (Print Name) Inmate I.D. Number 946529

Social Security No.

Housing Unit: B2-1

Medical Problem (be specific): I WAS prescribed Health shakes For my SpeciAL Diet condition BACK in November of 2016 which I HAVE never Received. Confirm this with nurse Attending whom I seen For checkup on Feb 13 or 14, 2017 I WAS told I would Be getting Refill order of shakes. I Am suffering daily And my physical condition is deteriorating. Respectfully Request thAt I receive my Health shakes daily thAt Are prescribed For me.

Inmate's Signature Robert Taylor Date: 2-22-17 Time: 2:35 Pm

FOR MEDICAL UNIT USE ONLY

Disposition:

Provider's Signature: Date: Time:

86-146

V

ROBERT TAYLOR
96529

B2-1
152426

TO ARAMARK — MARCH 11, 2017 6:37 PM

DIETARY DEPRIVATION

This Food Dietary service has been "deliberately indifferent" To my needs. My special Dietary Health Shakes which were ISSUED To me November 2016 HAVE never been provided or Distributed To me BY ARAMARK Dietary service. This has and is currently causing undue suffering As my physical medical condition of (Low Blood sugar, chronic Thyroid, ANEMIA Periodic Low Blood pressure, And severe weight Loss, which has At A point reached 45 pounds Below weight. Requires me to receive Nutrient health shakes

TO Receive Dietary health shakes As soon As possible.

Brought this matter To OFFICIALS And Address this Medical during checkups, evaluations. Last visit in February 2017.

MARCH 12 2017

Robert Taylor

MARCH 11, 2017

Check one: Dental V Medical

Name: ROBERT TAYLOR (Last, Name)

Number: 946529

Social Security No:

Housing Unit: D1-1

Medical Problem (be specific): Need Asthma INHALER Immediately HAveBeen empty of ALBUTEROL RESCUE INHALER FOR DAYS. Am TIRED And hAve Been ShoRt of BREATHE. EXTREMELY STRUGGLING. WAS INFORMED BY PREVIOUS sick cALL To get REFill on Block FROM meds-LINE BUT I WAS REFUSED And TOld mUST go To medicAL. RespectfullyREQUest TREATment And REFill AS SOON AS possible pleASE.

Inmate's Signature: Robert Taylor Date: 4-17-17 Time: 5:20 PM

FOR MEDICAL UNIT USE ONLY

Disposition:

Provider's Signature: Date:

36-146

Attachment 3 F.10.a

ROBERT TAYLOR
946529

UNIT: 01-1
NUMBER: 1522426

Description of Complaint, Incident or Problem

APRIL 17, 2017 8:20Pm Deliberate Indifference to medical needs

I had To go To medical on morning of APRIL 18, 2017 For Asthma Breathing Treatment Due To severe shortness of Breathe And Hyper Ventilating Asthma Attack. Later on Same Date Awaited Response of Sick call Request I submitted Regarding This medical Problem of needing my Breathing Inhaler Upon Prior sick call was Directed To meds-Line For Asthma Inhaler Renewal Went to meds-Line And was sent Back To medical. Neither one Tended To This Emergency medical need. As result of not having my medicine Am not Able To Talk, Walk To much and have Been short of Breathe For A week To Date. And Am suffering unduely which can Result in Fatality. In violation of my constitutional and statutory Rights secured By The Eight And Fourteenth Amendments

Respectfully Request For Issuance of Albutero Asthma Inhaler And Any Further Appropriately needed medicine. So I can Breathe

Sick call Request on APRIL 17 2017 And Before And discussed this with medical staff on APRIL 16 + 17, 2017

4-21-17

Robert Taylor

4-21-17

PHILADELPHIA DEPARTMENT OF PRISONS

INMATE GRIEVANCE FORM

Name: ROBERT TAYLOR HOUSING UNIT D1-1

PID: 946529 INTAKE NUMBER 1522426

Check box only if grievance is regarding Medical Services ✓

Description of Grievance Incident or Problem

(Include date and time of incident)

APRIL 21, 2017

ON/AROUND 10:00 AM

MEDICAL DENIAL/DELIBERATE INDIFFERENCE

GRIEVANT/INMATE WENT TO MEDICAL FOR EMERGENCY BREATHING TREATMENT FOR HIS ASTHMA AS GRIEVANT/INMATE HAS BEEN WITHOUT INHALER FOR DAYS GRIEVANT/INMATE WAS DENIED AND REFUSED TREATMENT BY TRIAGE MEDICAL STAFF REASON GIVEN WAS THAT WEEZING WAS NOT HEARD FROM HIS LUNGS AND THATS THE ONLY WAY TO RECEIVE TREATMENT AFTER BEING REPEATEDLY TOLD BY GRIEVANT/INMATE THAT HIS LUNGS WERE CONSTRICTED AND HE COULD NOT BREATHE BUT BARELY HAVING SHORT BREATHE GRIEVANT/INMATE WAS TOLD NOTHING COULD BE DONE AND THAT HE WAS PRESCRIBED AN INHALER A WEEK BEFORE GRIEVANT/INMATE TOLD MEDICAL STAFF THAT THAT WAS A DIFFERENT MEDICINE WHICH MEDICAL KEPT GRIEVANT/INMATE DOES NOT HAVE OR USE DUE TO IT MAKING HIM SICKER AND HAVING ALLERGIC REACTION OF THROAT SWELLING NAUSEA AND OTHER COMPLICATIONS GRIEVANT/INMATE IS USUALLY ISSUED HIS ALBUTEROL MEDICINE BUT FOR SOME REASON NOW IS BEING REFUSED IT. AS RESULT GRIEVANT/INMATE IS BEING PUT TO UNDUE SUFFERING IN VIOLATION OF HIS CONSTITUTIONAL AND STATUTORY RIGHTS SECURED BY THE EIGHT AND FOURTEENTH AMENDMENTS

Action Requested by Inmate:

THAT GRIEVANT/INMATE BE GIVEN TREATMENT AND HIS PROPER MEDICINE

Check: Continuation of Grievance – Page 2 YES ☐ No ☐

Describe how and when you tried to resolve this Grievance informally.

BEFORE THIS WRITTEN NOTICE ON APRIL 21, 2017 BROUGHT THIS TO MEDICAL STAFF'S ATTENTION ASWELL AS ON APRIL 17 2017

Date that you are depositing this Grievance in a grievance box: APRIL 21 2017

Signature of Grievant: Robert Taylor Date: APRIL 21 2017

Attachment 3.F.10.a

APPLICABLE DEPARTMENTAL POLICY
INMATE GRIEVANCE FORM

NAME: ROBERT TAYLOR
TDCJ-ID NUMBER: 1522426
PID: 946529
ASSIGNMENT: D1-1

Description of Problem, Action Requested and Reason for Grievance

JUNE 25.2017
on/AROund Time 10:00 pm

DENIAL of MEDICAL ATTENTION

GRIEVANT WAS Brought IN CFCF medical UNit FOR INJURY sustained in FACIAL And EYES After Being sprAYED BY PRISON officiALS with chemICAL Component GRievant WAS Blinded And INexcruciating, PAIN, And hyperventilating AS gRievant hAd Allergic REACTION TOchemicALS. GRIEVANT WAS refused TREATment And DENIED TRANSPORT To the hospitAL In Violation of GRIEVANTS ConstitutionAL AndSTATUTORY Rights SECURED BY The Eighth And Fourteenth Amendments.

FOR ANY ARising And CURRENT medicAL ISSUES of GRIEVANT TO BE TAKEN TO NEAREST hospitAL OR ANother medicAL INSTitutionAL FACility FOR All his medicAL Needs And Attention for medicAL.

Action Requested to Resolve Your Complaint

BegAN FORMAL DIRect resolve

Date Step 1 Grievance Returned to Offender: JULY 7, 2017

Signature of Grievance Official: Robert Taylor Date: JULY 7, 2017

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT TAYLOR
Plaintiff
V.
THE COMMONWEALTH OF PENNSYLVANIA
THE COMMONWEALTH COURT (CJC)
AND
COMMONWEALTH COURT (CJC)
OFFICIAL JUDGE FRANK PALUMBO
THE CITY OF PHILADELPHIA
AND
CITY OF PHILADELPHIA POLICE
OFFICER OBRIEN NO. 7461
AND UNNAMED AND UNKNOWN
CITY OF PHILADELPHIA POLICE
OFFICERS
THE PHILADELPHIA PRISON SYSTEM/
DEPARTMENT OF PRISONS
CURRAN-FROMHOLD
CORRECTIONAL FACILITY
AND
WARDEN GERALD MAY
AND PRISON OFFICERS SERGEANT
LEBESCO
THE PHILADELPHIA SHERIFFS OFFICE
THE PHILADELPHIA PUBLIC DEFENDERS
ASSOCIATION AND PUBLIC DEFENDER
CHRIS ANGELO
Defendant (s)

ORDER

CASE NO.2-17-cv-03369
CIVIL ACTION NO.17-3369

ORDER

IT IS ORDERED

This Day Of Month And Year For monetary relief sought also Preliminary and Permanent Injunction And Equity. Motion to Court is granted for the following:

1. Total damages, fees and costs in amount of 52,002,620 (Fifty Two Million Two Thousand Six Hundred Twenty Dollars)

2. Enjoin The Philadelphia Prison System/Department Of Prisons, (CFCF) from overcrowding, no 3 inmate or 4 inmate celling.

3. Enjoin The Philadelphia Prison System/Department of Prisons (CFCF) from mail restrictions, violations. The reading, inspecting of inmates incoming legal, Court mail, and to not open outside of inmate presence, no outgoing mail is to be opened, and no confiscation of legal or Court materials

4. Enjoin The Philadelphia Prison System/Department Of Prisons, (CFCF) from unreasonable strip searches, and strip searches in plain view of other inmates.

5. Enjoin The Philadelphia Prison System/Department Of Prisons, (CFCF) from female c/o pat-frisk body searches of male inmates, and otherwise c/o' s not to search inmates of opposite gender.

6. Enjoin The Philadelphia Prison System/Department Of Prisons, (CFCF) from confiscation of property.

7. Enjoin The Philadelphia Prison System /Department Of Prisons, (CFCF) from corporal punishment, excessive lockdowns, and restrictions.

8. Enjoin The Philadelphia Prison System/Department Of Prisons, (CFCF) lengthy confinement.

9. Order For The Philadelphia Prison System/Department Of Prisons, (CFCF) to increase amount of food tray servings.

10. Order For The Philadelphia Prison System/Department Of Prisons, (CFCF) to provide and make affordable access to inmates that require special dietary.

11. Enjoin The Philadelphia Prison System/ Department Of Prisons, (CFCF) from prohibitions, threatened lock-ins', and punishments to inmates of Islamic Faith for "Free Exercise" freedom of religious beliefs to worship and peaceful assemblage on housing block activity area.

12. Order For The Philadelphia Prison System/Department Of Prison, (CFCF) to maintain and enable regular Islamic religious services.

13. Order For The Philadelphia Prison System/Department Of Prisons, (CFCF) to provide Islamic religious dietary.

14. Order For The Philadelphia Prison System/Department Of Prisons, (CFCF) to have Islamic chaplain.

15. Order For The Philadelphia Prison System /Department Of Prisons, (CFCF) to conduct proper classification.

16. Order For The Philadelphia Prison System/Department Of Prisons, (CFCF) to meet minimum medical care requirements.

17. Order For Philadelphia Prison System/Department Of Prisons, (CFCF) to be in full compliance of THE CONSTITUTION AND LAWS OF THE UNITED STATES or be shut down by THE UNITED STATES.

18. Enjoin The Philadelphia Police Department from enforcing unlawful arrest and seizure. Prescribed under stop, frisk or search and detention policy, practice, custom or usage.

19. Order to Enforce liens against defendants in absence of monetary compliance.

20. Enjoin Defendants from any retaliatory actions against Plaintiff for this action brought.

21. Retain jurisdiction over this matter to assure full compliance with the order of this court and with applicable law and require Defendant to file such reports as the Court deems necessary to evaluate compliance.

BY THE COURT:

_____ _____

 DATE

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUMMONS REQUEST: Summons In A Civil Action, Issuance, And Service, Under Rule 4(a)(1), (b), (c)(1), Of The Federal Rules Of Civil Procedure.

CERTIFIED COPY REQUEST: Plaintiff Requests a Stamped Dated Certified Copy Of This Filing To Be Returned To Plaintiff BY THE COURT. For This Plaintiff Has Sent a self addressed adhesive seal envelope and an Additional Copy Of Filing.

APRIL 19, 2018
DATE

Robert Taylor
ROBERT TAYLOR

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

_____
Plaintiff(s)

v.

Civil Action No.

_____
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 d
are the United States or a United States agency, or an officer or employee of the United States described in Fe
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Ru
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attor
whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the c
You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

EXHIBIT (D)

THIRD CIRCUIT

APPEAL- MOTIONS, AND BRIEF

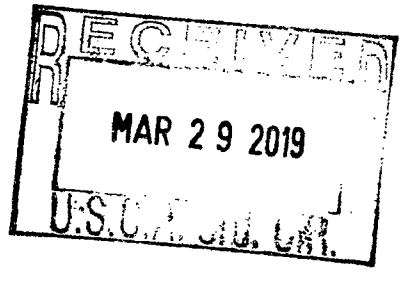
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ROBERT TAYLOR
P.O.BOX 12524
PHILADELPHIA, PA, 19151
APPELLANT

v.

THE COMMONWEALTH OF PENNSYLVANIA PHILADELPHIA DISTRICT ATTORNEY OFFICE, et al.,
RESPONDENTS

CASE NUMBER: 19-1542
DISTRICT CASE NUMBER: 2-17-cv-003369



MOTION FOR RELIEF

TO REVERSE

JURISDICTION

1. This Is Brought As A Right, And Pursuant To 28 U.S.C. s 1291. In Compliance Pursuant To 28 U.S.C. s 1746. Under Federal Rules Of Appellant Procedure Rules 3,4(a)(1)(A), (a)(4) And 27 (a)(1), (2)(a) ,(b),(d) Motion.

PARTIES

2. APPELLANT ROBERT TAYLOR
3. RESPONDENTS THE COMMONWEALTH OF PENNSYLVANIA, et al.,

STATEMENT OF FACTS AND GROUNDS

4. Appellant on Appeal Files This Motion To Reverse THE DISTRICT COURTS Order To Deny 60(b)Motion To Vacate Dismissal Of 42 U.S.C. s 1983 amended Complaint.

5. On December 27, 2018 Appellant Filed a Motion Pursuant to Rule 60(b)(1),(6) Of The Federal Rules Of Civil Procedure To THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. See (Exhibit (A) Appellant 60(b)Motion.

6. Appellant Avers THE DISTRICT COURT Committed Procedural errors Which are Pointed Out In Appellants 60(b)Motion See(Exhibit (A)Paragraphs 3,4,12). On Grounds THE DISTRICT COURT did not Apply The Verified Rule To Appellants 42 U.S.C. s 1983 Claim Or 60(b)Motion. None Of Respondents Answers Or Motions To Dismiss Contained Verified Information Or Certification. **(MCELYEA, 833 F.2D at 198)** a Verified Complaint Goes Beyond The Pleadings And Demonstrates Genuine Issue Of Material Fact. **(CELOTEX, 106 S.CT. at 2553 (EMPHASIS ADDED).**

7. DISTRICT COURT Brought a Summary Judgment Dismissal From a 12(b)Motion Based On Materials Outside Of Pleadings Without Informing Appellant.- In Full Relevant Part, Rule 12(b) Reads: If a Motion Asserting The Defense numbered (6) To Dismiss For Failure Of The Pleading To State A Claim Upon Which Relief Can Be Granted, Matters Outside The Pleadings Are Presented To And Not Excluded By The Court, The Motion Shall Be Treated As One For Summary Judgment And Disposed Of As Provided In Rule 56, And All Parties Shall Be Given Reasonable Opportunity To Present All Materials Made Pertinent To Such A Motion By Rule 56.Fed.civ.P.12(b).

8. Notice And Opportunity To Present Material Evidence Is Required **(DAVIS ELLIOT INTERNATIONAL, INC. v. PAN AMERICAN CONTAINER CORP.,705 F.2d 705,707-08(3d CIR.1983)**(Adopting a Rule Of Strict Adherence To Rule 56 Notice Requirements When Rule.12(b)(6)Motion Is Converted).

9. "When THE DISTRICT COURT Transforms a Dismissal Into a Summary Judgment Proceeding It Must Inform a Plaintiff Who Is Proceeding Pro Se That it Is Considering more than The Pleadings And Must Afford a Reasonable Opportunity To Present all Pertinent Materials" **(LUCAS v. DEPARTMENT OF CORRECTIONS 66 F3d 245,248(9TH CIR.1995)** The Notice Requirement Is Consistent With The "Rule Of

Liberal Construction Of Pleadings Presented By Pro Se Litigants." Particularly When Dismissal is Considered (**GIRAUX, 739 F2d. at 439).**

10. DISTRICT COURTS Reasons For Denying Appellants Relief As To Respondents The Commonwealth Court And Its Judge Was For State Immunity As Well As The Federal Courts Improvement Act Of 1996 ("FCIA"). And That The Material And Substantive Evidence Of Appellants September 22, 2009, and November 16, 2015 False Arrest Lacked Standing.

11. Appellant Avers THE DISTRICT COURT Discarded Reasons That Justified Relief. On Grounds Appellant Clearly Proved In His 60(b)Motion On September 22, 2009 He Was Never Charged Or Served Imprisonment Term For Felony Firearm Offenses Incurring Probation. Appellant Possessed A Valid Firearms Permit See (Exhibit (A) Appellant 60(b)Motion at Exhibit (A) Firearm License). Also Appellant Underwent a State Court Proceeding In Recognition Of This Right. Appellants 60(b)Motion Further Provided Verified Information That Motions Filed In The Criminal Case Relieved Appellant Of Alleged Charges Whereby Only a City Ordinance Violation Was Imposed For (VUFA) M1. For a Term Of 11 And a Half To 23 Months. See (Exhibit (A) Appellants 60(b)Motion At Paragraph 6.,Exhibit (B) Prison Status Sheet).Respondents never Disputed These Facts See (Exhibit (C) Response To 60(b)Motion). DISTRICT COURT Ignores The Material Evidence.

12. The Commonwealth Court And Its Judge Are Not Shielded By Immunity. Appellant Had No Criminal Case During Arrest And Imprisonment Showing The Commonwealth Court And Its Official Judge In Clear Absence Of Jurisdiction. The Doctrine Of (**EX PARTE YOUNG; PULLIAM v. ALLEN,466 U.S. 522)** Are Applicable. The District Court Also Cites Respondents Sovereign Immunity Claim(Doc.no.18) Under The Eleventh Amendment, "An Unconsenting State Is Immune From Suits Brought In Federal Courts By Her Own Citizens As Well As Citizens Of Another State." With Cited Cases. Appellant Has Brought Grounds Of Willful Misconduct Pursuant To 42 Pa C.S. 8550 Where The State Consents Exception To Immunity. Further Addressed In (**BUSKIRK v. SEIPLE, 560 F.SUPP.247(E.D.PA.1983).** Specifically states May Not Immunize Official Conduct Which Violates Rights Protected By s.1983.

13. Appellant Refutes DISTRICT COURTS Holding Of The Federal Courts Improvement Act Of 1996("FCIA") As a Bar Against His Sought Relief. On Grounds The ("FCIA") Is For Federal Courts And Its Judiciary, But Even Applying This To State Judicial Acting Under Color Of State Law The ("FCIA") Provides a Pertinent Part in Section 309 The Following (a) Notwithstanding Any Other Provision Of Law, No Judicial Office Shall Be Held Liable For Any Costs Including Attorney Fees, In Any Action Brought Against Such Officer For An Act Or Omission Taken In Such Officers Judicial Capacity, Unless Such Action Was In Excess Of Such Officers Jurisdiction. Appellant Has Already Provided Material evidence In His 60(b)Motion That He was Without a Criminal Case At The Time Of Arrest

And Detention On November 16, 2015. Showing Respondent Judge Absent Of Jurisdiction In Addition To The Deprivation Of Federal Rights That Ensued. Rendering The ("FCIA") Inapplicable Here.

14. DISTRICT COURT Improperly Denied Appellants s.1983 action Relief, And 60(b)Motion Regarding Respondents The City Of Philadelphia et al., See(Exhibit (D) DISTRICT COURT ORDER) at Pages 6,7. Appellant Contends On Grounds As to The City Of Philadelphia Police Officer Obrien, And Unknown And Unnamed Officers For Unlawful Arrest Inter Alia. Appellant Did Not Have a Criminal Case Or Probation When He Was Arrested On November 16, 2015 See Appellant 60(b)Motion at Paragraph 11. As To The Philadelphia Prison System, The (CFCF) Warden And Sergeant For False Imprisonment, Unconstitutional Conditions Of confinement And The Continual Practice Thereof. THE DISTRICT COURT Held That The Respondent Warden Had Not Been Linked To Supervisory Liability see(Exhibit (D) DISTRICT COURT ORDER 42 U.S.C. s 1983) . But Appellants s.1983 Action Exhibited Grievances As Material Evidence, All Institutional Grievances Are Directly To The warden See Bottom Of Grievance The Original Is The Wardens Copy The Second Copy Is For His Deputy And The Third Is For The Grievant. Furthermore The Warden Frequently Toured The Facility He Was Fully Aware of The Violating Conditions And Practices. Appellant Presented Verified Facts Of False Imprisonment, And Violation Of Due Process While In (CFCF) Detention See (Appellant 60(b)Motion At Paragraph 13).

15. Appellant Established Grounds For Relief For Overcrowding, And Conditions Of Confinement With Grievances As Documented Evidence See (Appellants 42 U.S.C. s.1983,And 60(b)Motion at Paragraph 16.). Appellant Showed and Established Grounds For Relief As To Prison Official Sergeant For Physical assault and Suffering To appellant See (Appellants 42 U.S.C. s.1983, And 60(b)Motion at Paragraph 17.) Which The City Of Philadelphia et al., Do Not Dispute At All Neither In Their Motion To Dismiss Or Response To 60(b)Motion.

16. Appellant Presented Substantive Documented evidence Supported With Verified Facts In His 42 U.S.C. s.1983 To Warrant Relief As To Mail Tampering And Denial Of Access To The Court. See (Appellants 60(b)Motion at Paragraph15.)

17. Appellant Properly Brought Grounds For Relief For Religious Discrimination and deprivations In his 42 U.S.C. s.1983 Action See (60(b)Motion at Paragraph 19.) As Well As Medical And Dietary Deprivations For Medical Neglect Inter Alia. Pointed out In Appellants 42 U.S.C. s.1983, See 60(b)Motion at Paragraph 20.

18. Appellant also sufficiently Brought Grounds For Relief As To Respondents The Philadelphia Sheriffs Office By Their Causal Link And Participation With Respondents, And The Constitutional Deprivations Suffered While In Their Custody. Brought In Appellants 42 U.S.C. s.1983 Action, See 60(b)Motion at Paragraph 13.

19. Appellant Avers THE DISTRICT COURT Misapplies The Monell Case Standards as It relates To The City Of Philadelphia et al., in a Way As To Defeat Appellants s.1983 Action. When **MONELL SUPRA** Is In support Of Its Conclusion That Municipalities Are "Persons" Under s.1983 Therefore liable. It Cannot Undermine s.1983 Which Specifically Protects Such Federal Constitutional Or Statutory Rights.

20. Appellant Sufficiently Brought Grounds For Relief As To Respondent The public Defenders Association And Its Public Defender. As a State Actor Under Color Of State Law In Appellants 42 U.S.C. s.1983 action, See 60(b)Motion at Paragraph 10. DISTRICT COURTS ORDER Concluded No Conspiracy Was established And Respondent Was Appointed By The State Court. Appellant Avers That Once Respondent Was Appointed That Made Respondent A State Actor Under Color Of State Law, And Party To The State And Federal Law Violations Against Appellant. District Court In Its Order Held That Appellant Never Expressed His Intention To Proceed Pro Se. To The Contrary Nowhere In Respondents Answers And Motions or In Appellants s.1983, 60(b)Motion Regarding His Detention did Appellant Refuse To Represent Himself.

21. DISTRICT COURT Dismissed Appellants 42 U.S.C. s.1983 Action In Its Entirety See(Exhibit (D) DISTRICT COURT ORDER), And Denied Appellants Relief in 60(b)Motion As To Respondent The Commonwealth Of Pennsylvania District Attorneys Office. Appellant Contends On Grounds Appellant Brought 42 U.S.C. s.1983 Action And Served Respondent With Summons. Proof of Service Dated 5/8/18. Respondent Never Answered Or Filed Motion In Response Clearly Defaulting. The District Court Continues To Ignore And Advocate On Respondents Behalf. While Appellant Is Entitled To Relief.

22. Appellant Hereby States In The Interest Of Justice His Action Should Not Have Been Dismissed, His Motion Should Not Have Been Denied And Relief Should Be Granted.

RELIEF SOUGHT

WHEREFORE, Appellant Moves For THE COURT To Grant The Following Relief:

a. Reverse Denial Of Appellants 60(b)Motion To Vacate Dismissal Of 42 U.S.C. s.1983 Amended Complaint Granting Relief.

b. Grant Appellant Reimbursement Of $505.00 Appeal Filing Fee.

RESPECTFULLY SUBMITTED, TO THE COURT

MARCH 28, 2019 — Robert Taylor

DATE

ROBERT TAYLOR

P.O. BOX 12524

PHILADLPHIA, PA, 19151

VERIFICATION

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 – UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY

I Verify That Facts Set Forth Are True And Correct To The Best Of Personal Knowledge, Information And Belief. "I Declare Or Verify Under Penalty Of Perjury That The Foregoing Is True And Correct."

Executed On MARCH 28,2019 Robert Taylor

DATE ROBERT TAYLOR

CERTIFICATE

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 - UNSWORN

DECLARATIONS UNDER PENALTY OF PERJURY

I Certify That Facts Set Forth Are True And Correct To The Best Of Personal Knowledge, Information And Belief. "I Declare Or Certify Under Penalty Of Perjury That The Foregoing Is True And Correct."

Executed On MARCH 28,2019 Robert Taylor

DATE ROBERT TAYLOR

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ROBERT TAYLOR

APPELLANT

v.

THE COMMONWEALTH
OF PENNSYLVANIA
PHILADELPHIA DISTRICT
ATTORNEY OFFICE, et al.,

RESPONDENT

CASENUMBER: 19-1542

DISTRICT CASE
NUMBER:2-17-CV-003369

ORDER

IT IS ORDERED

THIS DAY OF MONTH, YEAR FOR RELIEF SOUGHT. MOTION ON APPEAL IS GRANTED FOR THE FOLLOWING:

1. REVERSE DENIAL OF APPELLANTS 60(b)MOTION TO VACATE DISMISSAL OF 42 U.S.C. s.1983 AMENDED COMPLAINT GRANTING RELIEF
2. GRANT APPELLANT REIMBURSEMENT OF $505.00

   APPEAL FILING FEE

BY THE COURT:

_____

TO
U.S. COURT OF APPEALS - THIRD CIRCUIT

U.S. DISTRICT COURT: EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA
(District/state) (Location)

U.S. TAX COURT [ ]
(Full Caption of District Court Case)

Circuit Court
Docket Number: _____

ROBERT TAYLOR

District Court or
Tax Court
Docket Number: 2:17-CV-03369-JHS

vs.

THE COMMONWEALTH
OF PENNSYLVANIA, et al.,

District Court or
Tax Court
Judge : HON. JOEL H. SLOMSKY

Notice is hereby given that ROBERT TAYLOR
(NAMED PARTY)

appeals to the UNITED STATES COURT OF APPEALS for the THIRD CIRCUIT

from [ ] JUDGMENT [✓] ORDER

[ ] OTHER (specify): _____

_____

entered in this action on FEBRUARY 14, 2019
(Date)

DATED: MARCH 4, 2019

Robert Taylor PRO SE
Counsel for Appellant -signed

_____
Counsel for Appellee

ROBERT TAYLOR PRO SE
Named of Counsel- Typed or printed

_____
Address

P.O. BOX 12524
Address

_____

PHILADELPHIA, PA, 19151

_____

_____
Telephone Number or US Govt FTS.

_____
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Note: Use additional sheets if all appellants and/or all counsel for appellee cannot be listed on the Notice of Appeal Form

USCA APPEAL FORM (10/1/04)

3-9-19

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(s) Robert Taylor

Attorney for PRO SE

Dated: MARCH 28, 2019

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I Hereby Certify That A Copy Of The Foregoing Document Was Mailed First Class This

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PHILADELPHIA, PA, 19102

Robert Taylor

Signature

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PHILADELPHIA, PA, 19102

Robert Taylor

Signature

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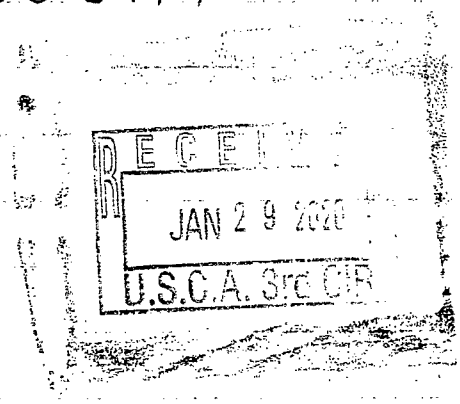
Address: 1441 SAMSON STREET

PHILADELPHIA, PA, 19102

Robert Taylor

Signature

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT



ROBERT TAYLOR PP#946529

APPELLANT

V.

COMMONWEALTH OF PENNSYLVANIA et al...

APPELLEES

MOTION TO THE COURT

PURSUANT TO 28 U.S.C. S 1746 and Federal Rules of Appellant Procedure Rule 27. motion

1. APPellant due To being arrested and detained by Appellees City of PHILadelPhia Police department And PHILadelPhia PRISON System on 1-13-20 FOR THE same Pending ISSUES BROUGHT BY APPellant in his CIVIL Action and APPeal. APPellant notifies the COURT of Address change And To Send COURT Notices TO THE INCARCERated address and TO APPLY APPROPRIate SANCTIONS FOR This ISSUE, APPellant has BEEN INFRINGED and obstructed FROM his pending Action. Wherefore Appellant Request THE COURT FOR:

1. Note change of Address: Robert TAYLOR PP#946529 (CF CF)
7901 STATE Road, PHILadelPhia, Pa, 19136

2. Send Appellant The Addresses of APPEllees For Proper Service

3. Apply APPropriate SAnCtions.

RESPECTFULLY TO THE COURT

1-23-20 — Robt Taylor

DATE — ROBERT TAYLOR

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-1542

Taylor v. District Attorney Philadelphia

To: Clerk

1) Motion by Appellant for Sanctions

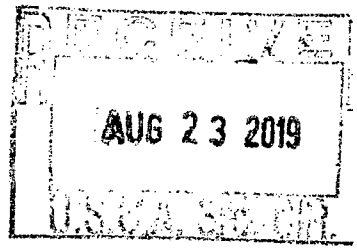
The foregoing motion is referred to the merits panel.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: February 3, 2020
mw/cc: Mr. Robert Taylor
Martha Gale, Esq.
Zachary G. Strassburger, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



ROBERT TAYLOR
Appellant

CASE NO: 19-1542
DISTRICT COURT NO: 2-17-CV-003369

v.

COMMONWEALTH
OF PENNSYLVANIA et al.
Appellee(s)

BRIEF

JURISDICTIONAL STATEMENT

THIS IS BROUGHT AS A RIGHT AND BASED PURSUANT TO 28 U.S.C. s1291. IN COMPLIANCE PURSUANT TO 28 U.S.C. s1746. UNDER FEDERAL RULES OF APPELLANT PROCEDURE RULES 3,4(a)(1)(A), (a)(4), AND RULES 28. BRIEFS, 30.(f).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FINAL ORDER TO 60 (B) MOTION OF FEDERAL RULES OF CIVIL PROCEDURE TO 42 U.S.C. s1983 CIVIL ACTION.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW; CONCISE STATEMENT

Appellant did not have his constitutional rights or procedural and substantive due process upheld in District Court. District Court committed procedural errors not applying the Federal Rules, and discarded material facts in his case. Appellant filed civil action on 4-23-18. (See attached 42 U.S.C. s1983). District Court dismissed in its Entirety on 12-12-18.(see attached s1983 District Court Dismissal Order).District Court also ignored and Denied a motion pursuant to (F.R.C.P.) 55. Default Judgment Docket no.16. Against District Attorneys Office of Philadelphia for failure to respond (See attached summons and proof of service). Pursuant to (F.R.C.P.) a Timely 60 (B) motion was filed on 12-27-18 (see attached 60 (B) motion). Which was dismissed on 2-14-19 This Timely Appeal followed Dated 3-4-19. (See attached Notice of Appeal).

SUMMARY OF THE ARGUMENT; ARGUMENT

Appellant was deprived of his constitutional rights secured by the First, Fourth, Eighth, and Fourteenth amendments to The UNITED STATES CONSTITUTION, and Statutory Provisions. By the City of Philadelphia through its departments, officials, and otherwise practices *MONELL v. DEPARTMENT OF SOCIAL SERVICES OF CITY OF NEW YORK, N.Y. (1978)* SUPRA. Appellant was falsely arrested, and imprisoned on November 16, 2015 by city of Philadelphia police officer Obrien, and unnamed and unknown officers, illegally searched and seized, then removed of his property, and put to physical and emotional duress *SEXTON v. GIBBS, D.C. TEX 1970, 327 F.SUPP. 134.* thus denied equal protection of the laws, and freedom of liberty. In violation of his rights secured by The Fourth, and Fourteenth Amendments to The UNITED STATES CONSTITUTION. *See attached 42 U.S.C. s 1983 at par. 7-12. And 60 (B) motion at p,5 par. 11.* The Commonwealth Court of Philadelphia and its Official Frank Palumbo conspired against appellant, detained And fabricated false information to keep him in prison in absence of jurisdiction *EX PARTE YOUNG; PULLIAM v. ALLEN, 466 U.S. 522. See attached 42 U.S.C. s1983 par. 15-21. And 60 (B) motion p,3,4 par.8,9.* The Philadelphia Sheriffs Office also conspired against appellant, and put him to unconstitutional conditions of confinement, Violating his rights to be free from false imprisonment, cruel and unusual punishment, and denied equal protection of the laws, and freedom of liberty secured by The Fourth, Eighth, and Fourteenth amendments to The UNITED STATES CONSTITUTION, and Statutory Provisions *See attached 42 U.S.C. s1983 at par. 14-21. And 60 (B) motion at p,3,4,5,6. Par. 8,9,13.* The Philadelphia Public Defenders Association and its Defender Chris Angelo conspired with appellees and Misrepresented appellant

to detain him in prison. *TOWER v. GLOVER, 467 U.S. 914 (1984).* Violating his constitutional rights secured by The Fourth, and Fourteenth amendments to The UNITED STATES CONSTITUTION, And Statutory Provisions. *See attached 42 U.S.C. s1983 at par. 22-23. And 60 (B) motion at p,4 par.10.* The City of Philadelphia Prison System (CFCF) and its officials Warden Gerald May, And SGT. Lebesco deprived appellant of his rights secured by The First ,Fourth, Eighth, And Fourteenth amendments to The UNITED STATES CONSTITUTION, and Statutory Provisions. Appellant was falsely imprisoned during which time he was denied access to The Court, And precluded by interference. *WOLFF v. MCDONELL, U.S. NEB, 1974.* SUPRA.; *HOUGHTON v. SHAFER, 392 U.S. 639. See attached 42 U.S.C. s1983 at par. 24-35. And 60 (B) motion at p, 5,6. Par. 11-15.* Appellant was put to unconstitutional harsh conditions of confinement. *U.S. EX REL.WOLFISH v. LEVI,S.D.N.Y.1977,439 F.SUPP.114. SUPRA. See attached 42 U.S.C. s1983 at par.36-42. And 60 (B) motion at p,7. par. 16.* Appellant was unreasonably searched and assaulted at the supervision of SGT. Lebesco *See attached 42 U.S.C. s1983 at par. 43-45. And 60 (B) motion at p,7,8. par.17.* Appellant Suffered religious deprivations *CRUZ v. BETO, TEX 1972.* SUPRA. *See attached 42 U.S.C. s1983 at par. 46-55. And 60 (B) motion at p,8 par.19.* Appellant suffered Dietary and Medical Deprivations *ESTELLE v. GAMBLE, 429 U.S. 97. SUPRA See attached 42 U.S.C. s1983 at par. 56-70. And 60 (B) motion at p,9. Par. 20.*

STANDARD OF REVIEW

1. District Court incorrectly decided appellants case on grounds: Appellant sufficiently brought cause for relief in s1983 action with verified complaint *CONLEY v. GIBSON, 355 U.S. 41, 45-46,78 S.CT.99, 101, 2 L.ED. 2D 80.; MCELYEA, 833 F.2D AT 198. See 42 U.S.C. s1983 and 60 (B) motion.* **2.** District Court did not follow rule 56. Of (F.R.C.P.) regarding 12 (b) motion which denied giving appellant required notice and opportunity to present material evidence, and discovery regarding September 22, 2009 criminal case. **3.** District Court denied material facts presented in his 60 (B) motion which showed possession of his firearms permit, and eligibility to false allegations brought against him. *See attached 60 (B) motion at p,2. Par. 5.* **a.** District Court also incorrectly decided facts that appellants 2009 criminal case and unconstitutional imposition of a (vufa) violation was without felony charges or probation, and the city ordinance term was completed from 2012 to 2014. Proving appellant did not have a criminal case at the time of the November 16, 2015 arrest *See 60 (B) motion at p,3. Par.6.* **4.** District Court misapplied Federal law (F.C.I.A.) Where an official in judicial capacity absent or in excess of jurisdiction is liable, And misapplied sovereign immunity claim where action for the violation of rights protected by s1983 should apply. Where occurs the willful misconduct pursuant

To 42 Pa. C.S. 8550 The state consents exception to immunity. *BUSKIRK v. SEIPLE, 560 F.SUPP.247 (E.D.P.A.1983).* **5.** District Court did not grant appellants motion For default judgment pursuant to (F.R.C.P.) 55. Docket no.16. Regarding Respondent District Attorneys Office of Philadelphia. Which appellant served According to rule 4. Of (F.R.C.P.) *See attached summons and proof of service.* Respondent failed to answer. *See attached 60 (B) motion at p,9,10. Par.21,22.*

CONCLUSION

In The Interest of Justice WHEREFORE , Appellant seeks for THE COURT to Grant The Following Relief:

a. Reverse Denial of Appellants 60 (B) Motion To Vacate Dismissal of 42 U.S.C. s1983 Amended Complaint Granting Relief.

b. Order for Appellants Relief Pursuant to Federal rules of Civil Procedure 55. Default Judgment.

c. Grant Appellant Reimbursement of $505.00 Appeal Filing Fee.

RESPECTFULLY SUBMITTED, TO THE COURT

8-22-19
DATE

Robert Taylor

ROBERT TAYLOR
P.O. BOX 12524
PHILADELPHIA, PA, 19151

Certificate of Compliance With Type-Volume Limit

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(s) Robert Taylor

Pro se Robert TAYLOR

Dated: 8-22-19

VERIFICATION

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 - UNSWORN

DECLARATIONS UNDER PENALTY OF PERJURY

I Verify That Facts Set Forth Are True And Correct To The Best Of Personal Knowledge, Information And Belief. "I Declare Or Verify Under Penalty Of Perjury That The Foregoing Is True And Correct."

Executed On 8-22-19 Robert Taylor

DATE ROBERT TAYLOR

CERTIFICATE

IN COMPLIANCE PURSUANT TO 28 U.S.C. s 1746 - UNSWORN

DECLARATIONS UNDER PENALTY OF PERJURY

I Certify That Facts Set Forth Are True And Correct To The Best Of Personal Knowledge, Information And Belief. "I Declare Or Certify Under Penalty Of Perjury That The Foregoing Is True And Correct."

Executed On 8-22-19 Robert Taylor

DATE ROBERT TAYLOR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENT WAS SERVED BY FIRST CLASS MAIL THIS DATE OF 8-22-19 TO:

NAME: MARTHA GALE ESQ.

ADDRESS: ADMINISTRATIVE OFFICE OF PA. COURTS
1515 ARCH STREET SUITE 1414
PHILADELPHIA, PA, 19102

Robert Taylor

SIGNATURE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENT WAS SERVED BY FIRST CLASS MAIL THIS DATE OF 8-22-19 TO:

NAME: ASSISTANT City Solicitor (City of PHILADELPHIA)

ADDRESS: 1515 ARCH STREET
17th Floor
PHILADELPHIA, PA, 19102

Robert Taylor
SIGNATURE

TO
U.S. COURT OF APPEALS - THIRD CIRCUIT

U.S. DISTRICT COURT: EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA)
(District state) (Location)

U.S. TAX COURT [ ]
(Check if Appeal from a District Court Case)

Circuit Court
Docket Number: _____

ROBERT TAYLOR

vs.

THE COMMONWEALTH OF PENNSYLVANIA, et al.,

District Court or
Tax Court
Docket Number: 2:17-CV-03369-JH

District Court or
Tax Court
Judge : HON. JOEL H. SLOMSKY

Notice is hereby given that ROBERT TAYLOR
(NAMED PARTY)

appeals to the UNITED STATES COURT OF APPEALS for the THIRD CIRCUIT

from [ ] JUDGMENT [✓] ORDER

[ ] OTHER (specify): _____

_____

entered in this action on FEBRUARY 14, 2019
(Date)

DATED: MARCH 4, 2019

Robert Taylor PRO SE
Counsel for Appellant -signed

_____
Counsel for Appellee

ROBERT TAYLOR PRO SE
Named of Counsel- Typed or printed

_____
Address

P.O. BOX 12524
Address

_____

PHILADELPHIA, PA, 19151

_____

_____
Telephone Number or US Gov't FTS

_____
Telephone Number or US Gov't FTS

Note: Use additional sheets if all appellants and/or all counsel for appellee cannot be listed on the Notice of Appeal Form

USCA APPEAL FORM (rev. 7-03)

03-9-19

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

ROBERT TAYLOR
Plaintiff(s)

v.

THE COMMONWEALTH OF PENNSYLVANIA COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE THE COMMONWEALTH COURT PHILADLEPHIA CRIMINAL JUSTICE CENTER (CJC) CURRENTLY OFFICIAL JUDGE FRANK PALUMBO THE CITY OF PHILADELPHIA C/O CITY OF PHILADELPHIA LAW DEAPRTMENT CURRENTLY CITY OF PHILADELPHIA POLICE OFFICER OBRIEN #7461 THE PHILADELPHIA PRISON SYYTEM/DEPARTMENT OF PRISONS CURRAN-FROMHOLD CORRECTIONAL FACILITY (CFCF) CURRENTLY WARDEN GERALD MAY PRISON OFFICIAL SGT. LEBESCO THE PHILADELPHIA SHERIFFS OFFICE THE PHILADELPHIA PUBLIC DEFENDERS ASSOCIATION CURRENTLY PUBLIC DEFENDER CHRIS ANGELO
Defendant(s)

Civil Action No. 17-3369

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

THE COMMONWEAITH OF PENNSYLVAIA
COMMONWEAITH of PENNSYLVANIA DISTRICT ATTORNEYS OFFICE
3 S. PENN/STREET SQUARE
PHILADELPHIA, PA, 19107

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert Taylor
P.O. Box 12524
Philadelphia, Pa 19107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 4/23/18

s/James Deitz
Signature of Clerk or Deputy Clerk

Civil Action No. 17-3369

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* COMMONWEALTH of PA. COMMONWEALTH of PA. DISTRICT ATTORNEYS office

was received by me on *(date)* 5/1/18

☐ I personally served the summons on the individual at *(place)* _____

on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* COMMONWEALTH of PA DISTRICT ATTORNEYS office, who

designated by law to accept service of process on behalf of *(name of organization)* COMMONWEALTH of PA

on *(date)* 5/8/18 ; or

☐ I returned the summons unexecuted because _____ ; c

☑ Other *(specify)*: SUMMONS WAS SERVED BY WAY of FIRST CLASS MAIL

My fees are S _____ for travel and S _____ for services, for a total of S _____

I declare under penalty of perjury that this information is true.

Date: 5/8/18

Robert Taylor
Server's signature

ROBERT TAYLOR
Printed name and title

Box 12524 PHILADELPHIA, PA, 19151
Server's address

Additional information regarding attempted service, etc:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed this 5/8/18 to:
Month, Day, Year

THE COMMONWEALTH OF PENNSYLVANIA

Name: COMMONWEALTH OF PENNSYLVANIA DISTRICT ATTORNEYS OFFICE

Address: 3 S. PENN SQUARE
PHILADELPHIA, PA. 19107

Robert E. Saylor
Signature

Rev. 10/2009