FILED: October 26, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6587
(3:18-cv-00597-JAG-RCY)

LOUIS ROY CHAPMAN

Plaintiff - Appellant

v.

PHYLLIS SMITH, Education Director, LVCC; DINAH KREITZ; SHANIQUA MOORE, Law Library, LVCC; DAVE ROBINSON, Chief of Operations, LVCC; T. WALKER, Recreation Supervisor; MARILYN SHAW, Assistant Warden Program, LVCC; CRYSTAL JONES, Facility Ombudsman, LVCC; RENEE WOODSON, Regional Ombudsman, VDOC; K. COSBY, Regional Ombudsman, VDOC; LAURA TORGESON; TAMIKA SOMMERVILLE; TALIA NEVILLE; KIAESHIA THOMAS; COMMONWEALTH OF VIRGINIA; GLOBAL EXPERTS AND OUTSOURCING, INC.

Defendants - Appellees

and

JENNIFER WALKER, Food Service Director, LVCC; N. C. EDMONDS, Captain, LVCC; MASON, Food Service Supervisor, LVCC; J. SMITH, Health Services Administrator, LVCC; SUSAN MINTER, Nurse Practitioner, LVCC; KEEFE CORPORATION, INC.

Defendants

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Thacker, Judge Richardson, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: September 20, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6587
(3:18-cv-00597-JAG-RCY)

LOUIS ROY CHAPMAN

Plaintiff - Appellant

v.

PHYLLIS SMITH, Education Director, LVCC; DINAH KREITZ; SHANIQUA MOORE, Law Library, LVCC; DAVE ROBINSON, Chief of Operations, LVCC; T. WALKER, Recreation Supervisor; MARILYN SHAW, Assistant Warden Program, LVCC; CRYSTAL JONES, Facility Ombudsman, LVCC; RENEE WOODSON, Regional Ombudsman, VDOC; K. COSBY, Regional Ombudsman, VDOC; LAURA TORGESON; TAMIKA SOMMERVILLE; TALIA NEVILLE; KIAESHIA THOMAS; COMMONWEALTH OF VIRGINIA; GLOBAL EXPERTS AND OUTSOURCING, INC.

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Defendants

Appendix A

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: October 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6587
(3:18-cv-00597-JAG-RCY)

LOUIS ROY CHAPMAN

Plaintiff - Appellant

v.

PHYLLIS SMITH, Education Director, LVCC; DINAH KREITZ; SHANIQUA MOORE, Law Library, LVCC; DAVE ROBINSON, Chief of Operations, LVCC; T. WALKER, Recreation Supervisor; MARILYN SHAW, Assistant Warden Program, LVCC; CRYSTAL JONES, Facility Ombudsman, LVCC; RENEE WOODSON, Regional Ombudsman, VDOC; K. COSBY, Regional Ombudsman, VDOC; LAURA TORGESON; TAMIKA SOMMERVILLE; TALIA NEVILLE; KIAESHIA THOMAS; COMMONWEALTH OF VIRGINIA; GLOBAL EXPERTS AND OUTSOURCING, INC.

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Defendants

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6587

LOUIS ROY CHAPMAN,

Plaintiff - Appellant,

v.

PHYLLIS SMITH, Education Director, LVCC; DINAH KREITZ; SHANIQUA MOORE, Law Library, LVCC; DAVE ROBINSON, Chief of Operations, LVCC; T. WALKER, Recreation Supervisor; MARILYN SHAW, Assistant Warden Program, LVCC; CRYSTAL JONES, Facility Ombudsman, LVCC; RENEE WOODSON, Regional Ombudsman, VDOC; K. COSBY, Regional Ombudsman, VDOC; LAURA TORGESON; TAMIKA SOMMERVILLE; TALIA NEVILLE; KIAESHIA THOMAS; COMMONWEALTH OF VIRGINIA; GLOBAL EXPERTS AND OUTSOURCING, INC.,

Defendants - Appellees,

and

JENNIFER WALKER, Food Service Director, LVCC; N. C. EDMONDS, Captain, LVCC; MASON, Food Service Supervisor, LVCC; J. SMITH, Health Services Administrator, LVCC; SUSAN MINTER, Nurse Practitioner, LVCC; KEEFE CORPORATION, INC.,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., District Judge. (3:18-cv-00597-JAG-RCY)

Submitted: September 14, 2021 Decided: September 20, 2021

Before THACKER and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Louis Roy Chapman, Appellant Pro Se. John P. O'Herron, THOMPSON MCMULLAN PC, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Louis Roy Chapman appeals the district court's orders denying his motion to recuse, dismissing as frivolous or for failure to state a claim several of his claims, and granting Defendants summary judgment on the remaining claims in this 42 U.S.C. § 1983 action. We have reviewed the record and Chapman's informal brief and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Chapman v. Smith*, No. 3:18-cv-00597-JAG-RCY (E.D. Va. Mar. 31, 2020; Sept. 21, 2020; Sept. 24, 2020; Mar. 3, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,

Plaintiff,

v. Civil Action No. **3:18CV597**

PHYLLIS SMITH, *et al.*,

Defendants.

MEMORANDUM OPINION

Louis Roy Chapman, a Virginia inmate proceeding *pro se*, filed this 42 U.S.C. § 1983 action.[1] The action is proceeding on Chapman's Second Particularized Complaint. ("Complaint," ECF No. 27.) The matter is before the Court for evaluation pursuant to 42 U.S.C. § 1997e(c)(1) and the Motion to Dismiss filed by the Commonwealth of Virginia, K. Cosby, and Renee Woodson. For the reasons set forth below, the Motion to Dismiss will be GRANTED and the below described claims will be DISMISSED for failure to state a claim and because they are legally frivolous.

I. Preliminary Review

Pursuant to the Prison Litigation Reform Act ("PLRA") this Court must dismiss any action filed by a prisoner if the Court determines the action (1) "is frivolous" or (2) "fails to state a claim on which relief may be granted." 42 U.S.C. § 1997e(c)(1); *see* 28 U.S.C. § 1915(e)(2)(B)(i–ii);

[1] The statute provides, in pertinent part:

> Every person who, under color of any statute . . . of any State . . . 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 . . . .

42 U.S.C. § 1983.

Appendix B

28 U.S.C. § 1915A(b). The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." *Clay v. Yates*, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff's well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); *see also Martin*, 980 F.2d at 952. This principle applies only to factual allegations, however, and "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

The Federal Rules of Civil Procedure "require[] only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (second alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Plaintiffs cannot satisfy this standard with complaints containing only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Id.* (citations omitted). Instead, a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level," *id.* (citation omitted), stating a claim that is "plausible on its face," *id.* at 570, rather than merely

"conceivable," *id.* "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." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). In order for a claim or complaint to survive dismissal for failure to state a claim, therefore, the plaintiff must "allege facts sufficient to state all the elements of [his or] her claim." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002); *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)).

"Where the context . . . makes clear a litigant's essential grievance, the complainant's additional invocation of general legal principles need not detour the district court from resolving that which the litigant himself has shown to be his real concern." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). Lastly, while the Court liberally construes *pro se* complaints, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), it does not act as the inmate's advocate, *sua sponte* developing statutory and constitutional claims the inmate failed to clearly raise on the face of his complaint, *see Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring).

The Complaint in this matter is 42 pages long and contains 11 separate claims for relief. In this Memorandum Opinion, the Court only recites those allegations pertinent to Claims 4, 8, 9, 10, and 11.[2]

II. Summary of Pertinent Claims and Allegations

Chapman is a white male confined in the Lawrenceville Correctional Center ("LCC"). (Compl. 2, 23.) LCC is operated by Global Experts in Outsourcing ("Geo"), a private, for profit

[2] The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects the spelling and punctuation in the quotations from Chapman's submissions. The Court corrects some, but not all, of the capitalization in the quotations from Chapman's submissions. The Court omits some of the excessive emphasis in the quotations from Chapman's submissions.

corporation. (*Id.* at 2.) While confined at LCC, Chapman contends that he has been the victim of "Gender Bias" and "Racial Discrimination." (*Id.* at 3.)

A. Claim 4

Defendants Smith, Moore, and Shaw are in charge of the library at LCC. (*Id.* at 9.) Chapman notes that the library "only has a Black Authors and Spanish Language section with a plaque. There are no plaques for Caucasians . . . or any other race in the world. This is offensive, and humiliating and degrading to Chapman." (*Id.*)

Chapman brought the lack of plaques for Caucasian authors to the attention of Defendant Moore and Smith. (*Id.*) Defendant Moore became agitated and asked Chapman if he was a racist in the presence of the other inmates in the library. (*Id.*) "Moore's asking Chapman if he is racist, is racist itself." (*Id.*) "Chapman is NOT a racist and is NOT responsible for slavery." (*Id.* at 11)

Based on the foregoing allegations, Chapman makes the following claim:

Claim 4 In violation of Chapman's right to equal protection and to be free from cruel and unusual punishment, "Smith, Moore and Shaw accused Chapman of being RACIST. When a white man stands for his rights he is called racist, when blacks do it, it is their heritage." (ECF No. 97, at 7.)[3]

B. Claims 8 through 11

Defendant Jones is the facility Ombudsman at LCC. (Compl. 1.) At LCC, Defendant Jones bears the initial responsibility for reviewing grievances to see if they meet the requirement for acceptance and processing. (*Id.* at 22.) Defendants Woodson and Jones are Regional Ombudsman for the VDOC. (*Id.* at 1.) They review Defendant Jones's decisions with respect to processing of grievances.

[3] Chapman's Complaint contains a long narrative of his racial grievances. However, in the Complaint, Chapman is less than clear as to which sleight Chapman perceives as giving rise to his distinct grounds for legal relief. Chapman's clearest articulation of his individual claims appears in Chapman's Response to the Motion for Summary Judgment filed by other correctional officials.

During his incarceration at LCC, Chapman has filed a host of informal complaints and grievances. (*See, e.g.*, ECF Nos. 1-10, 1-11, 1-14, 2-2.) Chapman contends that Defendants Jones, Woodson, and Cosby repeatedly denied him tracking numbers for his grievances when the grievance concerned black officers but provided him with a grievance number on the occasion that he complained about the conduct of a white officer. (Compl. 22.)

For example, on one occasion, Chapman wished to filed a grievance against L. Torgenson, a safety officer, for his failure to maintain the showers in a sanitary fashion. (*Id.* at 29.) The showers were moldy and dirty. (*Id.* at 31–32.) Although Defendant Torgenson sent a crew of six inmates to clean the showers, only two of the inmates worked on cleaning the showers, while the rest spent their time on the phone or watching television. (*Id.* at 30.) Chapman submitted a grievance wherein he complained that Torgenson was failing to properly maintain the showers because, *inter alia*, the concrete was coming off of the walls, there was no paint on the floors, there was mold and mildew on the walls and floors, the showers were not properly cleaned, the cleaning chemicals were not properly mixed, insufficient cleaning chemicals were provided, Torgenson failed to inspect the showers, Torgenson misappropriated the funds for cleaning the showers, et cetera. (ECF No. 2-7, at 1.) Defendant Jones refused to process the grievance because it addressed more than one issue and directed Chapman to resubmit the grievance with only one issue. (*Id.* at 2.) Chapman appealed the intake decision. (*Id.*) Defendant Woodson upheld the intake decision. (*Id.*) Because Chapman's grievance did not meet the criteria for intake, Defendant Jones refused to give it a tracking number. (Compl. 29.)

On November 22, 2017, Chapman was in the dining hall when he asked T. Sommerville, a correctional officer, "'Where are the cups?'" (*Id.* at 1, 33.) Sommerville looked directly at Chapman and said, "Shit Happens Deal With It." (*Id.* at 33.) Officer T. Neville laughed at this

remark. (*Id.*) "Sommerville did not say this to any Black inmate, only to Chapman, because he is White." (*Id.* at 34.) Chapman filed a grievance concerning the above incident. (ECF No. 2–9, at 1.) Defendant Jones refused the grievance at intake because she noted that it did not cause Chapman personal loss or harm. (*Id.* at 2.) Chapman appealed that intake decision. (*Id.*) Defendant Woodson upheld the intake decision. (*Id.*)

On June 4, 2018, Chapman asked T. Sommerville if she would get someone to wipe down the table where Chapman wanted to eat because there was smeared peanut butter on the table. (Compl. 34.) "Chapman was sitting with three (3) white men. Chapman had asked the only kitchen worker, who was black. Instead, he picked up trays and wiped the table for blacks only. Sommerville said, 'the worker was not going to wipe that table.' Blatant racist and gender bias." (*Id.*)

On July 17, 2018, Chapman and another white inmate were sitting at a table that was dirty. (*Id.* at 35.) Chapman asked Correctional Officer Thomas if she could get someone to wipe the table. (*Id.*) Correctional Officer Thomas responded, "I am not going to do it. I am not going to do it." (*Id.*) Chapman contends that this was a "blatant, racist act." (*Id.*) Chapman filed a grievance concerning this incident. (ECF No. 2–9, at 16.) Defendant Jones refused the grievance at intake, noting that it did not affect Chapman personally because it did not cause him personal loss or harm. (*Id.* at 17.) Chapman appealed that intake decision. (*Id.*) Defendant Cosby upheld the intake decision. (*Id.*)

In light of the foregoing allegations, Chapman raises the follow claims for relief:

Claim 8 On twenty-one (21) occasions, Defendant Jones, Woodson and Cosby denied Chapman a tracking number for his grievances that pertained to "ALL BLACK OFFICERS and Staff." (ECF No. 97, at 7.) Chapman contends that such actions

violated his rights under the Eighth Amendment and his rights to due process and equal protection under the Fourteenth Amendment. (Compl. 22.)[4]

Claim 9 (a) Defendant Torgenson's failure to keep the showers clean violated Chapmans's right under the Eighth and Fourteenth Amendments. (Compl. 33.)
(b) Defendant Jones "refused to give Chapman grievance tracking number for L. Torgenson, safety officer, concerning unsanitary showers." (ECF No. 97, at 8.) Such actions violated Chapman's "First and Eighth Amendment right[s] to petition the government for unsanitary showers." (*Id.* at 32.)

Claim 10 "T. Sommerville said, 'Shit happens. Deal with it,' and refused to have the table wiped clean where Chapman and other white men ate. Racism. T. Neville laughed at this racist act." (ECF No. 97, at 8.) Chapman contends that such actions violated his rights under the Eighth and Fourteenth Amendments. (Compl. 34.)

Claim 11 "K. Thomas, when Chapman asked her if she would get someone to wipe off the table where Chapman and [the] white me[n] ate, yelled, "I am not going to do it. I am not going to do it." "My name is Thomas." (ECF No. 97, at 8.) Chapman contends that such actions violated his rights under the Eighth and Fourteenth Amendments. (Compl. 36.)

III. Analysis

It is both unnecessary and inappropriate to engage in an extended discussion of the lack of merit to Chapman's theories for relief. *See Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996) (emphasizing that "abbreviated treatment" is consistent with Congress's vision for the disposition of frivolous or "insubstantial claims" (citing *Neitzke v. Williams*, 490 U.S. 319, 324 (1989))).

In this regard, Chapman has asserted throughout his Complaint that the actions of various defendants amounted to discrimination in violation of his rights under the Public Accommodations Act, 42 U.S.C. § 2000a, *et seq.* (*See, e.g.*, Compl. at 36.) However, "the Public Accommodations Act, 42 U.S.C. § 2000a, et seq., does not apply to prisons." *Lutchey v. Wiley*, No. 98–3760, 1999

[4] "[I]t is now well established that the Eighth Amendment 'serves as the primary source of substantive protection to convicted prisoners,' and the Due Process Clause affords a prisoner no greater *substantive* protection 'than does the Cruel and Unusual Punishments Clause.'" *Williams v. Benjamin*, 77 F.3d 756, 768 (4th Cir. 1996) (quoting *Whitley v. Albers*, 475 U.S. 312, 327 (1986)). Thus, Chapman's Fourteenth Amendment substantive due process claim is subsumed within his Eighth Amendment claim.

WL 645951, at *2 (6th Cir. Aug. 13, 1999) (citing 42 U.S.C. § 2000a(b)); *Patterson v. W. Va. Reg'l Jail & Corr. Facility Auth.*, No. 3:11–CV–00943, 2012 WL 3308607, at *1 (S.D.W. Va. July 3, 2012), *report and recommendation adopted sub nom. Patterson v. W. Va. Reg'l Jail*, No. 3:11–CV–00943, 2012 WL 3295876 (S.D.W. Va. Aug. 10, 2012). Accordingly, all of Chapman's claims seeking relief under Public Accommodations Act, 42 U.S.C. § 2000a, *et seq.* will be DISMISSED as legally frivolous.

Chapman's claims against the Commonwealth of Virginia also lack merit as that entity is not a person for purposes 42 U.S.C. § 1983 and is immune from suit. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). Accordingly, all claims against Commonwealth of Virginia will be DISMISSED as legally frivolous.

A. Eighth Amendment Claims

To state an Eighth Amendment claim, an inmate must allege facts showing "(1) that objectively the deprivation of a basic human need was 'sufficiently serious,' and (2) that subjectively the prison officials acted with a 'sufficiently culpable state of mind.'" *Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Under the objective prong, the inmate must allege facts to suggest that the deprivation complained of was extreme and amounted to more than the "routine discomfort" that is "part of the penalty that criminal offenders pay for their offenses against society." *Strickler v. Waters*, 989 F.2d 1375, 1380 n.3 (4th Cir. 1993) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). "In order to demonstrate such an extreme deprivation, a prisoner must allege 'a serious or significant physical or emotional injury resulting from the challenged conditions.'" *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003) (quoting *Strickler*, 989 F.2d at 1381). With respect to claims of inadequate

medical treatment under the Eighth Amendment, "the objective component is satisfied by a serious medical condition." *Quinones*, 145 F.3d at 167.

The subjective prong requires the plaintiff to allege facts that indicate a particular defendant actually knew of and disregarded a substantial risk of serious harm to his person. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "Deliberate indifference is a very high standard—a showing of mere negligence will not meet it." *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) (citing *Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976)).

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer, 511 U.S. at 837. *Farmer* teaches "that general knowledge of facts creating a substantial risk of harm is not enough. The prison official must also draw the inference between those general facts and the specific risk of harm confronting the inmate." *Quinones*, 145 F.3d at 168 (citing *Farmer*, 511 U.S. at 837); *see Rich v. Bruce*, 129 F.3d 336, 338 (4th Cir. 1997). Thus, to survive a motion to dismiss, the deliberate indifference standard requires a plaintiff to assert facts sufficient to form an inference that "the official in question subjectively recognized a substantial risk of harm" and "that the official in question subjectively recognized that his [or her] actions were 'inappropriate in light of that risk.'" *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004) (quoting *Rich*, 129 F.3d at 340 n.2).

Chapman fails to satisfy either the objective or subjective prong for any of his Eighth Amendment claims. Chapman fails to allege facts that plausibly suggest he sustained serious physical or emotional injury from any of the challenged conditions. *De'Lonta*, 330 F.3d at 634. Furthermore, in no instance does he allege facts that indicate any defendants perceived their actions

subjected him to a substantial risk of serious harm. *De'Lonta v. Fulmore*, 745 F. Supp. 2d 687, 691 (E.D. Va. 2010) (citing *Moody v. Grove*, No. 89-6650, 1989 WL 107004, at *1 (4th Cir. Sept. 19, 1989)) ("Verbal abuse of inmates by prison officials, without more, does not rise to the level of an Eighth Amendment violation."); *see Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979)). Accordingly, Chapman's Eighth Amendment claims recited above will be DISMISSED for failure to state a claim and as legally frivolous.

B. Equal Protection Generally

The Equal Protection Clause of the Fourteenth Amendment commands that similarly situated persons be treated alike. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To state an equal protection claim, Chapman must allege facts that plausibly suggest: (1) "that he has been treated differently from others with whom he is similarly situated"; and, (2) that the differing treatment resulted from intentional discrimination. *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001). To succeed on an equal protection claim, a plaintiff must set forth "specific, non-conclusory factual allegations that establish improper motive." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)). If a plaintiff satisfies the above, "the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Morrison*, 239 F.3d at 654 (citations omitted). "In a prison context," disparate treatment passes muster so long as "the disparate treatment is 'reasonably related to [any] legitimate penological interests.'" *Veney v. Wyche*, 293 F.3d 726, 732 (4th Cir. 2002) (alteration in original) (quoting *Shaw v. Murphy*, 532 U.S. 223, 225 (2001)).

Chapman also alleges the actions of the defendants violated his right to be free from discrimination under Article I, Section 11 of the Virginia Constitution. "The Virginia Constitution

affords no greater protection to be free from government discrimination than the equal protection clause in the Fourteenth Amendment, [so] the same analysis applies to [Chapman's] claims under both his federal and state law claims." *Farley v. Clarke*, No. 7:15–CV–00352, 2016 WL 8540135, at *18 n.25 (W.D. Va. Dec. 27, 2016) (citing *Lee v. York Cty. Sch. Div.*, 418 F. Supp. 2d 816, 835 (E.D. Va. 2006)); *Archer v. Mayes*, 194 S.E.2d 707, 711 (Va. 1973)), *report and recommendation adopted*, No. 7:15–CV–00352, 2017 WL 1049579 (W.D. Va. Mar. 17, 2017).

C. Claim 4

In Claim 4, Chapman contends that his right to equal protection was violated when he asked about the absence of plaques for Caucasian authors and Defendant Moore asked if he was a racist. Initially, the Court notes that Chapman fails to allege facts that indicate he was treated any differently than any other inmate who complained about the plaques in the law library. Therefore, his equal protection claim fails at the outset. Moreover, even if one were to conclude that Defendant Moore's question was racist and abusive, that fact alone would not support an equal protection claim. *Hernandez v. Fla. Dep't of Corr.*, 281 F. App'x 862, 867 (11th Cir. 2008) ("Hernandez, like all inmates, does not enjoy a fundamental right to be free of verbal abuse, so that could not support a traditional equal protection claim . . . ."); *Lewis v. Jacks*, 486 F.3d 1025, 1028 (8th Cir. 2007) ("Verbal abuse by correctional officials, even the use of reprehensible racially derogatory language, is not by itself unconstitutional race discrimination 'unless it is pervasive or severe enough to amount to racial harassment.'" (quoting *Blades v. Schuetzle*, 302 F.3d 801, 805 (8th Cir. 2002))). Accordingly, Claim 4 will be DISMISSED for failure to state a claim and as legally frivolous.

D. Claim 8

In Claim 8, Chapman contends that on twenty-one occasions Defendants Jones, Woodson, and Cosby violated his right to equal protection when they denied him a tracking number for his grievances that pertained to "ALL BLACK OFFICERS and Staff." (ECF No. 97, at 7.)[5] The record reflects that Defendant Jones conducted the initial intake review of grievances at LCC. Although Chapman is quick to attribute racial animus to nearly every action by prison officials, he fails to direct the Court to statements in the intake decisions of his grievances that reflect racial animus. Rather, Defendant Jones regularly refused to assign Chapman's grievances tracking numbers because she concluded that Chapman's grievances failed to pass the intake criteria because of, *inter alia*, their trivial nature. For example, Defendant Jones refused to process Chapman's trivial grievances about the refusal of staff to wipe down his table or Correctional Officer Sommerville's "shit happens," remark because Chapman was not harmed by this conduct. When Chapman appealed those intake decisions, they were upheld by Defendants Cosby and Woodson. Chapman does not direct the Court to similar insubstantial grievances or noncomplying grievances filed by black inmates or that concerned white correctional officers that were processed and received tracking numbers.

In short, Chapman fails to allege facts that plausibly suggest that Defendants Cosby and Woodson treated his grievances differently because of Chapman's race or the race of individuals named in the grievances. Moreover, Defendants Cosby and Woodson were not located at LCC and had limited interaction with individuals named in Chapman's noncomplying grievances. It is factually frivolous to suggest that their review of the intake decisions turned on research into the

[5] Defendant Jones filed a Motion for Summary Judgment with respect to the equal protection aspects of Claim 8. The Court will address the equal protection aspects of Claim 8 against Jones in the separate Memorandum Opinion resolving her Motion for Summary Judgment.

race of the correctional officials named in the grievance. Accordingly, the equal protection aspects of Claim 8 against Defendants Cosby and Woodson will be DISMISSED for failure to state a claim and as legally and factually frivolous.

Chapman also contends that Defendants Cosby and Woodson denied him due process by their failure to properly process his grievances. It is clear that "inmates have no constitutional entitlement or due process interest in access to a grievance procedure." *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 541 (4th Cir. 2017). Therefore, any alleged errors in the processing of Chapman's grievances do not amount to a denial of due process. Accordingly, this aspect of Claim 8 against Jones, Cosby, and Woodson fails to state a claim and is legally frivolous and will be DISMISSED.

E. Claim 9

The only remaining aspect of Claim 9 is Chapman's contention that Defendant Jones's failure to process his grievance pertaining to the unsanitary showers deprived Chapman of his First Amendment right to petition the Government. While prison officials cannot retaliate against an inmate for filing a grievance, they do not violate the First or Fourteenth Amendment by refusing to process a grievance or denying access to the grievance procedure altogether. *See id.* (citations omitted). Accordingly, this aspect of Claim 9 will be DISMISSED for failure to state a claim and as legally frivolous.

F. Claim 10

In the first portion of Claim 10, Chapman contends that he was denied equal protection of the law because when he asked Correctional Officer Sommerville, "'Where are the cups?'" she looked directly at him and said, "Shit Happens Deal With It." (Compl. 33.) Officer T. Neville laughed at this remark. (*Id.*) "Sommerville did not say this to any Black inmate, only to Chapman,

because he is White." (*Id.* at 34.) Chapman, however, fails to allege facts that he was treated differently than any other inmate because no other inmate complained about the lack of cups. Not Relevant Chapman's perceived racial slight fails to support and equal protection claim. *Umani v. Mich. Dep't of Corr.*, 432 F. App'x 453, 459 (6th Cir. 2011); *see Lewis*, 486 F.3d at 1028.

In the second portion of Claim 10, Chapman contends that he was denied equal protection because Correctional Officer Sommerville refused to make a black kitchen worker clean off a table where Chapman was sitting with other white inmates. While Chapman insists that Correctional Officer Sommerville's inaction is attributable to racial animus, that allegation is conclusory and implausible under the facts alleged. *See Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009). Chapman does not allege that inmates were prohibited from cleaning off their own tables. Nor does the Complaint indicate that Correctional Officer Sommerville made kitchen workers clean off any other tables at the request of other inmates. Accordingly, Chapman fails to state an equal protection claim against Correctional Officer Sommerville for her lack of action. Claim 10 will be DISMISSED for failure to state a claim and as legally frivolous.

G. Claim 11

Chapman's equal protection claim in Claim 11 suffers from the same defects as those in Claim 10. Chapman insists that Correctional Officer Thomas's refusal to direct someone to clean off Chapman's table was a product of racial animus. Chapman does not allege that inmates were prohibited from cleaning off their own tables. Nor does the Complaint indicate that Correctional Officer Thomas made kitchen workers clean off any other tables when requested by other inmates. Accordingly, Claim 11 will be DISMISSED for failure to state a claim and as legally frivolous.

IV. Conclusion

All claims against the Commonwealth of Virginia will be DISMISSED. All claims seeking relief under Public Accommodations Act, 42 U.S.C. § 2000a, *et seq.* will be DISMISSED. Claims 4, 9, 10, and 11 will be DISMISSED. The Eighth Amendment and due process aspects of Claim 8 will be DISMISSED against Defendant Jones, Woodson, and Cosby. The equal protection aspects of Claim 8 will be DISMISSED against Defendants Woodson and Cosby. The Motion to Dismiss (ECF No. 69) will be GRANTED.

An appropriate Order will accompany this Memorandum Opinion.

Date: 21 September 2020
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,

Plaintiff,

v. Civil Action No. **3:18CV597**

PHYLLIS SMITH, *et al.*,

Defendants.

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that:

1. All claims against the Commonwealth of Virginia are DISMISSED.
2. All claims seeking relief under Public Accommodations Act, 42 U.S.C. § 2000a, *et seq.* are DISMISSED.
3. Claims 4, 9, 10, and 11 are DISMISSED.
4. The Eighth Amendment and due process aspects of Claim 8 are DISMISSED against Defendant Jones, Woodson, and Cosby. The equal protection aspects of Claim 8 are DISMISSED against Defendants Woodson and Cosby.
5. The Motion to Dismiss (ECF No. 69) is GRANTED.

The Clerk is DIRECTED to send the Memorandum Opinion and Order to Chapman and counsel of record.

It is so ORDERED.

Date: 21 September 2020
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

(There are No Conclusive on the Court Story Chapman has presented Document Proof for ... Facts that are in dispute) 9.24.20

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,

Plaintiff,

v. Civil Action No. **3:18CV597**

PHYLLIS SMITH, ***et al.*****,**

Defendants.

MEMORANDUM OPINION

Louis Roy Chapman, a Virginia inmate proceeding *pro se* and *in forma pauperis*, filed this civil action under 42 U.S.C. § 1983.[1] In his Particularized Complaint, Chapman alleges, *inter alia,* that while incarcerated at the Lawrenceville Correctional Center ("LCC"), the Defendants[2] violated his rights under the Equal Protection Clause[3] by discriminating against him in a variety

[1] That statute provides, in pertinent part:

> Every person who, under color of any statute . . . of any State . . . 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 . . . .

42 U.S.C. § 1983.

[2] The named Defendants are: Phyllis Smith, an Education Director at LCC; D. Kreitz, a Job Coordinator at LCC; Shaniqua Moore, a Law Library Supervisor at LCC; Dave Robinson, the Chief of Operations for the Virginia Department of Corrections ("VDOC"); T. Walker, a Recreation Supervisor at LCC; Marilyn Shaw, Chief of Housing and Programs at LCC; Crystal Jones, a Facility Ombudsman at LCC; Renee Woodson, a Regional Ombudsman for the VDOC; K. Cosby, another Regional Ombudsman for the VDOC; L. Torgenson, a Safety Officer at LCC; Corrections Officers T. Neville, T. Sommerville, K. Thomas; Global Experts and Outsourcing, Inc. ("Geo"); and, the Commonwealth of Virginia. (ECF No. 27, at 1.) Chapman has thus far failed to serve Defendants Smith and Kreitz.

[3] "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

of ways because he is a white man. (ECF No. 27, at 3–7.)[4] The Court construes Chapman's pleadings to raise the following eleven claims for relief:[5]

Claim One: Defendants Smith, Kreitz, and Shaw will not process Chapman's job application for various clerk positions because Chapman is white, and they have only hired "Black and Hispanic" clerks. (ECF No. 97, at 6.)

Claim Two: Defendants Smith, Moore, and Shaw have "a black authors and Spanish language section with a plaque," in the "regular library," but "there are NO plaques for any other race in the world." (*Id.*)

Claim Three: Defendants Smith, Moore, and Shaw "included Martin Luther King Jr. [Day] on the law library/library calendar . . . [but] did not include Robert E. Lee [Day] or Thomas "Stonewall" Jackson [Day], but closed the law library/library both dates." (*Id.* at 6–7.)

Claim Four: Defendants Smith, Moore, and Shaw "accused Chapman of being RACIST." (*Id.* at 7.)

Claim Five: Defendants Smith, Moore, and Shaw "had a black history program scheduled . . . the only race . . . given special treatment." (*Id.*)

Claim Six: Defendants Smith, Shaw, Walker, and Geo "designed recreation for blacks only." (*Id.*)

Claim Seven: Defendants Shaw, Robinson, and Geo "have a contract to air TVONE, an ALL Black TV channel, . . . in . . . [the] dayroom . . . TVONE's language is racist and carries sex offenders . . . there is NO ALL WHITE TV channel." (*Id.*)

Claim Eight: Defendants Jones, Woodson, and Cosby denied Chapman a tracking number twenty-one times for "regular grievances for ALL Black officers

[4] The Court employs the pagination assigned by the CM/ECF docketing system to the parties' submissions. To the extent possible, the Court corrects the spelling, capitalization, and punctuation in the quotations from the parties' submissions.

[5] In his hand-written, forty-two-page Particularized Complaint, which can most generously be described as rambling, disjointed, and, at times, incoherent, Chapman fails to delineate clearly between his various claims. (*See* ECF No. 27, at 1–42.) Fortunately, in his response to one of the pending Motions for Summary Judgment presently before the Court, Chapman offers a more concise description of his claims under the heading "Summary of Claims." (ECF No. 97, at 6–8.) Having reviewed both documents, the Court will refer to this latter iteration of Chapman's claims to help frame and contextualize the issues before it.

and staff . . . giving Chapman a tracking number for a white officer only." (*Id.*)

Claim Nine: Defendant Jones "refused to give Chapman a grievance tracking number for L. Torgenson, safety officer, concerning unsanitary showers." (*Id.* at 8.)

Claim Ten: Defendant Summerville "said 'shit happens, deal with it,' and refused to have the table wiped clean where Chapman and other white men ate . . . racism . . . [Defendant] Neville laughed at this racist act." (*Id.*)

Claim Eleven: Defendant Thomas "yelled" at Chapman, "I'm not going to do it," when Chapman requested that she "get someone to wipe the table off where Chapman and [other] white men ate." (*Id.*)[6]

Defendants Cosby, Woodson, and the Commonwealth of Virginia filed a Motion to Dismiss. (ECF No. 69.) The Court granted that Motion and dismissed the claims against those Defendants in a contemporaneous order. (*See* ECF No. 153.) In so doing, the Court exercised its duty under the Prison Litigation Reform Act (the "PLRA") and dismissed some of Chapman's claims because they were frivolous or failed to state a claim. Specifically, the Court: dismissed all of Chapman's claims against the Commonwealth of Virginia; dismissed all claims under the Public Accommodations Act; dismissed all aspects of Claims 4, 9, 10, and 11; dismissed the Eighth Amendment and due process aspects of Claim 8 against Defendant Jones, Woodson, and Cosby; and, dismissed the equal protection aspects of Claim 8 against Defendants Woodson and Cosby. Thus, only Claims One, Two, Three, Five, Six, Seven, and the equal protection aspects of Claim Eight against Defendant Jones remain.

[6] Chapman also characterized his pleadings as stating a twelfth claim against Francis Jordan, J. Worsham, and Marc Finney for alleged false statements. These individuals are not parties to this litigation. Chapman sought to add them by way of a Motion to Amend and a Proposed Second Particularized Complaint. (ECF No. 61.) The Court, however, denied that motion to amend. (ECF No. 98, at 3–4.) Accordingly, the Court will not address Chapman's putative twelfth claim.

The matter is before the Court on the Motions for Summary Judgment filed by Defendants Geo, Jones, Robinson, Shaw, Walker, and Moore (the "Defendants") as to Chapman's Equal Protection Clause Claims. (ECF Nos. 79, 103.) Chapman has responded. For the reasons stated below, the Defendants' Motions for Summary Judgment will be GRANTED.[7]

I. Summary Judgment Standard

Summary judgment must be rendered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). It is the responsibility of the party seeking summary judgment to inform the Court of the basis for the motion and to identify the parts of the record that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the pleadings, depositions, answers to interrogatories, and admissions on file." *Id.* at 324 (internal quotation marks omitted). When the motion is properly supported, the nonmoving party must go beyond the pleadings and, by citing affidavits or "'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting former Fed. R. Civ. P. 56(c) and 56(e) (1986)). Mere conclusory allegations and bare denials are insufficient to support the nonmoving party's case. *Erwin v. United States*, 591 F.3d 313, 319–20 (4th Cir. 2010).

[7] In addition to the Equal Protection claims addressed by the pending Motions for Summary Judgment, Claims One, Two, Three, Five, Six, Seven, and Eight, when liberally construed, also allege violations of Chapman's Eighth Amendment rights under the United States Constitution. (*See* ECF No. 27, at 6, 9, 11, 15, 16, 19, 22.) These claims were not addressed in the pending Motions for Summary Judgment. Accordingly, the Court does not address them now. Nevertheless, as noted above, the Court previously dismissed the Eighth Amendment aspects of Claim Eight.

In reviewing a summary judgment motion, the Court "must draw all justifiable inferences in favor of the nonmoving party." *United States v. Carolina Transformer Co.*, 978 F.2d 832, 835 (4th Cir. 1992) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). However, a mere scintilla of evidence will not preclude summary judgment. *Anderson*, 477 U.S. at 251 (citing *Improvement Co. v. Munson*, 81 U.S. (14 Wall.) 442, 448 (1872)). "[T]here is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party . . . upon whom the onus of proof is imposed." *Id.* (quoting *Munson*, 81 U.S. at 448). Additionally, "Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994) (quoting *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915 & n.7 (5th Cir. 1992)); *see* Fed. R. Civ. P. 56(c)(3) ("The court need consider only the cited materials . . . .").

In support of their Motions for Summary Judgment, Defendants submit: (1) the Declaration of Anthony Parker, the Chief of Security at LCC, ("Parker Decl.," ECF No. 80-1); (2) the Declaration of Marc L. Finney, the current Librarian at LCC ("Finney Decl.," ECF No. 80-2); (3) the Declaration of Andrea Green, the current Job Coordinator at LCC ("Green Decl.," ECF No. 80-3); (4) the Declaration of Defendant Jones ("Jones Decl.," ECF No. 80-4); (5) VDOC Operating Procedure No. 866.1 ("OP 866.1," ECF No. 80-5); (6) an Offender Grievance Report for Chapman ("Grievance Report," ECF No. 80-6); and, (7) a spreadsheet relating to certain grievance responses (ECF No. 80-7). 82% Denied

In response, Chapman submits, *inter alia*, several of his own affidavits (*see* ECF Nos. 97-1; 97-6, at 10–11, 18–20; 97-7, at 7–16; 105-2), which are mostly handwritten and at times difficult to decipher, as well as a host of documents relating to his various grievance proceedings (*see* ECF

Nos. 97-2; 97-3; 97-4; 97-5; 97-6). The Court will consider these submissions in determining the propriety of the Motion for Summary Judgment. *See* Fed. R. Civ. P. 56(c).

The Court resolves this matter in light of the foregoing principles and draws all permissible inferences in favor of Chapman.

II. Applicable Law

The Equal Protection Clause of the Fourteenth Amendment commands that similarly situated persons be treated alike. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To survive summary judgment, a plaintiff must demonstrate: (1) "that he has been treated differently from others with whom he is similarly situated," and (2) that the differing treatment resulted from intentional discrimination. *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001). In so doing, the plaintiff must set forth "specific, non-conclusory factual [evidence] that establish[es] improper motive." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (quoting *Crawford–El v. Britton*, 523 U.S. 574, 598 (1998)).

If a plaintiff satisfies the above, "the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Morrison*, 239 F.3d at 654 (citations omitted). "To account for the unique health and welfare concerns in the prison context," the Court's "review of a plaintiff's prison decision or policy is more demanding, as [courts] 'accord deference to the appropriate prison authorities.'" *Fauconier v. Clarke*, 966 F.3d 265, 277 (4th Cir. 2020) (quoting *Turner v. Safley*, 485 U.S. 78, 85 (1987)). "In a prison context," disparate treatment passes muster so long as "the disparate treatment is 'reasonably related to [any] legitimate penological interests.'" *Veney v. Wyche*, 293 F.3d 726, 732 (4th Cir. 2002) (alteration in original) (quoting *Shaw v. Murphy*, 532 U.S. 223, 225 (2001)).

The Equal Protection Clause does not require "things which are different in fact or opinion to be treated in law as though they were the same." *Moss v. Clark*, 886 F.2d 686, 691 (4th Cir. 1989) (quoting *Plyler*, 457 U.S. at 216). Instead, "the class to which [an inmate] belongs consists of the persons confined as he was confined, subject to the same conditions to which he was subject." *Id.* (alteration in original) (citation omitted).[8]

III. Analysis

Chapman has alleged a host of putative equal protection violations on the part of prison staff, which he maintains were motived by the fact that he is a white man. As noted above, the Court has already dismissed a number of Chapman's claims as frivolous or otherwise failing to state a claim. The Court now addresses each of the remaining claims in turn.

A. Gender Bias

In his Particularized Complaint, Chapman alleges that he was discriminated against by the Defendants on the basis of "Gender Bias" and "Racial Discrimination." (ECF No. 27, at 3.) As an initial matter, the Court notes that, in actuality, the gravamen of Chapman's claims relate solely to the issue of racial discrimination. Nowhere in his pleadings does Chapman allege, must less prove, that he was treated differently than a similarly situated female. *See Morrison*, 239 F.3d at 654.

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[8] Chapman also alleges the Defendants violated his right to be free from discrimination under Article I, Section 11 of the Virginia Constitution. Because "[t]he Virginia Constitution affords no greater protection to be free from government discrimination than the equal protection clause in the Fourteenth Amendment, the same analysis applies to [Chapman's] claims under both . . . federal and state law." *Farley v. Clarke*, No. 7:15–CV–00352, 2016 WL 8540135, at *18 n.25 (W.D. Va. Dec. 27, 2016) (citing *Lee v. York Cty. Sch. Div.*, 418 F. Supp. 2d 816, 835 (E.D. Va. 2006), and *Archer v. Mayes*, 194 S.E.2d 707, 711 (Va. 1973)), *report and recommendation adopted*, No. 7:15–CV–00352, 2017 WL 1049579 (W.D. Va. Mar. 17, 2017). To the extent the Court resolves any of Chapman's federal claims, the same resolution applies to his corollary state claims.

Accordingly, to the extent any of Chapman's claims allege gender bias, that portion of his claims will be DISMISSED.

B. Claim One

In Claim One, Chapman alleges that Defendants Smith, Kreitz, and Shaw would not process Chapman's job application for various clerk positions because Chapman is white, and they have only hired "Black and Hispanic" clerks. (ECF No. 97, at 6.) As noted above, Chapman has thus far failed to serve Defendants Smith and Kreitz. Accordingly, the Court will address Claim One only insofar as it pertains to Defendant Shaw.

For purposes of summary judgment, the following facts are established. If an inmate wishes to apply for a job, he or she submits an application to the job coordinator. (Green Decl. ¶ 7.) The job coordinator reviews the inmate's qualifications, and if qualified, sends the application to the job supervisor. (*Id.*) There are various criteria for screening candidates, including disciplinary history, security classifications, and education. (*Id.*) Race is not a criterion. (*Id.*) If an inmate is deemed unqualified or the job sought is not available, the job coordinator returns the job application to the inmate with an explanation. (*Id.* ¶ 8.) If an inmate is placed in a job, the job coordinator will retain a copy of the inmate's application. (*Id.*) If the inmate is not placed in the job, the application is not retained. (*Id.*) There are presently "no open positions available." (*Id.* ¶ 9.)

Chapman argues that Defendant Shaw failed to process his application for a clerk position in the "unit manager's or counselor's office." (ECF No. 97, at 6.) However, Chapman has failed to submit any admissible evidence to support his claim that he was purposefully discriminated against based upon his status as a white male. As a baseline, Chapman has not submitted proof that he actually applied for, or even attempted to apply for, any sort of clerk position at a time

when that position was open and available. He has not submitted a job posting or any other evidence to indicate that the position he desired was not already filled during the relevant time periods. Further, he has not submitted any evidence to establish what the qualifications for the position were, much less established that his personal qualifications (which he has recited multiple times) were indeed compatible with those specific requirements. Nor has he identified a similarly situated comparator whom he maintains was treated differently in applying for the unit manager and counselor's office clerk positions that he alleges Defendant Shaw prevented him from obtaining.[9]

Even if the Court were to ignore these basic issues, Chapman has offered nothing, aside from his own speculation and subjective beliefs, to indicate that any decision made by Defendant Shaw was motivated by race in any way, shape, or form, much less that she harbored any animosity towards him because he was white. Chapman's allegations concerning Shaw are speculative and conclusory and cannot survive summary judgment. *See Erwin v. United States*, 591 F.3d 313, 319–20 (4th Cir. 2010) (discussing that conclusory allegations and bare denials are insufficient to support the nonmoving party's case).

Accordingly, Claim One will be DISMISSED as to Defendant Shaw.

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[9] Chapman alleges generally in unsworn pleadings that a black inmate, whom he maintains was less qualified than him, was given the library clerk position. (*See* ECF No. 27, at 7.) But he has failed to allege, much less prove, the basic details of this person's putative hiring, including when it occurred. He has further failed to submit proof that he applied for the position at a time and in a manner such that he would have directly competed against this person for the position. Despite the obvious deficiencies in Chapman's pleading of these facts, the Court need not address these failures because Chapman has failed to allege, much less prove, facts indicating that Defendant Shaw had anything to do with the library clerk hiring decision. Rather, Chapman alleges that Defendant Smith made that decision. (*Id.*) Chapman's claims against Defendant Shaw involve Chapman's inability to secure a clerk position in the unit manager's office and the counselor's office, not the library.

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C. Claim Two

In Claim Two, Chapman alleges that Defendants Smith, Moore, and Shaw have "a black authors and Spanish language section with a plaque," in the "regular library," but "there are NO plaques for any other race." (ECF No. 97, at 6.) Due to Chapman's failure to serve Defendant Smith, the Court will address this claim only insofar as it involves Defendants Moore and Shaw.

For purposes of summary judgment, the following facts are established. The "library includes African American, Native American, Spanish-speaking and Western/European fiction and non-fiction books." (Finney Decl. ¶ 6.) "The Library is organized with a specific section containing the African American and Spanish-speaking collections." (*Id.*) "The overwhelming majority of the library collection is comprised of American and European publications predominantly authored by Caucasian writers." (*Id.*)

Chapman argues that if LCC is going to have a section for "black authors" and a "Spanish language" section, marked by a plaque, there must be a similar "plaque for all other races," or there should be no plaques at all. (ECF No. 97, at 10.) Chapman maintains that "[t]here is nothing special about black authors." (*Id.* at 21.) Chapman further sees no value in having a Spanish language section, because "[t]his is the United States of America," and the "official language is English," and he seems to assert that Spanish-speaking inmates should simply "Assimilate." (*Id.* at 22.) Chapman maintains that LCC is "setting out one race over another," which he alleges is "offensive, and humiliating and degrading to [him]." (ECF No. 27, at 9.) Defendants Moore and Shaw argue that the undisputed facts show that they have "not subjected [Chapman] to disparate treatment or discriminatory animus." (ECF No. 80, at 10.)

Although Chapman offers no specific authorities to support his position, the Court construes his claim to be one of 'stigmatic injury.' *See, e.g., Moore v. Bryant*, 853 F.3d 245, 249

October 2020 New Plaque Design as Submitted "NOT Relevant"

(5th Cir. 2017). In *Moore*, an African-American attorney sued the Governor of Mississippi, alleging that his "unavoidabl[e] expos[ure] to the state flag," which, in part, "depict[ed] the Confederate battle flag," stigmatized him, made him "feel like a second-class citizen," and caused him "physical and emotional injuries." *Id.* at 248–49.

In resolving the case, the Fifth Circuit determined that in order to plead a stigmatic injury, a "[p]laintiff must plead that he was personally subjected to discriminatory treatment." *Id.* at 249 (citations omitted). The court held that under the Equal Protection Clause, "exposure to a discriminatory message, without a corresponding denial of equal treatment, is insufficient to plead an injury." *Id.* at 250 (citations omitted). This is because, "the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging." *Id.* (citations omitted).

The Argument That is NO Place Rebuttal, This is Simple The System That is NO Place For White, or any other Race

In so holding, the court expressly rejected the plaintiff's attempt to infuse Establishment Clause[10] jurisprudence, into a claim under the Equal Protection Clause because "the injuries protected against under the Clauses are different." *Id.* While the Establishment Clause "prohibits the Government from endorsing a religion, and . . . directly regulates Government speech if that speech endorses religion," "[t]he same is not true under the Equal Protection Clause." *Id.* In the end, the court held that the plaintiff lacked standing to bring his claim that the "flag's message" was "painful, threatening, and offensive," and affirmed the district court's dismissal of it because the plaintiff had failed to plead a personal injury. *Id.* at 249.

There are many parallels between Chapman's allegations and the claims asserted in *Moore*. Chapman claims that the plaques designating the Spanish-language and "black authors" sections

NO Parallel Chapman is White / Moore Black

[10] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

The court cannot equate what a White Man goes Through as opposed what a Black man does,

of the prison library are "offensive, and humiliating and degrading to [him]," (ECF No. 27, at 9), in much the same way that the plaintiff in *Moore* complained the Mississippi state flag was "painful, threatening, and offensive" to him, *Moore*, 853 F.3d at 249. As was the case with the plaintiff in *Moore*, who failed to show that he had been treated differently than anyone else who saw the flag, Chapman has likewise failed to show that he has been treated any differently than anyone else who used the library. Chapman does not allege and has not proven that he was prohibited from accessing any materials in the library, the "overwhelming majority" of which were written by Caucasian authors. At most, he has shown that he was exposed to "differential governmental messaging." *Id.* at 250. However, without more, even "exposure to a discriminatory message . . . is insufficient to plead an equal protection case." *Id.* (citation omitted).

Accordingly, Claim Two will be DISMISSED as to Defendants Moore and Shaw.[11]

D. Claim Three

In Claim Three, Chapman alleges that Defendants Smith, Moore, and Shaw "included Martin Luther King Jr. [Day] on the law library/library calendar . . . [but] did not include Robert E. Lee [Day] or Thomas "Stonewall" Jackson [Day]." (ECF No. 97, at 6–7.) Again, due to Chapman's failure to serve Defendant Smith, the Court will address this claim only insofar as it involves Defendants Moore and Shaw.

[11] The United States District Court for the District of Columbia recently applied *Moore* in a similar fashion to dismiss an Equal Protection Clause challenge to a decision by the Mayor of the District of Columbia to paint a "BLACK LIVES MATTER" on the street "just outside the White House." *Penkoski v. Bowser*, No. 20–cv–01519 (TNM), 2020 WL 4923620, at *1, 5 (D.D.C. Aug. 21, 2020). There, a group of "non-black Christians," challenged the "mural" because they "perceive[d] it as a sign that they [were] not welcome in the District." *Id.* at *1. Because the plaintiffs did not show that the Mayor had "subjected them to discriminatory treatment because of their race," the court held thatany exposure they may have had to a "discriminatory message" was insufficient to establish standing, and their claim was dismissed. *Id.* at *5.

For purposes of summary judgment, the following facts are established. LCC is operated by Geo, a Florida corporation, which operates correctional facilities around the county. (Finney Decl. ¶ 7.) LCC observes numerous national holidays and is generally closed on those days. (*Id.*) Martin Luther King Day is one of the holidays observed. (*Id.*) Lee-Jackson Day, a state holiday previously observed in the Commonwealth of Virginia, is not one of the holidays observed by LCC.[12] (*Id.*)

Chapman's primary grievance seems to be that even though the library is closed on both Martin Luther King Day and Lee-Jackson Day, the Defendants have failed to write Lee-Jackson Day on the library calendar as the reason for the second closure. (ECF No. 27, at 11–12.) Chapman argues, without citing any authority in support, that if Geo is to do business in Virginia, then it was required to recognize Lee-Jackson Day. (*Id.* at 12.) Chapman further argues that LCC's failure to include Lee-Jackson Day on the calendar is "offensive, humiliating and degrading" to him, as a "native born Virginian." (*Id.* at 11–12.) Chapman points out that Martin Luther King was not from Virginia, and he claims that King "caused riots." (ECF No. 105, at 9.)

Defendant Shaw argues that the undisputed facts show that they have "not subjected [Chapman] to disparate treatment or discriminatory animus." (ECF No. 80, at 10.) As an initial matter, the record does not indicate that Defendants Moore and Shaw had anything to do with deciding when the library was closed or what holidays would be observed. Rather, it appears that someone else at Geo may have been responsible for those decisions. Chapman did not expressly name Geo in Claim Three. However, even if he had, Claim Three would still fail for the same reasons that Claim Two failed.

[12] Since Chapman filed his Particularized Complaint, Virginia has eliminated Lee-Jackson Day as a holiday. *See* 2020 Va. Acts ch. 418; Va. Code § 2.2-3300.

Chapman is again claiming a stigmatic injury because a holiday that he does not prefer is being celebrated, and a holiday that he does prefer is being overlooked. The decision of which holidays to include or, conversely, exclude from a calendar can be construed as a message, much the same as a flag, a plaque, or a mural: it can speak to the relative value the creator of the calendar places on the holidays it chooses to commemorate and those it chooses not to commemorate. At its base, Chapman's argument is that LCC has engaged in "differential governmental messaging" concerning the relative value it places on Martin Luther King Day and Lee-Jackson Day. As discussed above, "differential governmental messaging," without "differential governmental treatment," is not actionable under the Equal Protection Clause. *Moore*, 853 F.3d at 250. Here again, Chapman has failed to demonstrate that he has suffered differential treatment from anyone at LCC, much less that he was treated differently because of his race. Indeed, from the record before the Court, it appears that everyone at LCC was presented with the same calendar which observed the same holidays, even if the holidays observed were not the holidays Chapman would have chosen.

Accordingly, Claim Three will be DISMISSED as to Defendants Moore and Shaw.

E. Claim Five

In Claim Five, Chapman alleges that Defendants Smith, Moore, and Shaw "had a black history program scheduled . . . the only race . . . given special treatment." (ECF No. 97, at 7.) Here again, due to Chapman's failure to serve Defendant Smith, the Court will address this claim only insofar as it involves Defendants Moore and Shaw.

ADMITS Black History Month

For purposes of summary judgment, it appears that the Defendants concede that the library at LCC does celebrate Black History Month. (ECF No. 80, at 2, 10.) Defendants point out that Black History Month was recognized on a national level by Congress in 1986. (*Id.* at 10.) As

such, they argue that its celebration is a longstanding national tradition, and therefore, Chapman cannot show that their observance of Black History Month results from "purposeful or intentional discrimination intended to demean Chapman." (*Id.*) Defendants argue that the undisputed facts show that they have "not subjected [Chapman] to disparate treatment or discriminatory animus." (*Id.*)

Chapman responds that "[t]here is nothing special about black history that separates it from the history of any other race." (ECF No. 97, at 10.) He goes on to argue that "[j]ust because the US Congress designated [Black History Month] doesn't make it right." (*Id.*) Chapman makes clear that he is upset because there was not a scheduled observation for "Caucasian [history], Native American [history], North African [history], or any other race in the world." (ECF No. 105, at 9.) Chapman claims that he "cannot relate to black history," and laments the absence of some other program "to which Chapman can relate." (*Id.* at 10.) Chapman has again failed to cite any pertinent authorities to support his arguments on this position.

Here again, Chapman's claim sounds not in terms of a personal injury suffered due to discriminatory treatment, but in terms of a perceived stigmatic injury caused by governmental messaging that does not align with his viewpoint. *See generally Moore*, 853 F.3d 245. Chapman is upset because LCC has chosen to observe an event which Chapman "cannot relate to," and has opted not to institute an equivalent event, "to which Chapman can relate." As with its selection of which holidays to observe, LCC's decision to observe Black History Month and not to institute a similar observation for any other race can be construed as a message that speaks to LCC's relative values and priorities. However, as stated above, exposure to "differential governmental messaging," without "differential governmental treatment," is not actionable under the Equal Protection Clause. *Id.* at 250. It appears that all the inmates at LCC were exposed to the same

message about Black History Month that Chapman was, and Chapman has failed to demonstrate that he was denied access to any services or materials that were available to other inmates, or that he was otherwise subject to any treatment that was different than a similarly situated inmate due to LCC's decision to observe Black History Month.

Accordingly, Claim Five will be DISMISSED as to Defendants Moore and Shaw.

F. Claim Six

In Claim Six, Chapman alleges that Defendants Smith, Shaw, Walker, and Geo "designed recreation for blacks only." (ECF No. 97, at 7.) In particular, Chapman alleges that the Defendants closed a ballfield where Chapman and other white inmates liked to play softball. (ECF No. 27, at 16–17.) Because Chapman has failed to serve Defendant Smith, the Court will address this claim as it relates to Defendants Shaw, Walker, and Geo.

For purposes of summary judgment, the following facts are established. "At least four years ago, the decision was made to close the baseball fields." (Parker Decl. ¶ 6.) These recreational spaces added a large perimeter area that was difficult to monitor. (*Id.*) Consequently, "the ballfields created opportunities for the infiltration of contraband — like cell phones, drugs, and other prohibited items." (*Id.*) Individuals would "throw[] contraband over the fences." (*Id.*) LCC "first responded to this threat by erecting a nuisance fence." (*Id.* ¶ 7.) However, "this proved to be ineffective." (*Id.*) LCC, with the consent of the VDOC, decided to close the ballfields indefinitely. (*Id.*) This decision was made entirely due to security concerns and "was in no way motivated by the race of the offenders who may have used that space." (*Id.* ¶ 8.) There remain, among other things, two external recreation areas, an indoor gym, and a walking track at LCC. (*Id.* ¶ 9.) "Access to the recreation yards is granted by housing unit." (*Id.* ¶ 10.) "The housing

units rotate between the two recreation yards on a schedule." (*Id.*) "Race is not a criterion in granting access to the recreation yards," or in an inmate's housing assignment. (*Id.*)

Defendants Shaw, Walker, and Geo argue that there are "penological justifications" for the closure of the ballfield and that the undisputed facts show that they have "not subjected [Chapman] to disparate treatment or discriminatory animus." (ECF No. 80, at 2, 10–11.) Chapman responds by positing: "Where on the recreation yards . . . can Chapman and white men participate in softball?" (ECF No. 97, at 19.) Chapman answers his own question: "No Where." (*Id.*) Chapman argues that the "recreation yard is adequate if you are Black, but NOT for Chapman, or if you are White." (ECF No. 27, at 18.) Chapman further questions the wisdom and efficacy of the decision to close the ballfield, claiming that it "did nothing to stem the tide of drugs and cell phones coming into the facility," and ultimately calling the security issue raised by Defendants "fake." (ECF No. 97, at 19).

Chapman's claim fails at this in several ways. First, he has failed to show that he was treated differently than anyone else who used the ballfield prior to its closure. Second, he has not shown that the decision to close the ballfield resulted from discriminatory intent. To the contrary, the record makes clear that race was not a consideration in the decision to close the ballfield, nor is it a consideration in granting access to the recreation areas.

Instead, the ballfield represented a "large perimeter" which was "difficult to monitor." Contraband had been thrown over the fence and made its way into the facility. LCC took the less drastic step of putting up a "nuisance fence," but this was "ineffective." Contraband was still coming into the facility through the ballfield. Chapman has offered no competent evidence to counter this assertion. Rather, he has provided the Court with his own personal beliefs as to the efficacy of this security measure. As for his claim that the security concerns were somehow "fake,"

and that the true motive for the closure was to discriminate against him and other white men, Chapman has offered nothing more than rank speculation. Because Chapman has failed to rebut the Defendants' evidence with "specific, non-conclusory factual [evidence] that establish[es] improper motive," this claim will not survive summary judgment. *Trulock*, 275 F.3d at 405

Accordingly, Claim Six will be DISMISSED as to Defendants Shaw, Walker, and Geo.[13]

G. Claim Seven

In Claim Seven, Chapman alleges that Defendants Shaw, Robinson, and Geo "have a contract to air TVONE, an ALL Black TV channel, . . . in . . . [the] dayroom . . . TVONE's language is racist and carries sex offenders . . . there is NO ALL WHITE TV channel." (ECF No. 97, at 7.) Chapman maintains that the programing on TvONE, which includes "The George Jefferson Show" and "The Bill Cosby Show" is offensive to him. (ECF No. 27, at 19.) He describes the language used by "George Jefferson," such as "Honkey," and "Cracker," as "racist with ethnic connotations," and maintains that it is "humiliating and degrading" to him. (*Id.*) He further alleges that Bill Cosby is a sex offender, and his mere presence on the TV screen is offensive. (*Id.*)

For purposes of summary judgment, the following facts are established. "During their free time, inmates . . . enjoy access to a day room area within their assigned housing pod." (Parker Decl. ¶ 11.) There is a television in the day room. (*Id.*) Inmates may also have a television in their personal cell. (*Id.*) LCC has a contract with a company called Correctional Cable TV. (*Id.*) The service provided includes several channels. (*Id.*) TvONE is a channel that is included in the

[13] Alternatively, had Chapman shown some sort of legally cognizable disparate treatment, his claim would have nevertheless failed, as the decision to close the ballfield was "reasonably related" to ensuring the security of inmates and staff at LCC, an obviously "legitimate penological interest." *Veney*, 293 F.3d at 732 (citation omitted).

basic cable package. (*Id.*) LCC "does not have a contract directly with TvONE." (*Id.*) The television in the dayroom is "controlled by inmates using a remote control." (*Id.*)

Defendants Shaw, Robinson, and Geo argue that the undisputed facts show that they have not subjected Chapman to disparate treatment or discriminatory animus. (ECF No. 80, at 10.) They further argue that the "inmates must collectively choose the programing in the day room area, and those who are dissatisfied may watch television in their cell." (*Id.* at 11.) Chapman responds by claiming that the "Defendants are promoting a Sex Offender and [a] Racist." (ECF No. 97, at 21 (emphasis omitted).) Chapman further suggests that "[m]aybe Chapman does not have money to buy a TV or wants to be in the POD 'Common Area' for all men," but he never states whether either condition is indeed true. (*Id.* at 13). And he never suggests an "all white" alternative TV channel, which he seems to believe should be offered in place of or as a supplement to TvONE.

As an initial matter, Chapman has failed to point to a similarly situated inmate who has been treated differently than he has. Moreover, nothing in the record indicates that Defendants Shaw, Robinson, or Geo did anything to cause Chapman to be treated any differently than any other inmate. To the contrary, it appears that all inmates have access to the same TV in the dayroom, the same slate of programming, which includes more than just TvONE, and the same access to cable television in their cells. Chapman's suggestion that "maybe" he "does not have money to buy a TV" does not impact the equal protection analysis. All that matters is whether Chapman was afforded the same opportunities that the other inmates were afforded, and the record shows that he was. *See Morrison*, 239 F.3d at 654 (holding that a plaintiff must demonstrate "that he has been treated differently from others with whom he is similarly situated").

Because Chapman has not established disparate treatment, the Court need not analyze the second prong of the *Morrison* test. *See* 239 F.3d at 654. However, were the Court to reach this issue, Chapman's claim would nevertheless fail because, again, he has utterly failed to provide "specific, non-conclusory factual [evidence] that establish[es] improper motive." *Trulock*, 275 F.3d at 405. Even if the Court were to liberally construe Chapman's claim as alleging a stigmatic injury based upon some perceived "differential governmental messaging," that theory would likewise fail because of the lack of "differential governmental treatment." *See Moore*, 853 F.3d at 250.

Thus, Claim Seven will be DISMISSED as to Defendants Shaw, Robinson, and Geo.[14]

H. Claim Eight

In Claim Eight, Chapman alleges that Defendants Jones, Woodson, and Cosby "DENIED Chapman twenty-one (21) times, a tracking number on regular grievances for ALL Black officers and staff . . . giving Chapman a tracking number for a white officer only." (ECF No. 97, at 7.) As noted above, Woodson and Cosby have previously been dismissed from this action. As such, the Court will consider Claim Eight as it relates to Defendant Jones.

For purposes of summary judgment, the following facts are established. Defendant Jones is the "acting Institutional Grievance Coordinator" at LCC. (Jones Decl. ¶ 1.) VDOC "Operating Procedure 866.1 ("OP 866.1") sets forth the institutional grievance procedures in place" at LCC. (*Id.* ¶ 6.) The criteria for acceptance of a grievance is set forth in OP 866.1 and on the back of the

[14] While not binding, *Banks v. Hiland*, No. 5:12–CVP197–R, 2013 WL 1679362, at *8 (W.D. Ky. April 27, 2013), is informative as to Chapman's Claims Three and Seven. In *Banks*, the plaintiff complained that, among other things, the Kentucky State Prison's failure to observe Martin Luther King Day and failure to provide Black Entertainment Television ("B.E.T.") violated his rights, including his right to Equal Protection. *Id.* In rejecting his claim, the court held that watching B.E.T. was not a necessity, that authorities had no duty to purchase television channels such as B.E.T., and that Banks had failed to show racial discrimination. *Id.*

grievance form. (*Id.* ¶ 7.) "The offender's race is not a criterion under OP 866.1." (*Id.* ¶ 16.) "If the grievance meets the criteria for acceptance, it is logged in and a receipt is issued to the inmate." (*Id.* ¶ 7.) "If a grievance does not meet the criteria for acceptance, the grievance is returned to the offender with an explanation of the reason for denial of intake." (*Id.* ¶ 18.) An inmate may appeal an intake decision. (*Id.* ¶¶ 7, 18.) From January 1, 2016, to December 31, 2019, "Chapman successfully filed two hundred twenty-one (221) regular grievances and informal complaints." (*Id.* ¶ 8.) Chapman filed grievances related to "access to health services, pharmacy services, [and] medical records," as well as issues related to the library and other "allegations in [this] lawsuit." (*Id.* ¶¶ 9–15.) During that time period, Defendant Jones personally "accepted intake of forty (40) Regular Grievances filed by Chapman. (*Id.* ¶ 19.)

Defendant Jones argues that the undisputed facts establish that she has not subjected Chapman to disparate treatment or discriminatory animus. (ECF No. 80, at 10.) Jones further argues that "Chapman is attributing discriminatory animus [to her] based on nothing more than speculation." (*Id.* at 12.) Chapman responds by saying that "[a]ll of Jones's statements are unconstitutional." (ECF No. 97, at 26.) He also summarizes several of the rejected grievances that Jones had returned to him. (*Id.* at 25.) In the instances Chapman cites, the reason for rejection was "DOES NOT AFFECT YOU PERSONALLY." (*Id.*) Chapman argues that his rejected grievances were proper and that the subject matter of his complaints did affect him personally. (*Id.*) Chapman freely admits that he has "no constitutional right to participate in a grievance proceeding," (*id.* at 23), which is an accurate statement of the law, *see Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 541 (4th Cir. 2017) (observing that "inmates have no constitutional entitlement or due process interest in access to a grievance procedure").

The record reflects that Defendant Jones conducted the initial intake review of grievances at LCC. Although Chapman is quick to attribute racial animus to nearly every action by prison officials, he fails to direct the Court to statements in the intake decisions of his grievances that reflect racial animus. Rather, Defendant Jones regularly refused to assign a tracking number because she concluded that Chapman's grievances failed to pass the intake criteria because of, *inter alia*, their trivial nature. Chapman does not direct the Court to a similarly situated inmate who filed similarly insubstantial or noncomplying grievances that were processed and received a tracking number. Indeed, Chapman does not identify a comparator inmate at all, whether similarly situated or not, insofar as Claim Eight is concerned.

Given Chapman's failure to identify a similarly situated comparator inmate, he has again failed to show that he was subject to disparate treatment. *See Morrison*, 239 F.3d at 654 (holding that a plaintiff must demonstrate "that he has been treated differently from others with whom he is similarly situated"). Because Chapman has not established disparate treatment, the Court need not analyze the second prong of the *Morrison* test. *Id.* (holding that if disparate treatment is established, the plaintiff must also prove that it was motivated by purposeful discriminatory intent). However, were the Court to reach this issue, Chapman's claim would nevertheless fail because, again, he has not provided "specific, non-conclusory factual [evidence] that establish[es] improper motive." *Trulock*, 275 F.3d at 405.

Accordingly, Claim Eight will be DISMISSED as to Defendant Jones.[15]

[15] In their Motion for Summary Judgment, the Defendants argue that several, if not all, of Chapman's claims should be dismissed because he has failed to exhaust his administrative remedies, as required under the PLRA. (ECF No. 80, at 12–13.) As close as the Court can tell, the Defendants aver that at least Claims One, Two, Three, Five, Six, and Seven should be dismissed on these grounds. (*Id.*) Chapman responds that in each instance he had taken his administrative remedies either to exhaustion or to a point of futility. (ECF No. 97, at 26–33.)

IV. Conclusion

Accordingly, the Motions for Summary Judgment (ECF Nos. 79, 103) concerning Chapman's Equal Protection Clause Claims under the both the Virginia and United States Constitutions will be GRANTED as follows:

1.) Claim One as to Defendant Shaw;

2.) Claim Two as to Defendants Moore and Shaw;

3.) Claim Three as to Defendants Moore and Shaw;

4.) Claim Five as to Defendants Moore and Shaw;

5.) Claim Six as to Defendants Shaw, Walker, and Geo;

6.) Claim Seven as to Defendants Shaw, Robinson, and Geo; and,

7.) Claim Eight as to Defendant Jones.

An appropriate Order will accompany this Memorandum Opinion.

Date: 24 September 2020
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

The PLRA "mandates that an inmate exhaust 'such administrative remedies as are available' before bringing suit to challenge prison conditions." *Ross v. Blake*, 136 S. Ct. 1850, 1854–55 (2016). In the ordinary course, the first step the Court would undertake in a case like this would be to determine whether Chapman had indeed complied with the administrative requirements placed upon him. However, while both parties provided volumes of grievance-related materials, neither provided adequate record citations to conclusively establish their position. More importantly, given Chapman's allegations of racial animus in the grievance process, as indicated in Claim Eight, it is unclear whether there were administrative remedies available for him to exhaust. *See id.* at 1860. As such, the Court was required to undertake a "thorough review" of the entire record to ferret out the answer. *Id.* at 1862. During the course of conducting that review, it became clear that Chapman's claims failed for a variety of reasons, as discussed above, in addition to potentially being barred for failing to exhaust administrative remedies. Given the inescapable conclusion that Chapman's claims obviously lack merit, the Court need not resolve this procedural issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN.,

Plaintiff,

v. Civil Action No. **3:18cv597**

PHYLLIS SMITH, *et al.*,

Defendants.

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that the Motions for Summary Judgment (ECF Nos. 79, 103) concerning Chapman's Equal Protection Clause Claims under the both the Virginia and United States Constitutions will be GRANTED as follows:

1.) Claim One as to Defendant Shaw;

2.) Claim Two as to Defendants Moore and Shaw;

3.) Claim Three as to Defendants Moore and Shaw;

4.) Claim Five as to Defendants Moore and Shaw;

5.) Claim Six as to Defendants Shaw, Walker, and Geo;

6.) Claim Seven as to Defendants Shaw, Robinson, and Geo; and,

7.) Claim Eight as to Defendant Jones.

The Clerk is DIRECTED to send a copy of the Memorandum Opinion and Order to Chapman and counsel of record.

Date: 24 September 2020
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,

Plaintiff,

v. Civil Action No. **3:18CV597**

PHYLLIS SMITH, *et al.*,

Defendants.

MEMORANDUM OPINION

Louis Roy Chapman, a Virginia inmate proceeding *pro se*, filed this 42 U.S.C. § 1983 action[1] alleging various violations of his constitutional rights because of what he perceives to be bias against him because he is a white male. The action is proceeding on Chapman's Second Particularized Complaint. (ECF No. 27.) The procedural history of this case has been somewhat cumbersome, due in no small part to the inartful nature of Chapman's pleadings.[2] Nevertheless, at this juncture, the bulk of Chapman's claims have already been resolved. (*See* ECF Nos. 152–55.) Presently, only a handful of claims remain, claims which were not previously addressed by

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[1] The statute provides, in pertinent part:

> Every person who, under color of any statute . . . of any State . . . 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 . . . .

42 U.S.C. § 1983.

[2] In his hand-written, forty-two-page Particularized Complaint, Chapman failed to delineate clearly between his various claims. (*See* ECF No. 27, at 1–42.) Chapman's clearest articulation of his individual claims appeared in a response that he filed to a motion for summary judgment that has since been resolved. (*See* ECF No. 97, at 6–8.) Having reviewed both documents, the Court will refer to this latter iteration of Chapman's claims to frame and contextualize the issues before it.

the parties or involve two unserved defendants, Phyllis Smith and D. Kreitz. Under the Prison Litigation Reform Act ("PLRA"), the Court has an ongoing duty to review and evaluate Chapman's claims. The matter is presently before the Court for evaluation of Chapman's remaining claims pursuant to 42 U.S.C. § 1997e(c)(1) and for consideration of a MOTION TO AMEND OR ALTER THE JUDGMENT (ECF No. 156) filed by Chapman, which the Court construes as a motion pursuant to Federal Rule of Civil Procedure 54(b). For the reasons set forth below, Chapman's remaining claims will be DISMISSED either for failure to state a claim or because they are legally frivolous (or both), Chapman's Rule 54(b) Motion will be DENIED, and all other outstanding motions and requests will be DENIED AS MOOT. The action will be DISMISSED.

I. Obligatory Judicial Review

Pursuant to the PLRA this Court must dismiss any action filed by a prisoner if the Court determines the action (1) "is frivolous" or (2) "fails to state a claim on which relief may be granted." 42 U.S.C. § 1997e(c)(1); *accord* 28 U.S.C. § 1915(e)(2)(B)(i–ii); 28 U.S.C. § 1915A(b). The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." *Clay v. Yates*, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff's well-pleaded allegations

are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); *see also Martin*, 980 F.2d at 952. This principle applies only to factual allegations, however, and "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

The Federal Rules of Civil Procedure "require[] only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (second alteration in original) (citation omitted). Plaintiffs cannot satisfy this standard with complaints containing only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Id.* (citations omitted). Instead, a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level," *id.* (citation omitted), stating a claim that is "plausible on its face," *id.* at 570, rather than merely "conceivable," *id.* "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." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). In order for a claim or complaint to survive dismissal for failure to state a claim, therefore, the plaintiff must "allege facts sufficient to state all the elements of [his or] her claim." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002); *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)).

"Where the context . . . makes clear a litigant's essential grievance, the complainant's additional invocation of general legal principles need not detour the district court from resolving that which the litigant himself has shown to be his real concern." *Beaudett v. City of Hampton,*

775 F.2d 1274, 1278 (4th Cir. 1985). Lastly, while the Court liberally construes *pro se* complaints, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), it does not act as the inmate's advocate, *sua sponte* developing claims the inmate failed to clearly raise on the face of his complaint. *See Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring).

II. Summary of Remaining Claims and Allegations

Chapman is a white male confined in the Lawrenceville Correctional Center ("LCC"). (ECF No. 27, at 2, 23.)[3] LCC is operated by Global Experts in Outsourcing ("Geo"), a private, for-profit corporation. (*Id.* at 2.) While confined at LCC, Chapman contends that he has been the victim of "Racial Discrimination." (*Id.* at 3.) Chapman's remaining claims are as follows:[4]

Claim One: Defendants Smith, Kreitz, and Shaw will not process Chapman's job application for various clerk positions because Chapman is white, and they have only hired "Black and Hispanic" clerks. (ECF No. 97, at 6.)
(a) These actions violated Chapman's rights under the Eighth Amendment.[5]

[3] The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects that spelling and punctuation in the quotations from Chapman's submissions. The Court corrects some, but not all, of the capitalization in the quotations from Chapman's submissions. The Court omits some of the excessive emphasis in the quotations from Chapman's submissions.

[4] In prior rulings, the Court liberally construed each of the enumerated claims to state both an Eighth Amendment claim and an Equal Protection Clause claim under the United States Constitution, as well as a state equal protection claim under the Virginia Constitution. (*See* ECF No. 154, at 4 n.7, 7 n.8.) To date, neither the Court nor the parties have substantively addressed the Eighth Amendment issues raised by the above-referenced claims. Consequently, the Court must now address the Eighth Amendment claims raised by Chapman against all remaining Defendants. However, the Court previously granted summary judgment to Defendants Moore, Robinson, Shaw, Walker, and Geo on the Equal Protection aspects of Chapman's claims. Therefore, the Court need only address Chapman's Equal Protection claims against Defendants Smith and Kreitz, the two unserved defendants.

[5] "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

(b) These actions by Defendants Smith and Kreitz violated Chapman's rights to equal protection under the both United States Constitution[6] and the Virginia Constitution.[7]

Claim Two: Defendants Smith, Moore, and Shaw have "a black authors and Spanish language section with a plaque," in the "regular library," but "there are NO plaques for any other race in the world." (*Id.*)
(a) These actions violated Chapman's rights under the Eighth Amendment.
(b) These actions by Defendant Smith violated Chapman's rights to equal protection under both the United States Constitution and the Virginia Constitution.

Claim Three: Defendants Smith, Moore, and Shaw "included Martin Luther King Jr. [Day] on the law library/library calendar . . . [but] did not include Robert E. Lee [Day] or Thomas "Stonewall" Jackson [Day], but closed the law library/library both dates." (*Id.* at 6–7.)
(a) These actions violated Chapman's rights under the Eighth Amendment.
(b) These actions by Defendant Smith violated Chapman's rights to equal protection under both the United States Constitution and the Virginia Constitution.

Claim Five: Defendants Smith, Moore, and Shaw "had a black history program scheduled . . . the only race . . . given special treatment." (*Id.*)
(a) These actions violated Chapman's rights under the Eighth Amendment.
(b) These actions by Defendant Smith violated Chapman's rights to equal protection under both the United States Constitution and the Virginia Constitution.

Claim Six: Defendants Smith, Shaw, Walker, and Geo "designed [the] recreation [area] for blacks only." (*Id.*)
(a) These actions violated Chapman's rights under the Eighth Amendment.

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[6] "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

[7] Chapman invokes Article I, Section 11 of the Virginia Constitution as a basis for his state law racial discrimination claims. "The Virginia Constitution affords no greater protection to be free from government discrimination than the equal protection clause in the Fourteenth Amendment," consequently, "the same analysis applies" to both Chapman's state and federal racial discrimination claims. *Farley v. Clarke*, No. 7:15CV352, 2016 WL 8540135, at *18 n.25 (W.D. Va. Dec. 27, 2016) (citing *Lee v. York Cty. Sch. Div.*, 418 F. Supp. 2d 816, 835 (E.D. Va. 2006); *Archer v. Mayes*, 194 S.E.2d 707, 711 (Va. 1973)), *report and recommendation adopted*, No. 7:15CV352, 2017 WL 1049579 (W.D. Va. Mar. 17, 2017). The Court addresses Chapman's state and federal racial discrimination claims concomitantly. Thus, any decision that the Court renders as to one set of Chapman's "equal protection" claims applies equally to the other, unless otherwise specifically stated.

(b) These actions by Defendant Smith violated Chapman's rights to equal protection under both the United States Constitution and the Virginia Constitution.

Claim Seven: Defendants Shaw, Robinson, and Geo "have a contract to air TVONE, an ALL Black TV channel, . . . in . . . [the] dayroom . . . TVONE's language is racist and carries sex offenders . . . there is NO ALL WHITE TV channel." (*Id.*) These actions violated Chapman's rights under the Eighth Amendment.[8]

III. Analysis

It is both unnecessary and inappropriate to engage in an extended discussion of the lack of merit of Chapman's theories for relief. *See Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996) (emphasizing that "abbreviated treatment" is consistent with Congress's vision for the disposition of frivolous or "insubstantial claims" (citing *Neitzke v. Williams*, 490 U.S. 319, 324 (1989))).

A. Eighth Amendment Claims

To state an Eighth Amendment, claim, an inmate must allege facts showing "(1) that objectively the deprivation of a basic human need was 'sufficiently serious,' and (2) that subjectively the prison officials acted with a 'sufficiently culpable state of mind.'" *Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Under the objective prong, the inmate must allege facts to suggest that the deprivation complained of was extreme and amounted to more than the "routine discomfort" that is "part of the penalty that criminal offenders pay for their offenses against society." *Strickler v. Waters*, 989 F.2d 1375, 1380 n.3 (4th Cir. 1993) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). "In order to demonstrate such an extreme deprivation, a prisoner must allege 'a serious or significant physical

[8] Neither Defendant Smith nor Defendant Kreitz were named by Chapman in Claim Seven. Thus, as far as that claim is concerned, the equal protection issues have been settled and all that remains for the Court to consider are the Eighth Amendment issues raised by Chapman.

or emotional injury resulting from the challenged conditions.'" *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003) (quoting *Strickler*, 989 F.2d at 1381).

The subjective prong requires the plaintiff to allege facts that indicate a particular defendant actually knew of and disregarded a substantial risk of serious harm to his person. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "Deliberate indifference is a very high standard—a showing of mere negligence will not meet it." *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) (citing *Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976)).

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer, 511 U.S. at 837. *Farmer* teaches "that general knowledge of facts creating a substantial risk of harm is not enough. The prison official must also draw the inference between those general facts and the specific risk of harm confronting the inmate." *Quinones*, 145 F.3d at 168 (citing *Farmer*, 511 U.S. at 837); *see Rich v. Bruce*, 129 F.3d 336, 338 (4th Cir. 1997). Thus, to avoid dismissal, the deliberate indifference standard requires a plaintiff to assert facts sufficient to form an inference that "the official in question subjectively recognized a substantial risk of harm" and "that the official in question subjectively recognized that his [or her] actions were 'inappropriate in light of that risk.'" *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004) (quoting *Rich*, 129 F.3d at 340 n.2).

Chapman fails to satisfy either the objective or subjective prongs for any of his Eighth Amendment claims. Chapman fails to allege facts that plausibly suggest he sustained serious physical or emotional injury from any of the challenged conditions. *De'Lonta*, 330 F.3d at 634. Furthermore, in no instance does Chapman allege facts that indicate any defendant perceived that

his or her actions subjected Chapman to a substantial risk of serious harm. *De'Lonta v. Fulmore*, 745 F. Supp. 2d 687, 691 (E.D. Va. 2010) ("Verbal abuse of inmates by prison officials, without more, does not rise to the level of an Eighth Amendment violation." (citing *Moody v. Grove*, No. 89-6650, 1989 WL 107004, at *1 (4th Cir. Sept. 19, 1989); *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979)).

Accordingly, the Eighth Amendment claims raised in Claims One (a), Two (a), Three (a), Five (a), Six (a), and Seven will be DISMISSED as they fail to state a claim and are frivolous.

B. Equal Protection Claims

The Equal Protection Clause of the Fourteenth Amendment commands that similarly situated persons be treated alike. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To state an equal protection claim, Chapman must allege facts that plausibly suggest: (1) "that he has been treated differently from others with whom he is similarly situated"; and, (2) that the differing treatment resulted from intentional discrimination. *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001). To succeed on an equal protection claim, a plaintiff must set forth "specific, non-conclusory factual allegations that establish[es] improper motive." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)). If a plaintiff satisfies the above, "the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Morrison*, 239 F.3d at 654 (citations omitted). "In a prison context," disparate treatment passes muster so long as "the disparate treatment is 'reasonably related to [any] legitimate penological interests.'" *Veney v. Wyche*, 293 F.3d 726, 732 (4th Cir. 2002) (alteration in original) (quoting *Shaw v. Murphy*, 532 U.S. 223, 225 (2001)).

1. Claim One (b)

In Claim One (b), Chapman alleges that Defendants Smith and Kreitz would not process his job application for a law clerk position because Chapman is white, and they only hire "Black and Hispanic" clerks. (ECF No. 97, at 6.) However, Chapman does not allege that the position he desired was actually open and available to new hires, much less that he applied for, or even attempted to apply for, it at an appropriate time and in an appropriate manner. Further, Chapman does not allege what the qualifications for the position were, much less that his own qualifications (which he recites multiple times) were indeed compatible with the job requirements. Finally, Chapman does not identify a similarly situated comparator who he maintains was treated differently than Chapman in applying for the law clerk position.[9]

Even if the Court were to ignore these basic issues, Chapman has offered nothing, aside from his own speculation and subjective beliefs, to indicate that any decision made by Defendants Smith and Kreitz was motivated by race in any way, much less that they harbored any animosity towards Chapman because he was white. Chapman's allegations concerning Smith and Kreitz are speculative and conclusory and fail to state a claim. *Twombly*, 550 U.S. at 555 (holding that a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level").

Accordingly, Claim One (b) will be DISMISSED WITHOUT PREJUDICE.

2. Claim Two (b)

In Claim Two (b), Chapman alleges that Defendant Smith has "a black authors and Spanish language section with a plaque," in the "regular library," but "there are NO plaques for any other

[9] Chapman alleges generally that a black inmate, who he maintains was less qualified than Chapman, was given the library clerk position. (*See* ECF No. 27, at 7.) However, Chapman fails to allege even the most basic details of this person's putative hiring, including when it occurred. Nothing in Chapman's pleadings indicates that he was actually in direct competition with this person for the same position at the same time. Action Advance

race." (ECF No. 97, at 6.) Chapman avers that if LCC has a section for "black authors" and a "Spanish language" section marked by a plaque, there must be a similar "plaque for all other races" or there should be no plaques at all. (ECF No. 97, at 10.) Chapman maintains that "[t]here is nothing special about black authors." (*Id.* at 21.) He states that "[t]his is the United States of America," the "official language is English," and Spanish-speaking inmates should simply "Assimilate." (*Id.* at 22.) Chapman maintains that Defendant Smith is "setting out one race over another," (*see id.*), which he alleges is "offensive, and humiliating, and degrading to [him]." (ECF No. 27, at 9.)

The Court construes Chapman's claim to be one of "stigmatic injury." *See, e.g.*, *Moore v. Bryant*, 853 F.3d 245, 249 (5th Cir. 2017). In *Moore*, an African-American attorney sued the Governor of Mississippi, alleging that his "unavoidabl[e] expos[ure] to the state flag," which, in part, "depict[ed] the Confederate battle flag," stigmatized him, made him "feel like a second-class citizen," and caused him "physical and emotional injuries." *Id.* at 248–49.

In resolving the case, the Fifth Circuit determined that in order to plead a stigmatic injury, a "[p]laintiff must plead that he was personally subjected to discriminatory treatment." *Id.* at 249 (citations omitted). The court held that under the Equal Protection Clause, "exposure to a discriminatory message, without a corresponding denial of equal treatment, is insufficient to plead an injury." *Id.* at 250 (citations omitted). This is because "the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging." *Id.* (citations omitted).

In so holding, the court expressly rejected the plaintiff's attempt to infuse Establishment Clause[10] jurisprudence into a claim under the Equal Protection Clause because "the injuries protected against under the Clauses are different." *Id.* While the Establishment Clause "prohibits the Government from endorsing a religion, and . . . directly regulates Government speech if that speech endorses religion," "[t]he same is not true under the Equal Protection Clause." *Id.* In the end, the court held that the plaintiff lacked standing to bring his claim that the "flag's message" was "painful, threatening, and offensive," and affirmed the district court's dismissal of it because the plaintiff had failed to plead a personal injury. *Id.* at 249.

There are many parallels between Chapman's allegations and the claims asserted in *Moore*. Chapman claims that the plaques designating the Spanish-language and "black authors" sections of the prison library are "offensive, and humiliating, and degrading to [him]," (ECF No. 27, at 9), in much the same way that the plaintiff in *Moore* complained the Mississippi state flag was "painful, threatening, and offensive" to him, *Moore*, 853 F.3d at 249. As was the case with the plaintiff in *Moore*, who failed to show that he had been treated differently than anyone else who saw the flag, Chapman has failed to show that he has been treated any differently than anyone else who used the library. Chapman does not allege that he was prohibited from accessing any materials in the library. At most, he has shown that he was exposed to "differential governmental messaging." *Id.* at 250. However, without more, even "exposure to a discriminatory message . . . is insufficient to plead an equal protection case." *Id.* (citation omitted).[11]

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[10] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

[11] The United States District Court for the District of Columbia recently applied *Moore* in a similar fashion to dismiss an Equal Protection Clause challenge to a decision by the Mayor of the District of Columbia to paint "BLACK LIVES MATTER" on the street "just outside the White House." *Penkoski v. Bowser*, No. 20cv1519, 2020 WL 4923620, at *1, 5 (D.D.C. Aug. 21, 2020). There, a group of "non-black Christians," challenged the "mural" because they "perceive[d] it as

Accordingly, Claim Two (b) will be DISMISSED as it is legally frivolous and fails to state a claim.

3. Claim Three (b)

In Claim Three (b), Chapman alleges that Defendant Smith "included Martin Luther King Jr. [Day] on the law library/library calendar . . . [but] did not include Robert E. Lee [Day] or Thomas 'Stonewall' Jackson [Day]." (ECF No. 97, at 6–7.) Chapman's primary grievance seems to be that even though the library was closed on both Martin Luther King Day and Lee-Jackson Day, the Defendants failed to write Lee-Jackson Day on the library calendar as the reason for the second closure.[12] (ECF No. 27, at 11–12.) Chapman alleges that if Geo is to do business in Virginia, then it should be required to recognize Lee-Jackson Day. (*Id.* at 12.) Chapman further argues that LCC's failure to include Lee-Jackson Day on the calendar is "offensive, humiliating and degrading" to him, as a "native born Virginian." (*Id.* at 11–12.) Chapman notes that Martin Luther King was not from Virginia, and he claims that King "caused riots." (ECF No. 105, at 9.)

As an initial matter, it does not appear that Chapman specifically alleges that Defendant Smith decided when the library was to be closed or what specific holidays would be observed. Rather, it appears that someone at Geo may have been responsible for those decisions. Chapman did not expressly name Geo in Claim Three (b). But even if he had, Claim Three (b) would still fail for the same reasons that Claim Two (b) failed.

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a sign that they [were] not welcome in the District." *Id.* at *1. Because the plaintiffs did not show that the Mayor had "subjected them to discriminatory treatment because of their race," the court held that any exposure they may have had to a "discriminatory message" was insufficient to establish standing, and their claim was dismissed. *Id.* at *5.

[12] Virginia formally recognized Lee-Jackson Day as a state holiday. Since Chapman filed his Particularized Complaint, Virginia has eliminated Lee-Jackson Day as a holiday. *See* 2020 Va. Acts ch. 418; Va. Code § 2.2-3300.

Chapman is again claiming a stigmatic injury because a holiday that he does not prefer is explicitly celebrated, and a (now former) holiday that he does prefer is overlooked. The decision of which holidays to include or exclude from a calendar can be construed as a message, much the same as a flag, a plaque, or a mural: it can speak to the relative value that the creator of the calendar places on the holidays it chooses to commemorate and those it chooses not to commemorate. At its base, Chapman's argument is that LCC has engaged in "differential governmental messaging" concerning the relative value it places on Martin Luther King Day and Lee-Jackson Day. As discussed above, "differential governmental messaging," without "differential governmental treatment," is not actionable under the Equal Protection Clause. *Moore*, 853 F.3d at 250. Here again, Chapman has failed to allege that he experienced differential treatment from anyone at LCC, much less that he was treated differently because of his race. Indeed, it appears that everyone at LCC was presented with the same calendar which observed the same holidays, even if the holidays observed were not the holidays Chapman would have chosen.

Accordingly, Claim Three (b) will be DISMISSED as it is legally frivolous and fails to state a claim.

4. Claim Five (b)

In Claim Five (b), Chapman alleges that Defendant Smith "had a black history program scheduled . . . the only race . . . given special treatment." (ECF No. 97, at 7.) Chapman avers that "[t]here is nothing special about black history that separates it from the history of any other race." (*Id.* at 10.) He goes on to state that "[j]ust because the US Congress designated [Black History Month] doesn't make it right." (*Id.*) Chapman makes clear that he is upset because there was not a scheduled observation for "Caucasian [history], Native American [history], North African [history], or any other race in the world." (ECF No. 105, at 9.) Chapman claims that he "cannot

relate to black history," and laments the absence of some other program "to which Chapman can relate." (*Id.* at 10.)

Here again, Chapman's claim sounds not in terms of a personal injury suffered due to discriminatory treatment, but in terms of a perceived stigmatic injury caused by governmental messaging that does not align with his viewpoint. *See generally Moore*, 853 F.3d 245. Chapman is upset because LCC has chosen to observe an event which Chapman "cannot relate to," and has opted not to institute an equivalent event, "to which Chapman can relate." As with its selection of which holidays to observe, LCC's decision to observe Black History Month and not to institute a similar observation for any other race can be construed as a message that speaks to LCC's relative values and priorities. But as stated above, exposure to "differential governmental messaging," without "differential governmental treatment," is not actionable under the Equal Protection Clause. *Id.* at 250. It appears that all the inmates at LCC were exposed to the same message about Black History Month that Chapman was, and Chapman has failed to allege that he was denied access to any services or materials that were available to other inmates or that he was otherwise subject to any treatment that was different than a similarly situated inmate due to LCC's decision to observe Black History Month.

Accordingly, Claim Five (b) will be DISMISSED because it is legally frivolous and fails to state a claim.

5. Claim Six (b)

In Claim Six (b), Chapman alleges that Defendant Smith "designed [the] recreation [area] for blacks only." (ECF No. 97, at 7.) Specifically, Chapman challenges the closure of a ballfield where Chapman and other white inmates liked to play softball. (ECF No. 27, at 16–17.) Chapman avers that the reconstituted "recreation yard is adequate if you are Black, but NOT for Chapman,

or if you are White." (*Id.* at 18.) He acknowledges that the stated purpose for the closure was institutional security, but he questions the wisdom and efficacy of the decision to close the ballfield, ultimately dismissing those concerns as "fake," and claiming that it "did nothing to stem the tide of drugs and cell phones coming into the facility." (ECF No. 97, at 19).

Chapman's claim fails for a number of reasons. Most notably, Chapman has not adequately alleged that he was treated differently than anyone else who used the reconstituted recreation area. When the field was closed, all inmates were apparently excluded from the closed portion, regardless of race. Moreover, Chapman does not allege that there are any portions of the reconstituted recreation area that he was categorically barred from going because of his race. As for Chapman's claim that the security concerns were somehow "fake" and the true motive for the closure was to discriminate against him and other white men, Chapman has offered nothing more than rank speculation on that point. *Twombly*, 550 U.S. at 555 (holding that a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level").

Accordingly, Claim Six (b) will be DISMISSED as it is legally frivolous and fails to state a claim.

IV. Chapman's Rule 54(b) Motion

The Court now considers Chapman's submission entitled "MOTION TO AMEND OR ALTER THE JUDGMENT." (ECF No. 156.) Chapman does not expressly state which judgment he is challenging in his motion. (*See id.*) However, in his supporting memorandum, Chapman references Federal Rule of Civil Procedure 56, which governs motions for summary judgment. (*See* ECF No. 157, at 2.) As such, the Court understands Chapman's challenge to relate to the September 24, 2020 Memorandum Opinion and Order granting summary judgment to some, but not all, defendants on some, but not all, of Chapman's claims. (*See* ECF Nos. 154, 155.)

If a motion seeks reconsideration of an order before the entry of final judgment, the motion is governed by Rule 54(b). That rule provides:

> [A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Fed. R. Civ. P. 54(b).[13]

A district court retains the discretion to reconsider or modify a grant of a partially dispositive motion at any time prior to the entry of final judgment. *See Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003) (citing *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1469 (4th Cir. 1991); Fed. R. Civ. P. 54(b)). Nevertheless, a court must exercise its discretion to consider such motions sparingly in order to avoid an unending motions practice. *See Potter v. Potter*, 199 F.R.D. 550, 553 (D. Md. 2001). Under Rule 54(b), a motion for reconsideration generally should be limited to instances including when

> the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension . . . . [or] a controlling or significant change in the law or facts since the submission of the issue to the Court [has occurred]. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983); *accord United States v. Smithfield Foods, Inc.*, 969 F. Supp. 975, 977 (E.D. Va. 1997). The Fourth Circuit has indicated that reconsideration is also appropriate where "a subsequent trial produces substantially different evidence" or "the prior decision was clearly erroneous and would work manifest injustice." *Am. Canoe Ass'n*, 326 F.3d at 515 (quoting *Sejman v. Warner-Lambert Co.*,

[13] Chapman references Federal Rule of Civil Procedure 59(e) as the authority supporting his MOTION TO AMEND OR ALTER THE JUDGMENT. (ECF No. 156, at 1.) However, because the judgment that Chapman seeks to challenge was not a final judgment, Rule 54(b) is the proper vehicle for bringing this sort of contest.

845 F.2d 66, 69 (4th Cir. 1988)). Generally, the Court will not entertain a motion to reconsider which asks the Court to "rethink what the Court had already thought through—rightly or wrongly." *Above the Belt, Inc.*, 99 F.R.D. at 101.

Chapman does not explicitly address any of the recognized grounds for relief in his Rule 54(b) Motion. Chapman's Rule 54(b) Motion and his supporting memorandum (ECF No. 157) are not clearly directed at a specific conclusion of the Court. Rather, Chapman states generally that:

> When a White man stands for his rights he's called racist. When Blacks do it, it is called heritage.
>
> Chapman has given a clear and concise explanation of a pattern and culture of racial Discrimination.
>
> This Court's 23 page typewritten Memorandum Order is premature, wrong, incoherent, disjointed, rambling, frivolous and constitutionally defective. With conclusory allegations and bare dismissals NOT rooted in facts.
>
> . . . .
>
> This dismissal is prima facie evidence of this Courts [sic] premature prejudicial bias against Chapman because he is a White inmate.
>
> Chapman wants this Court to know that "White Inmate Lives Matter."

(ECF No. 157, at 2, 5 (emphasis in original).)

The remainder of the Rule 54(b) Motion simply repeats conclusory assertions that Chapman has advanced throughout this proceeding or veers off into other general grievances that Chapman has, none of which directly relate to the adjudication of the summary judgment award in question. At bottom, Chapman essentially asks the Court to, "rethink what the Court had already thought through." *Above the Belt, Inc.*, 99 F.R.D. at 101. As such, Chapman has failed to identify any error sufficient to warrant relief under Rule 54(b). Accordingly, Chapman's Rule 54(b) Motion (ECF No. 156) will be DENIED.

V. Conclusion

The Eighth Amendment claims raised in Claims One (a), Two (a), Three (a), Five (a), Six (a), and Seven will be DISMISSED. The Equal Protection claims under the United States and Virginia Constitutions raised in Claim One (b) will be DISMISSED WITHOUT PREJUDICE. The Equal Protection claims under the United States and Virginia Constitutions raised in Claims Two (b), Three (b), Five (b), and Six (b) will be DISMISSED. Chapman's Rule 54(b) Motion (ECF No. 156) will be DENIED. All of Chapman's other outstanding motions (ECF Nos. 95, 107, 109, 123, 125, 127, 130, 133, 135, 137, 139, 141, 143, 147, 148, 149, 150, and, 158) will be DENIED AS MOOT. This action will be DISMISSED.

An appropriate Order will accompany this Memorandum Opinion.

Date: 3 March 2021
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,

Plaintiff,

v. Civil Action No. **3:18CV597**

PHYLLIS SMITH, *et al.*,

Defendants.

FINAL ORDER

In accordance with the accompanying Memorandum Opinion, it is ORDERED that:

1. The Eighth Amendment claims raised in Claims One (a), Two (a), Three (a), Five (a), Six (a), and Seven are DISMISSED;
2. The Equal Protection claims under the United States and Virginia Constitutions raised in Claim One (b) are DISMISSED WITHOUT PREJUDICE;
3. The Equal Protection claims under the United States and Virginia Constitutions raised in Claims Two (b), Three (b), Five (b), and Six (b) are DISMISSED;
4. Chapman's Rule 54(b) Motion (ECF No. 156) is DENIED;
5. All of Chapman's other outstanding motions (ECF Nos. 95, 107, 109, 123, 125, 127, 130, 133, 135, 137, 139, 141, 143, 147, 148, 149, 150, and, 158) are DENIED AS MOOT;
6. This action is DISMISSED.

Chapman is advised that he may appeal the decision of this Court. Should he wish to do so, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the loss of the ability to appeal.

The Clerk is DIRECTED to send the Memorandum Opinion and Order to Chapman and counsel of record.

It is so ORDERED.

/s/
John A. Gibney, Jr.
United States District Judge

Date: 3 March 2021
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LOUIS ROY CHAPMAN,
Plaintiff,

v.

Civil Action No. **3:18cv597**

PHYLLIS SMITH, et al.,
Defendants.

ORDER

By Memorandum Opinion and Order entered March 3, 2021, the Court addressed all of the parties' outstanding motions and dismissed the action. (ECF Nos. 161, 162.) On April 1, 2021, the plaintiff filed a "Motion Commanding Court To Respond" wherein he requests that the Court address his outstanding motions. (ECF No. 163.) Because the Court has addressed all of the outstanding motions, the Court DENIES the plaintiff's motion. (*Id.*)

The Clerk is DIRECTED to send a copy of this Order to the plaintiff.

It is so ORDERED.

Date: 8 November 2021
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

FILED: November 3, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6587
(3:18-cv-00597-JAG-RCY)

LOUIS ROY CHAPMAN

Plaintiff - Appellant

v.

PHYLLIS SMITH, Education Director, LVCC; DINAH KREITZ; SHANIQUA MOORE, Law Library, LVCC; DAVE ROBINSON, Chief of Operations, LVCC; T. WALKER, Recreation Supervisor; MARILYN SHAW, Assistant Warden Program, LVCC; CRYSTAL JONES, Facility Ombudsman, LVCC; RENEE WOODSON, Regional Ombudsman, VDOC; K. COSBY, Regional Ombudsman, VDOC; LAURA TORGESON; TAMIKA SOMMERVILLE; TALIA NEVILLE; KIAESHIA THOMAS; COMMONWEALTH OF VIRGINIA; GLOBAL EXPERTS AND OUTSOURCING, INC.

Defendants - Appellees

and

JENNIFER WALKER, Food Service Director, LVCC; N. C. EDMONDS, Captain, LVCC; MASON, Food Service Supervisor, LVCC; J. SMITH, Health Services Administrator, LVCC; SUSAN MINTER, Nurse Practitioner, LVCC; KEEFE CORPORATION, INC.

Defendants

Appendix C

MANDATE

The judgment of this court, entered September 20, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Additional material from this filing is available in the Clerk's Office.