

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6338

THOMAS BARTHOLOMEW SIMPSON,

Plaintiff - Appellant,

v.

GLENN YOUNGKIN; ROBERT MOSIER; JASON S. MIYARES; HAROLD W.
CLARKE; WARDEN TIKKI HICKS; TONY DARDEN; BRIAN DAWSON;
LEONARD LEVIN,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. M. Hannah Lauck, Chief District Judge. (3:23-cv-00032-MHL-MRC).

Submitted: November 21, 2025

Decided: December 17, 2025

Before THACKER, HARRIS, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thomas Bartholomew Simpson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Bartholomew Simpson appeals the district court's order and judgment dismissing his 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915(e)(2)(B). We have reviewed the record and find no reversible error.

First, contrary to Simpson's arguments on appeal, the district court adequately notified Simpson that his particularized complaint needed to comply with the joinder rules set forth in Fed. R. Civ. P. 20(a)(2), and it did not violate his due process or equal protection rights by enforcing those rules. *See* Fed. R. Civ. P. 21 (stating that court "may at any time . . . drop a [misjoined] party"). Second, Simpson's Eighth Amendment claim against the first-named defendant did not arise out of the same transaction or occurrence as Simpson's claims against different defendants; therefore, the district court did not abuse its discretion by dismissing the latter claims without prejudice as improperly joined. *See Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 325 (4th Cir. 2021) (discussing when joinder is appropriate). Third, the court correctly dismissed Simpson's Eighth Amendment claim because he failed to plausibly allege that any of the defendants named therein knowingly disregarded a substantial risk to his health or safety. *See Ford v. Hooks*, 108 F.4th 224, 230 (4th Cir. 2024) (stating elements of Eighth Amendment claim). Finally, because Simpson did not present a colorable claim, the court did not abuse its discretion by declining to appoint him counsel. *See Jenkins v. Woodard*, 109 F.4th 242, 248 (4th Cir. 2024) (discussing appointment of counsel in civil cases).

Accordingly, we affirm the district court's judgment, and we deny Simpson's motions for appointment of counsel and for a restraining order and injunction. *Simpson v.*

Youngkin, No. 3:23-cv-00032-MHL-MRC (E.D. Va. Mar. 5, 2024). 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

APPENDIX B

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. 3:23cv32

GLENN YOUNGKIN, et al.,

Defendants.

MEMORANDUM OPINION

Thomas B. Simpson, a Virginia inmate proceeding *pro se* and *in forma pauperis*, filed this 42 U.S.C. § 1983 action.¹ By Memorandum Order entered on October 18, 2023, the Court directed Simpson to file a Particularized Complaint. (ECF No. 12.) In the Memorandum Order, the Court warned Simpson that if he failed to submit an appropriate Particularized Complaint that comported with the joinder requirements set forth in each Memorandum Order, the Court would drop all defendants not properly joined with the first named defendant. (ECF No. 12, at 2–3.)² Simpson filed a thirty-seven-page Particularized Complaint with an additional thirty-one pages of attachments. (ECF No. 13.) The matter is before the Court for evaluation pursuant to

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 The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects the capitalization, spelling, and punctuation from Simpson's submissions and omits any emphasis.

28 U.S.C. §§ 1915(e)(2) and 1915A, Federal Rule of Civil Procedure 20(a),³ and Simpson's compliance with the Court's October 18, 2023 Memorandum Order.

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." 28 U.S.C. § 1915(e)(2); *see* 28 U.S.C. § 1915A. 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

³ Federal Rule of Civil Procedure 20(a) provides:

(2) **Defendants.** Persons . . . may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a)(2).

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)). 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); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

II. Joinder

The Federal Rules of Civil Procedure place limits on a plaintiff's ability to join multiple defendants in a single pleading. *See* Fed. R. Civ. P. 20(a). "The 'transaction or occurrence test' of [Rule 20] . . . 'permit[s] all reasonably related claims for relief by or against different parties to be tried in a single proceeding. Absolute identity of all events is unnecessary.'" *Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th Cir. 1983) (quoting *Mosley v. Gen. Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974)). "But, Rule 20 does not authorize a plaintiff to add claims 'against different parties [that] present[] entirely different factual and legal issues.'" *Sykes v. Bayer Pharm. Corp.*, 548 F. Supp. 2d 208, 218 (E.D. Va. 2008) (alterations in original) (quoting *Lovelace v. Lee*, No. 7:03CV00395, 2007 WL 3069660, at *1 (W.D. Va. Oct. 21, 2007)). "And, a court may 'deny joinder if it determines that the addition of the party under Rule 20 will not foster the objectives of [promoting convenience and expediting the resolution of disputes], but will result in prejudice, expense, or delay.'" *Id.* (quoting *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007)).

In addressing joinder, the Court is mindful that "the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). This impulse, however, does not provide a plaintiff free license to join multiple defendants into a single lawsuit where the claims against the defendants are unrelated. *See, e.g., George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). Thus, "[a] buckshot complaint that would be rejected if filed by a free person—

say, a suit complaining that A defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in different transactions—should be rejected if filed by a prisoner.” *George*, 507 F.3d at 607.

“The Court’s obligations under the PLRA include review for compliance with Rule 20(a).” *Coles v. McNeely*, No. 3:11CV130, 2011 WL 3703117, at *3 (E.D. Va. Aug 23, 2011) (citing *George*, 507 F.3d at 607).

Thus, multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass that these complaints have produced but also to ensure that prisoners pay the required filing fees.

Id. (citing 28 U.S.C. § 1915(g); *Showalter v. Johnson*, No. 7:08CV00276, 2009 WL 1321694, at *4 (W.D. Va. May 12, 2009)).

III. Summary of Allegations and Claims

In his Particularized Complaint, Simpson names the following fourteen individuals as Defendants: Glenn Youngkin, the Governor of Virginia; Jason Miyares, the Attorney General of Virginia; Chadwick Dotson, the current Director of the Virginia of Corrections (“VDOC”), Harold W. Clarke, the former Director of the VDOC; Robert Mosier, the Secretary of Public Safety and Homeland Security; Tikki Hicks, the former Warden of Haynesville Correctional Center (“HCC”); Tony Darden, the current Warden at HCC; Brian Dawson, the Virginia Correctional Enterprise Manager at HCC; Leonard Levin, a former doctor in the HCC medical department; S.C. King, an investigator at HCC; Captain D.C. Jackson, an HCC employee; S.W. Allen, the Hearing Officer at HCC; Major A. White, an HCC employee; and Unit Manager Dobyns, an employee of HCC. (ECF No. 13, at 1–2.) Simpson’s Particularized Complaint appears to be a general airing of grievances during his incarceration from the start of the

COVID-19 pandemic in 2020 until he filed his Particularized Complaint in November of 2023. The Particularized Complaint is rambling, repetitive, and contains a lengthy timeline of events and information that is not particularly necessary or useful for the disposition of his claims.

Specifically, Simpson first has a "STATEMENT OF FACTS" section that is thirteen pages in length. (ECF No. 13, at 2–14.) Simpson next has a section called "LEGAL CLAIMS" wherein he first appears to summarize his claims, then he identifies the Eighth Amendment⁴ (ECF No. 13, at 15), subsequently has a section called "Causation and Injuries," (ECF No. 13, at 16–17), and then, finally sets forth five claims. (ECF No. 13, at 17–29.) Simpson next has a section that he labels "Retaliation by campaign of Harassment," and identifies the First Amendment.⁵ (ECF No. 13, at 29.) Underneath each claim is a lengthy discussion of facts and arguments with titles such as, "Deprivation of Basic Human Needs/Objective Evidence," "Causal Connection," "Deliberate Indifference/Subjective Evidence," "Exhaustion of Legal Remedies." (ECF No. 13, at 17–20.) Although Simpson initially only identifies the First and Eighth and Amendment, the Court notes that several of his claims are brought pursuant to the Fourteenth Amendment.⁶ In his Particularized Complaint Simpson raises the following claims for relief recited here verbatim:

Claim One: "That Tikki Hicks, Harold W. Clarke, and Brian Dawson provided Plaintiff with unsafe prison conditions by failing to provide Plaintiff with six feet social distancing living space which caused Plaintiff to contract the COVID-19 virus, violating Plaintiff's right protecting him

⁴ "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

⁵ "Congress shall make no law . . . abridging the freedom of speech" U.S. Const. amend. I.

⁶ "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

from cruel and unusual punishment under Eighth and Fourteenth Amendment of the United States Constitution.” (ECF No. 13, at 17.)

- Claim Two: “The unsafe prison conditions Tikki Hicks exposed Plaintiff to by forcing him to sleep on the visitation room concrete floor and Plaintiff being infected with COVID-19 violated Plaintiff’s rights and constituted cruel and unusual punishment under the Eighth and Fourteenth Amendment to the United States Constitution.” (ECF No. 13, at 20).
- Claim Three: “The physical, mental, psychological, and emotional anguish and injury caused by Brian Dawson grossly effected on the Plaintiff by tripling Plaintiff’s workload as a post-COVID long haul ward of the state violated Plaintiff’s rights and constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendment rights of the United States Constitution and First Amendment violation for retaliation when Plaintiff filed a grievance or written complaint.” (ECF No. 13, at 22.)
- Claim Four: “The unsafe prison condition by Tikki Hicks in gross negligently housing Plaintiff in 2B dorm where fungus growth was detected and the deliberat[e] indifference to Plaintiff[’s] medical needs by Leonard Levin[’s] refusal and failure to prescribe him Diflucan as a COVID-19 long haul ward of the state with fungus infection violated Plaintiff’s right[s] and constituted cruel and unusual punishment under the Eighth Amendment and Fourteenth Amendment of the United States Constitution.” (ECF No. 13, at 23.)
- Claim Five: “The unsafe prison conditions of Glenn Youngkin, Jason Miyares, Robert Mosier, Harold W. Clarke, and Chadwick Dotson violates Plaintiff’s rights and constitutes cruel and unusual punishment under the Eighth Amendment and Fourteenth Amendment of the United States Constitution.” (ECF No. 13, at 27.)
- Claim Six: “Captain D.C. Johnson is liable unto Plaintiff in his individual/personal and official capacity for violating Plaintiff’s First Amendment right to free speech and expression and to be free from wrongful interference and unlawful retaliation for the exercise of such rights, and Fourteenth Amendment right violation of association and companionship.” (ECF No. 13, at 29.)
- Claim Seven: “S.C. King, Captain D.C. Jackson, S.W. Allen, Major A. White, Unit Manager Dobyns are liable unto Plaintiff in their individual/personal and official capacity for violating Plaintiff[’s] First Amendment right and Article 19 of the United Nation’s Declaration of Human Rights to free speech and expression and to be free from wrongful interference

and unlawful retaliation for exercise of such rights.” (ECF No. 13, at 30.)

Simpson asks for what he calls, “Injunctive Relief,” and provides a long list of demands. (ECF No. 13, at 34–35.) In his original Complaint, Simpson also asked for unspecified monetary damages. (ECF No. 1, at 20.)

IV. Dismissal of Improperly Joined Claims

The Court now proceeds with the analysis outlined in the October 18, 2023 Memorandum Order. (See ECF No. 12, at 2–3.) The first named defendant in the body of the Particularized Complaint is Glenn Youngkin. (ECF No. 13, at 4.) Youngkin is named in Claim Five with Jason Miyares, Robert Mosier, Harold W. Clarke, and Chadwick Dotson. (ECF No. 13, at 27.)⁷ Claim Five alleges that “the unsafe prison conditions of” Youngkin, Miyares, Mosier, Clarke, and Dotson amount to cruel and unusual punishment. (ECF No. 13, at 27.) Accordingly, the Court will proceed with the analysis it explained in the October 18, 2023 Memorandum Order,

⁷ Of the five defendants, only Harold Clarke is named in another claim, Claim One. As explained in conjunction with the analysis of Claim Five below, the allegations against Defendants Clarke are too vague and conclusory to state a claim for relief or to show that Defendant Clarke was personally involved in the deprivation of Simpson’s Eighth Amendment rights. Simpson may not name a defendant who has no personal involvement in an underlying claim to attain the joinder of his claims. *Cf. Jackson v. Olsen*, No. 3:09cv43, 2010 WL 724023, at *3 (E.D. Va. Mar. 1, 2010) (citations omitted) (explaining that a Plaintiff cannot satisfy joinder requirements “with conclusory allegations of a conspiracy”); *Salley v. Sec’y Penn. Dep’t of Corr.*, 565 F. App’x 77, 80, 81–82 (3rd Cir. 2014) (explaining that bare allegations of a vast conspiracy is inadequate to permit joinder of unrelated claims when plaintiff fails to specify any personal involvement on the part of a defendant). Because Defendant Clarke was not personally involved in the conduct alleged in Claim Five, it was improper for Simpson to name him in that claim. The Court will not permit joinder of Claim One based solely on the fact that Simpson named Defendant Clarke in both claims. *See Dobson v. Clarke*, No. 3:22CV132, 2023 WL 5109538, at *4 n.4 (E.D. Va. Aug. 9, 2023) (refusing to permit joinder of claims where defendants who were named in more than one claim were not personally involved in alleged conduct).

and “the Court will drop all defendants not properly joined with the first named defendant.”⁸

(See ECF No. 12, at 3.)

As a preliminary matter, the manner in which Simpson has pled his Particularized Complaint requires the Court to weed through excessive verbiage and unnecessary factual information in order to distill the claims to their essence. Simpson also repeats factual information from other claims that is entirely unrelated to the main component of that individual claim. Moreover, in several instances Simpson has alleged more than one disparate claim for relief under his identification of a “Claim,” or alleged underlying facts that are not at all related to his statement of the claim, complicating the Court’s joinder analysis.

As best the Court can discern, Claim Five alleges that a policy of mass incarceration in 2022 and 2023, in the “post COVID-19 era,” led to cruel and unusual living conditions in VDOC facilities because many of the inmates could have been released, which according to Simpson, would have alleviated overcrowding. (ECF No. 13, at 27–29.) Claim One alleges that in 2020, HCC officials subjected Simpson to cruel and unusual punishment because they failed to separate inmates by six feet and Simpson contracted COVID-19. (ECF No. 13, at 17–20.) Claim Two alleges cruel and unusual punishment because Simpson was forced to sleep on a concrete floor after he contracted COVID-19. (ECF No. 13, at 20–21.) Claim Three alleges that Simpson’s workload was tripled. (ECF No. 13, at 22–23.) Claim Four alleges deliberate indifference to Simpson’s medical needs because he contracted a fungus that was then not treated in the manner Simpson desired. (ECF No. 13, at 23–26.) Claims Six and Seven allege violations

⁸ “Such a procedure fosters the objectives of the Rules of Civil Procedure[] of expediting the resolution of disputes, without further squandering scarce judicial resources on ‘disputes that are not structurally prepared to use those resources efficiently.’” *Jackson*, 2010 WL 724023, at *8 n.10 (quoting *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279–80 (11th Cir. 2006)).

of the First Amendment freedom of speech, the Fourteenth Amendment right to “association and companionship,” and retaliation. (ECF No. 13, at 29–30.)

Simpson repeats *ad nauseam* that inmates were housed too closely during the COVID-19 pandemic and that he purportedly has long haul COVID-19 and has or had a fungal infection. Simpson appears to suggest that these three facts are somehow related to all of his claims. However, these disparate facts are not sufficient to make his claims properly joined. That his claims stem from experiences during his incarceration in the HCC do not make them properly joined.

Thus, Claims One, Two, Three, Four, Six, and Seven, are different types of claims from Claim Five, alleging different conduct, on different dates, against different defendants. Thus, it is apparent that Simpson has failed to articulate a common question of law and fact for all of the named defendants, and that Simpson’s various causes of action do not arise “out of the same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P. 20(a). Instead, Simpson has submitted the sort of “mishmash of a complaint” that the rules governing joinder aim to prevent. *Jackson*, 2010 WL 724023, at *7 (quoting *George*, 507 F.3d at 607). As such, permitting the joinder of Claims One, Two, Three, Four, Six, and Seven will not promote the objectives of Rule 20 or judicial efficiency. *See id.* at *8 n.10.

For the reasons set forth above, Simpson’s Particularized Complaint “comprises multiple lawsuits, rather than one suit.” *Id.* at *8 (quoting *Canada v. Ray*, No. 7:08cv00219, 2009 WL 2448557, at *2 (W.D. Va. Aug. 10, 2009)).⁹

⁹ Through the PLRA, Congress sought to ensure “that the flood of nonmeritorious [prisoner] claims does not submerge and effectively preclude consideration of the allegations with merit.” *Jones v. Bock*, 549 U.S. 199, 203 (2007) (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). The requirement that inmates must pay the full filing fee for each separate suit, *see* 28 U.S.C. § 1915(b)(1), is one of the PLRA’s key “reforms designed to filter out the bad claims and facilitate consideration of the good.” *Id.* at 204. To allow an inmate, such as Simpson, to

Accordingly, Claims One, Two, Three, Four, Six, and Seven will be DISMISSED WITHOUT PREJUDICE because they are improperly joined. Defendants Hicks, Dawson, Levin, King, Jackson, Allen, White, and Dobyns will be DISMISSED from the action because the claims against them are improperly joined. Defendant Darden will be DISMISSED because he was not named in any claim. Thus, the action proceeds solely on Claim Five against Defendants Youngkin, Miyares, Mosier, Clarke, and Dotson ("Defendants"), to which the Court now turns.

V. Eighth Amendment

A. Simpson's Allegations in Claim Five

Claim Five is hardly clear or precise. Simpson alleges as follows:

148. The Defendants placed Plaintiff in serious and extreme conditions because he is suffering from COVID-19 long haul, and their official regulations are prejudiced by their individual support of the inhumane system of mass incarceration resulting in overcrowding of prisons, causing unsanitary conditions, depriving Plaintiff of the basic human right of six feet living space, in the post-COVID-19 era.

149. Eighth Amendment objective standard can be met by showing that Plaintiff is deprived of a basic human need. By showing officials knew he was deprived, but ignore[d] his conditions, satisfies [the] subjective evidence prong.

150. Prison conditions can violate the Plaintiff's rights if he can show that the conditions put him at serious risk for injury in the future.

a. Deprivation of Basic Human Needs/Objective Evidence:

151. Prison conditions in VDOC security level 2 at HCC could/and does seriously affect Plaintiff's health because he is deprived of a sanitary six feet living[]space. He is consistently threatened by airborne pathogens because he cannot control the sanitation of surface or air quality by having 3 other individuals within 3ft, and 2 other[s] within 5ft of him. His past COVID-19 infection injuries cause mental and emotional injury. Six feet living conditions are a basic human right exposed by the COVID-19 pandemic, which virus is still a serious threat due [to] its long haul harm. The best way to avoid COVID-19 long haul is to not have

"package many lawsuits into one complaint exempts him from such a cost, benefit analysis and thus undercuts the PLRA." *Canada*, 2009 WL 2448557, at *3.

caught the virus at all. The virus caused HCC compound pandemic twice a year, every year since 2020.

152. Plaintiff's unfortunate COVID-19 long haul means a common cold isn't just a common cold, as well as the flu, RSV, or diseases caused by airborne pathogens or chronic illness.

153. Plaintiff is a ward of the state and Defendants are officials who constantly put him in serious and harmful prison conditions, violating his constitutional rights because he is deprived of controlling air and surface 6 ft around him, revealing the inhumanity of mass incarceration.

b. Deliberate Indifference:

154. The Defendant know or should have reason to know that COVID-19 causes serious harm and long-term effects and that six feet social distancing is the best defense preventing infection.

155. The Defendants know or should have reason to know individuals in VDOC security level 2 do not afford individuals the right to six feet living space, which conditions are serious and extreme for COVID-19 long haul patients in chronic care.

156. The Defendants knew or should have reason to know that: (1) HCC places 70+ individuals in a 3750 ft² living area with 48,300 ft³ of air space, which is the perfect [breeding] ground, easily spreading airborne pathogens and that the common cold is no longer just the common cold for COVID-19 long haul patients; and (2) from February 2021 to currently, Plaintiff has suffered as a COVID-19 long haul patient, yet his living conditions are grossly neglected.

157. That Defendants openly, purposefully, deliberately, and mercilessly support mass incarceration, which science negate[s], and went as far as to prevent Va. Code § 53.1-202.3 from fully going into [e]ffect, which would have freed up the living-area space affording security level 2 six feet living-space.

(ii) Restrictive Regulations Cause Unsafe Prison Conditions

158. First, Defendants maliciously intended to prevent a "de-carceration" law, Va. Code § 53.1-202.3^[10] from fully going into effect on July 1, 2022, telling

¹⁰ The United States District Court for the Western District of Virginia recently explained the history of this law as follows:

In 1994, the Virginia General Assembly enacted legislation establishing the Earned Sentence Credit ("ESC") system for inmates convicted of a felony offense committed on or after January 1, 1995. See Va. Code Ann. §§ 53.1-202.2-53.1-202.4. The system allows inmates to earn sentence credits "through adherence to

disappointed inmate[s] days before on Father's Day. The administration ran on a merciless hate campaign against prisoners, supporting the failed decaying system of mass incarceration. JASON MIYARES revealed as much when he stated to James Bacon of Fredericksburg.com that "we're trying to make the best out of a horrific situation," referring to § 53.1-202.3 [e]ffective date on July 1, 2022, when

rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and by meeting such other requirements as may be established by law or regulation." *Id.* § 53.1-202.2. Prior to July 1, 2022, inmates could earn a maximum of 4.5 sentence credits for every 30 days served. *See id.* § 53.1-202.3 (effective until July 1, 2022).

In 2020, the General Assembly revised the ESC system by amending Virginia Code § 53.1-202.3. The statutory amendments created a two-tier system pursuant to which a "maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence" for certain enumerated offenses, including particular violent crimes and sex offenses. Va. Code Ann. § 53.1-202.3(A). In contrast, inmates who are serving a sentence for "any offense other than those enumerated in subsection A" (referred to herein as a "non-enumerated offense"), and who satisfy other statutory criteria, may earn as many as 7.5 or 15 days of sentence credits for every 30 days served. *Id.* § 53.1-202.3(B); *see also Prease v. Clarke*, 888 S.E.2d 758, 759 (Va. 2023) (describing the two-tier system created by the revised statutory scheme).

"The implementation of this two-tiered system was delayed until July 1, 2022." *Id.* at 760 (citing 2020 Va. Acts, Spec. Sess. I, Ch. 50 (specifying that "the provisions of this act, other than the provisions of the second enactment of this act, shall become effective on July 1, 2022")). The 2020 legislation provided that the amended provisions of § 53.1-202.3 "shall apply retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022." 2020 Va. Acts, Spec. Sess. I, Ch. 50. Before the two-tiered system became effective on July 1, 2022, however, the General Assembly approved a biennial budget amendment proposed by the Governor that limits the ability of inmates serving sentences for both enumerated and non-enumerated offenses to earn enhanced sentence credits. That amendment (Amendment 19), which was added to the biennial budget as Item 404(R)(2), provides as follows:

Notwithstanding the provisions of § 53.1-202.3, Code of Virginia, a maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence that is concurrent with or consecutive to a sentence for a conviction of an offense enumerated in subsection A of § 53.1-202.3, Code of Virginia.

2022 Va. Acts, Spec. Sess. I, Ch. 2, § 1-113, Item 404(R)(2). The budget provisions, including Item 404(R)(2) (the "Budget Amendment"), took effect on July 1, 2022, and remain in effect until June 30, 2024. *See id.* §§ 4-13.00, 4-14.00.

Hoglan v. Youngkin, No. 7:22-cv-00460, 2023 WL 5214122, at *1-2 (W.D. Va. Aug. 14, 2023) (footnotes omitted). Unlike the Plaintiff in *Hoglan*, Simpson does not allege that he was entitled to release under this provision, just that other unidentified inmates would be.

individuals would gain their liberty and civil right[s] back. The Budget Amendment 19 was meant to punish individuals who earned their right to liberty, preventing 4,500 plus inmates from being release[d] within 2 months. Such prejudice deprived Plaintiff of his basic human right to six feet living space, making Defendants liable.

159. Secondly, the Budget Amendment 19 achieved no legitimate goal except mass incarceration. Financially, it would be less expensive to free individuals who earned their liberty and had a personal interest in §53.1-202.3 July 1, 2022 [e]ffective date, then to house them at \$30,000 plus every body/year. Budget Amendment 19 had no purpose but to punish and promote mass incarceration which violates individual[']s civil rights. The regulation was an exaggerated response to inmates being released early and the administration's concern of the new ESC-2 effective date of July 1, 2022, because they looked for [an] unconstitutional way to continue to illegally detain individuals. However, it also ignored the new post COVID-19 long haul era, exposing how mass incarceration violates basic human rights.

160. Defendants have violated Plaintiff's constitutional rights by housing him in serious and extreme inhumane conditions by failing to afford him safe and sanitary living-space conditions by adjusting new levels to what would now be overcrowding, post-COVID-19 era, constituting cruel and unusual punishment. The Defendants maliciously intended to further punish inmates through restrictive regulations of Budget Amendment 19, which failed to provide safe conditions for Plaintiff's COVID-19 long haul and chronic health, depriving him of his constitutional protection and depriving individuals of their personal interest of liberty.

(ECF No. 13, at 27–29 (internal citations and emphasis omitted).)

B. No Personal Involvement Alleged

In order to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998). “Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*.” *Iqbal*, 556 U.S. at 676 (citations omitted). To state a legally sufficient claim for an alleged violation of a federal constitutional right, “[a] plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.” *Id.* Accordingly,

the plaintiff must allege facts that affirmatively show “that the official charged acted personally in the deprivation of the plaintiff[s] rights.” *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977) (internal quotation marks omitted); *Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001) (noting that liability is “personal, based upon each defendant’s own constitutional violations”). Here, Simpson has failed to allege sufficient facts that suggest each named Defendant was personally involved in the violation of Simpson’s rights in Claim Five. That deficiency alone warrants the dismissal of his claim. Moreover, as explained more fully below, Simpson has failed to plausibly allege sufficient facts to support an Eighth Amendment violation by any of the Defendants.

C. Eighth Amendment Law

To state an Eighth Amendment claim,¹¹ 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 (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

¹¹ Although Simpson contends that Defendants also violated the Fourteenth Amendment in Claim Five, the Eighth Amendment governs his claim of cruel and unusual living conditions. See *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998); see *Lewis*, 523 U.S. at 842 (“[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more general notion of substantive due process, must be the guide for analyzing these claims.” (quoting *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (Rehnquist, C.J.) (plurality opinion))).

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 [or she] 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).

D. Analysis of Claim Five

In Claim Five, Simpson contends that: “The unsafe prison conditions of Glenn Youngkin, Jason Miyares, Robert Mosier, Harold W. Clarke, and Chadwick Dotson violates Plaintiff’s rights and constitutes cruel and unusual punishment under the Eighth Amendment and Fourteenth Amendment of the United States Constitution.” (ECF No. 13, at 27.) As noted previously, Claim Five alleges that the policy of mass incarceration in 2022 and 2023, in the “post COVID-19 era” led to cruel and unusual living conditions in VDOC facilities because many of the inmates could have been released alleviating purported overcrowding. (ECF No. 13, at 27–29.) Claim Five is difficult to unravel, extremely tenuous, and requires several leaps in logic and causation. Broken down, Simpson initially faults Defendants for a law passed on July 1, 2022, that was amended, apparently, to disallow early release for as many inmates as Simpson initially believed would be released. Simpson believes the failure to release this allegedly “4,500 plus inmates” is the source of his being housed within six feet of other inmates. (ECF No. 13, at 28.) Simpson contends that this is cruel and unusual punishment. Claim Five can be dismissed for several reasons.

Here, Simpson simply has failed to allege facts that indicate any of the defendants “subjectively recognized a substantial risk of harm” to Simpson and further recognized that his or her “actions were ‘inappropriate in light of that risk.’” *Parrish ex rel. Lee*, 372 F.3d at 303 (quoting *Rich*, 129 F.3d at 340 n.2). First, Simpson never identifies how any individual Defendant was personally involved in the deprivation of his Eighth Amendment rights. Instead, throughout Claim Five, Simpson merely indicates that “Defendants” took certain actions. However, that is insufficient to state a claim an Eighth Amendment claims against these individuals. *See Grieveson v. Anderson*, 538 F.3d 763, 778 (7th Cir. 2008) (“Vague references

to a group of defendants, without specific allegations tying the individual defendants to the alleged unconstitutional conduct” fail to support a claim for relief against the individual defendants.” (citing *Alejo v. Heller*, 328 F.3d 930, 936 (7th Cir. 2003)); see also *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) (“Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given pro se complaints.” (citing *U.S. ex rel. Brzozowski v. Randall*, 281 F. Supp. 306, 312 (E.D. Pa. 1968))).¹² For that reason alone, Claim Five may be dismissed.

Second, with respect to Defendants Clarke, Dotson, Miyares, and Mosier, Simpson has failed to allege sufficient facts to suggest that any of these Defendants were personally involved in the passage of an amendment to a Virginia law that changed how many inmates qualified for early release. Only the legislative body of Virginia, the General Assembly, and the Governor would have any involvement in legislation or the amendment process. See *Hoglan*, 2023 WL 5214122, at *1–2 (explaining legislative history of Amendment 19 and the code section it amended). Thus, Simpson’s claim fails at the outset against these Defendants. For this reason, Simpson fails to state a claim against Defendants Clarke, Dotson, Miyares, and Mosier. Accordingly, any claim against Defendants Clarke, Dotson, Miyares, and Mosier will be DISMISSED.

With respect to Defendant Youngkin, although he may have been involved in the legislative process, Simpson fails to allege facts indicating that, by amending a bill to change

¹² The only Defendant named in the body of Claim Five is Jason Miyares, who according to Simpson, noted to a reporter, “we’re trying to make the best out of a horrific situation.” (ECF No. 13, at 28.) The Court fails to discern, and Simpson fails to explain, what this means, much less how it shows that Defendant Miyares was personally involved in the alleged unconstitutional conduct.

early release qualifications, Defendant Youngkin violated Simpson's Eighth Amendment rights. Simpson alleges that the change in early release law led to more inmates remaining in the VDOC which Simpson considers overcrowded because he is housed within six feet of other inmates. Then, Simpson claims that living within six feet of other inmates is cruel and unusual punishment. However, Simpson does not allege an injury, much less "a serious or significant physical or emotional injury" resulting from the bill's passage on July 1, 2022. *De'Lonta*, 330 F.3d 630, 634 (4th Cir. 2003) (quoting *Strickler*, 989 F.2d at 1381). At most, Simpson contends that he "is consistently threatened by airborne pathogens because he cannot control the sanitation of surface or air quality by having 3 other individuals within 3ft, and 2 other[s] within 5ft of him." (ECF No. 13, at 27.) Simpson fails to plausibly allege a serious or significant physical or emotional injury resulting from the passage of the amended bill. Accordingly, Simpson's claim against Defendant Youngkin will be DISMISSED.¹³

VI. Conclusion

Defendants Hicks, Dawson, Levin, King, Jackson, Allen, White, and Dobyons will be DISMISSED WITHOUT PREJUDICE. Claims One, Two, Three, Four, Six, and Seven will be

¹³ Simpson's claim also has a causation issue. "[C]onstitutional torts, like their common law brethren, require a demonstration of both but-for and proximate causation." *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) (citations omitted). Thus, to establish liability under § 1983, Simpson must show that Defendant Youngkin, acting under color of state law, violated Simpson's constitutional rights, "and thereby caused the complained of injury." *Brown v. Mitchell*, 327 F. Supp. 2d 615, 628 (E.D. Va. 2004) (citing *Coppage v. Mann*, 906 F. Supp. 1025, 1035 (E.D. Va. 1995)). Here, Defendant Youngkin proposed an amendment to a bill that changed the qualifications for release for some inmates. "[A] policy . . . that is not itself unconstitutional . . . must be independently proven to have caused the violation. Proof merely that such a policy . . . was 'likely' to cause a particular violation is not sufficient; there must be proved at least an 'affirmative link' between policy . . . and violation; in tort principle terms, the causal connection must be 'proximate,' not merely 'but-for' causation-in-fact." *Spell v. McDaniel*, 824 F.2d 1380, 1387–88 (4th Cir. 1987) (citation omitted). Simply put, Simpson fails to plausibly suggest a causal connection between Defendant Youngkin's amendment to a law and Simpson's alleged injury of being housed within six feet of other inmates at HCC.

DISMISSED WITHOUT PREJUDICE because they are improperly joined. Defendant Darden will be DISMISSED because he was not named in any claim. Claim Five against Defendants Youngkin, Miyares, Mosier, Clarke, and Dotson will be DISMISSED for failure to state a claim and as frivolous. The Clerk will be DIRECTED to note the disposition for the purposes of 28 U.S.C. § 1915(g).

An appropriate Order will accompany this Memorandum Opinion.

Date: 3/5/2024
Richmond, Virginia


M. Hannah
United States District Judge

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. 3:23cv32

GLENN YOUNGKIN, et al.,

Defendants.

FINAL ORDER

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

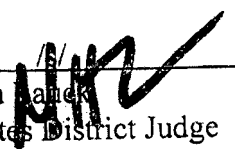
1. Defendants Hicks, Dawson, Levin, King, Jackson, Allen, White, and Dobyns are DISMISSED WITHOUT PREJUDICE;
2. Claims One, Two, Three, Four, Six, and Seven are DISMISSED WITHOUT PREJUDICE because they are improperly joined;
3. Defendant Darden is DISMISSED because he was not named in any claim;
4. Claim Five against Defendants Youngkin, Miyares, Mosier, Clarke, and Dotson is DISMISSED for failure to state a claim and as frivolous;
5. The Clerk is DIRECTED to note the disposition of the action for purposes of 28 U.S.C. § 1915(g);
6. The Clerk is DIRECTED to enter a final appealable Judgment in a Civil Case in favor of Defendants as a separate entry on the docket; and,
7. Simpson does not request, and the Court does not grant, leave to amend, rendering this order final and appealable. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022).

Should Simpson desire to appeal, 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 notice of appeal within that period may result in the loss of the right to appeal.

The Clerk is DIRECTED to send a copy of this Order and the accompanying Memorandum

Opinion to Simpson.

Date: 3/5/2024
Richmond, Virginia


M. Hannah
United States District Judge

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF VIRGINIA
Richmond Virginia

THOMAS B. SIMPSON,
Plaintiff,

V.

GLENN YOUNGKIN, et al.,
Defendant.

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Civil Action No. 3:23CV32

PARTICULARIZED COMPLAINT FOR CIVIL ACTION NUMBER 3:23CV32

1. This is a civil action authorized by 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The Court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3). The Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, and claims for injunctive relief are authorized by 28 U.S.C. §§2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure against the following Defendants: Governor of Virginia **GLENN YOUNGKIN** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; A.G. of the Commonwealth of Virginia and chief law officer of Virginia **JASON MIYARES** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; Current Director of the Virginia Department of Corrections **CHADWICK DOTSON** is sued for injunctive relief in his official capacity; Former Director of the Virginia Department of Corrections **HAROLD W. CLARKE** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; The Secretary of Public Safety and Homeland Security **ROBERT MOSIER** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; Former Warden of Haynesville Correctional Center **TIKKI HICKS** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; Current Warden at HCC **TONY DARDEN** is sued for declaratory and injunctive relief; Virginia Correctional Enterprise manager of the HCC location **BRIAN DAWSON** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; former Doctor of HCC Medical Department **LEONARD LEVIN** is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; HCC Investigator S.C. KING is sued for declaratory and injunctive relief in his official capacity, and in his individual capacity for nominal, compensatory, and punitive damages; **CAPTAIN D.C. JACKSON** OIC of investigating

'Disciplinary Offence Report', for declaratory and injunctive relief; S.W. ALLEN the Hearing Officer at Haynesville Correctional Center for declaratory and injunctive relief; MAJOR A. WHITE the major at Haynesville Correctional for declaratory and injunctive relief; and UNIT MANAGER DOBYNS who is involved in disciplinary process at Haynesville Correctional Center. All are sued in their official capacity for declaratory and injunctive relief, and in their individual capacity for nominal, compensatory, and punitive damages.

II. STATEMENT OF FACTS

2. COME NOW the Plaintiff, THOMAS B. SIMPSON, in pro se, is and was at all times mentioned herein, a prisoner of the Commonwealth of Virginia in the custody of the Virginia Department of Corrections(VDOC). He is currently confined in Haynesville Correctional Center(HCC), in Haynesville, Virginia at Richmond County. There he was involved in the Virginia Correctional Enterprise workers programe. Plaintiff allges as follows against the Defendants while they was acting under color of the state law. (Exhibit #1).

COVID-19 Pandemic And Executive Order

3. On March 11, 2020, World Health Organization classified COVID-19 infections a Global Pandemic.

4. On March 12, 2020, then Governor Ralph S. Northam declared Virginia a State of Emergency.(Exhibit #2).

5. On March 30, 2020, the Governor then enacted Executive Order No. 55(E055) which ordered, in part, that: "[a]ll individuals in Virginia shall remain at their place of residence except as provided bellow by this order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must all times maintain social distancing of at least six feet from any other person..."

All public universities and beaches was closed and prohibited. All "parties, celebartions, religious, or social events whether they occur indoor or outdoor," of social gatherings of more than ten individuals. Violations of E055 were deemed punishable as Class 1 misdemeanors via Va. Code §44-146. Workplaces was to maintain six feet distancing.

6. The Center for Diseas Control(CDC), issued guidance that individuals are at higher risk of contracting COVID-19 when in tightly crowded areas and all government entities had suggested individuals are to stay home as much as possible.

7. Director HAROLD W. CLARKE at VDOC institutions housed inmates in dorms of 74 individuals. There is 29 bunkbeds and 16 single-beds. All individuals shared four toilets, five sinks, four showers, five phones, two microwaves, and four urinals in the common area. The living-space of individuals are as follows:

- (A). Twenty-one(21) sets of living-space between bunkbeds in the dorm are 3ft. which two inmates would share(sets are 24 square-ft areas, consisting of two wall lockers on either side, two floor lockers on either side, all inmates personal supplies including laundry bags, and chairs). Also, in most cases one inmate is within 3ft of five other inmates(two on bunks to the right, two on bunks to the left, and one on the top bunks).
- (B). Four(4) sets of living-space between bunkbeds are 5ft apart, due to structural support I-beams(sets are 40 square-ft areas, consisting of two wall lockers on either side, two floor lockers on either side, all inmates personal supplies including laundry bags, and two chairs). Inmates are within 3ft of three other inmates(two on bunks to one side, and one on top bunk), and 5ft away from other bunkbed.
- (C). Two(2) sets of living-space was next to a wall and bunkbed(Sets are 20 sq. ft.). The inmate did not share the living-space. However, he was 3ft away from two other inmates and next to living-space(A), with bunky.
- (D). Two(2) other sets of living-space was also next to a wall and bunkbed in the middle of the dorm.(Sets are 65sq. ft. area). The inmate did not share the living-space. However, he was 3ft away from two other inmates and had a bunky in the living-space(A).
- (E). Sixteen(16) other sets of living-space was for single-beds and shared no space(Setd are 24 sq. ft. areas, consisting of ones floor locker and one neighbors floor locker on opposite side individuals bed). The single-bed are 3ft apart each other. There was two rows of beds with a 2ft wall seperating 11 beds on each side.(16 single-beds and 6 bunkbeds).
- (F) Two (2) bunkbed and two(2) single-bed shares common space areas.

Such was the living conditions at HCC where TIKKI HICKS was warden. The Plaintiff was housed in Dorm 2A. VCE workers programe was moved throughout the compound in order to always have workers available in case of a COVID-19 outbreak in March and April 2020. BRIAN DAWSON began working inmates seven days a week even fired inmates for not reporting to work, including for religious reasons. Sleeping patterns was recommended in the Dorms.(Exhibit #22).

8. On April 5, 2020, Building 1 and 3 at HCC went on lock-down due to possible COVID-19 infections, which was then confirmed in Building on after inmates test positive.

9. On April 8, 2020, a Section 1983 suit was brought against HARALD W. CLARKE, TIKKI HICKS, and other Virginia officials relating to prison conditions during the pandemic, raising their awareness of COVID-19 risk and their responsibilities while acting "under color of state law", and that know or have reason to know that:

- a. Individuals are at higher risk to contract COVID-19 in tightly crowded areas: (Complaint for Plaintiff in Whorley v. Northam 2020 U.S. Dist. LEXIS 86315(2020), ¶1115);
- b. "inmates are wards of the state and Warden Hicks and Director Clarke is responsible for providing reasonable care... That [inmates] have not been provided or protected by prison policies, resources, or [partitions];" and that such protection "can be established to provide the social distance and reduction in population density" which is necessary to reduce the ongoing risk to eligible inmates able to qualify for early release and those who remain confined; and not having "done so in a reasonable fashion, deprive inmates in an extreme manner via conditions of confinement in violation of 8th and 14th Amend."(id ¶ 143, 175, 177, 181, 182).
- c. That inmates "are wards of the Commonwealth of Virginia and remain protected by the constitution of the United States, specifically the 8th Amend. guarantee that they are to be protected from cruel and unusual punishment as applied to the state via the 14 Amend..," and that Warden Hicks

and Director Clarke has a duty to the inmates at HCC and the Plaintiff to provide, protect, and ensure contemporary standards of decency, at a minimum, the civilized measure of life's necessities. (id ¶ 155 and 156).

d. "Increasing the spatial distance between individuals, specifically by six feet or more, and reducing the amount of individuals in a closed setting, specifically to a number of ten(10) people or less, is a mean of reducing the risk of spreading COVID-19" and such "a [practice] that are not only widely accepted societal norms during COVID-19 pandemic, they have been publicly encouraged via officials at all levels of Government, commercial enterprise, and American culture" because it is the "contemporary standards of decency recognized throughout the United States and the Commonwealth of Virginia" which practices has "been enacted into law in most settings via Executive Order promulgated by Gov. Northam." (id ¶ 171, 172, 174).

e. That the "spread of COVID-19 to and among inmates,.. poses a substantial, serious, and significant risk to the physical health of inmates." (id ¶ 176).

10. Also in April 2020, then President Trump declared Virginia a "major disaster area" and United States A.G. William Barr issued a State of Emergency within the U.S. Bureau of Prisons.

11. On April 27, 2020, the General Assembly adopted the 'Early Release Plan' (COVID-19 Response: Inmate Early Release Plan), which allowed eligible inmates with one year or less remaining on their sentence to be released early. A memo went out on April 27, 2020, stating that "during the declared emergency [the plan will] assist in maintaining the health, safety and welfare of any prisoner discharged or placed or the prisoners remaining in state correctional facilities..."

12. During the first week of May 2020, due to further positive COVID-19 infections in other dorms besides the Plaintiff's 2A dorm, HCC went on lockdown.

13. Warden TIKKI HICKS and Director HARLOD W. CLARKE came to a 'Stipulated Settlement Agreement' with Plaintiffs in the April suit on May 12, 2020, and VDOC officials agreed to free up space in HCC and other VDOC centers by implementing the 'Early Release Plan' for COVID-19. VDOC also agreed to "restrict the transfer of inmates from facility to facility." (Exhibit #3).

14. Another VDOC memo was sent out to inmates on May 22, 2020, stating that COVID-19 "directly enters the body from the droplets of a cough or sneeze of an infected person, landing in their own eyes..." And to protect yourself by "social distance" leaving "at least 6 feet between all person."

15. In June 2020, inmate Roger Teal was deemed eligible for the early release program. His original release date was for January 2021. He had went through radiation treatment due to graves disease from 2009 to 2011. He also was a Type 2 Diabetic.

Virginia Correctional Enterprise

16. In July 2020, in order to Keep VCE operational, Warden TIKKI HICKS and manager BRIAN DAWSON moved inmate workers into Dorms 1B and 2B, having two different shifts. Plaintiff was moved to Dorm 2B then 1B dorm's shift. Dorm 1B was packed with 70 plus

inmates. Plaintiff lived on bunkbed 11 top. He had living-space of (A). (see p 7). Plaintiff and his cut-mate (Inmate 2) shared their 3 ft. living-space. Plaintiff's bunk, sleeping under him, had (C) living-space (Inmate 1). Inmate 1 and Inmate 2 contracted COVID-19 already in April 2020. Next to Plaintiff on the top bunk-bed of 10 top was Inmate 3. All four inmates was three feet apart.

17. In Nov. 2020, Gov. Northam signed into law HB5148 'Earned Sentence Credit'. Eligible inmates could receive up to 15 days of good time for every 30 day served. The bill had a delayed effect of enactment in July 2022, intended for VDOC to have time to develop new system and recalculation.

18. In Nov. 2020, TIKKI HICKS and BRIAN DAWSON moved all VCE workers in 1B Dorm, forcing inmates to work six to seven days a week. Some inmates getting over first COVID-19 wave of 2020.

19. On Jan. 8, 2021, BRIAN DAWSON yelled at Correction Officer (CO) Hudnal, VCE's CO, to call back to 1B Dorm and find out why a number of inmates had not reported to work. He yelled they better have an excuse. Plaintiff stood in Dawson's doorway and told him, "You know they're sick in the dorm right?" DAWSON pulled his mask up and quiet his inquiry. BRIAN DAWSON however, keep the shop open that Friday and Monday, Jan. 11, 2021.

20. On Tuesday, Jan. 12, 2021, BRIAN DAWSON keep VCE open until an inmate, Inmate O who lived on bunkbed 7 bottom with living-area (B), went to HCC medical department and tested ~~positive~~ for COVID-19. BRIAN DAWSON was then forced to shutdown VCE. Dorm 1B went on quarantine, however, living-areas remained the same, never affording inmates six feet social distance, infrastructure, nor partitions to sequester inmate's living-space. Plaintiff at all times during pandemic wore face mask when proper, wash his hands constantly after touching surfaces, phones, microwaves, door handles, ect.

21. Inmate O's COVID-19 test was positive and HCC medical tested 1B Dorm on Friday, Jan. 15, 2021. That Saturday Plaintiff was placed in segregated housing due to contact tracing.

22. On Jan. 18, 2021, Plaintiff's COVID-19 test returned positive. (Exhibit #4). Around 4:30pm he joined about 25 other 1B Dorm inmates in HCC visiting room for quarantine. Inmate 3 had also tested positive who lived 3ft away from Plaintiff.

23. Plaintiff and others was forced to sleep on the visiting room floor. By that he began to experience shortness of breath with difficulty breathing, and coughing on that January 18 through the 19, 2021 night due to cold air on the concrete floor. Plaintiff and others laid on a three inch mattress. Grievances filed by Plaintiff and others went un-answered but they continued to verbally complain.

24. During the day of Jan. 19, 2021, while Plaintiff and others were suffering from COVID-19 infection and sleeping on the floor, in the gymnasium next door was HCC administration and staff receiving their first dose of the COVID-19 vaccination. Around 4:30pm as she was leaving, Warden TIKKI HICKS asked Plaintiff and others how they was doing and he expressed his injuries and them

being COVID-19 patients sleeping on 3 inch mats on the concrete floor. Cotes was brought in around 5pm into the visitation room.

25. Later that week Plaintiff and others relocated to 2A Dorm where other inmates was quarantining. Roger Teal, the Type 2 diabetic who qualified for COVID-19 Pre-sponse Early Release in June 2020 was still at his same bunk. He was now past his original release date due to contracting the virus in Jan. 2021.

COVID-19 Long Haul and VCE

26. During the month of Feb. 2021, Plaintiff's COVID-19 injuries worsen. He had difficulties breathing, chest pains, headaches, and had begun to break out in rashes. (Exhibit # 5)

27. On Feb. 23, 2021, before returning to VCE, Plaintiff signed up for a post COVID-19 Check due to growing concern for medical issues.

28. On Feb. 26, 2021, Plaintiff was diagnosed with COVID-19 Long Haul, hypertension with a blood pressure (bp) of 145/105. (In March 2020 it was 125/85). He began taking bp medication. He was treated for his rashes being prescribed Hydrocortisone Cream and Loratadine. Excedrin for head aches. (Exhibit #6).

29. On March 1, 2021, EO 55 mid-night curfew was lifted and outdoor social gatherings was moved from 10 to 20 individuals. VDOC also began transferring inmates from facility to facility later that month.

30. After returning to work in March through April 2021, Plaintiff continued to experience shortness of breath, headaches, confusion, fatigue, and his coughing became worse. Hypertension would cause him to experience vibrations or shakes or twitches, confusion, and high levels of anxiety. (Exhibit #7).

31. VCE manager BRIAN DAWSON continued to behave in an abusive pattern towards his post COVID-19 inmate workers. He would require inmates to work multiple job positions and tripled their workload with long hours and weeks. VCE's Embroidery Department two snip table positions remain vacant. The job took skill and precision to prevent damaging expensive fabrics and material, keeping re-orders to a minimum. Plaintiff already worked two job positions, Shipping clerk and Quality Control. Now he was forced to fill the two snip table positions himself.

32. On March 25, 2021, Embroidery Supervisor took a long term for sick leave.

33. New transferred inmates began joining VCE workers program. With pressure building on Plaintiff health due to COVID-19 Long Haul, he began expressing to BRIAN DAWSON the need for help. Plaintiff's cough continued to worsen and medical determined he was allergic to his bp meds, and stopped his treatment per medical department, having bp checks twice a week. He was then

prescribed water (h 20) pills. (May 2021, Exhibit #8).

34. On April 19, 2021, Plaintiff expressed to BRIAN DAWSON that he could not accomplish all three to four jobs effectively himself and that he needed permanent help at the Embroidery Snip table. BRIAN DAWSON and lead-man Belk both agreed.

35. On April 21, 2021, three new inmate workers began VCE work program. During their early morning orientation, Plaintiff had an opportunity to mention to BRIAN DAWSON about filling in one of the snip table positions with one of the new workers. He agreed. However, after their orientation, the three workers went to the plant floor to work, leaving snip table vacant.

36. Due to the workload and BRIAN DAWSON's deliberate indifference, Plaintiff then experienced a high level of anxiety and confusion which caused a shock to his nervous system. Remembering that his COVID-19 Long Haul caused such symptoms, Plaintiff felt it best to tell his lead-man, Belk, that due to abuse he was suffering from BRIAN DAWSON's gross negligence, he needed to leave in order to seek mental health. Plaintiff informed CO Hudnall and explained BRIAN DAWSON's refusal to provide relief of his extra workload, caused Plaintiff problems mentally and he needed to seek medical help and get answers as it relate to COVID-19 Long Haul. That usually he'd tough it out but the situation now seemed different (Exhibit #1).

37. On April 22, 2021, Plaintiff formally requested mental health and made Unit Manager aware.

38. On April 27, 2021, Plaintiff reported back to VCE and talked to BRIAN DAWSON with CO Hudnall present. Plaintiff informed BRIAN DAWSON that he filed a 'Written Complaint' that morning and was reporting to work to assert VCE Apparel Shop Rule (2020) #1, #19, and #26. (Exhibit #9). That Rule 19 gave Plaintiff 30 days of medical leave, before BRIAN DAWSON could "consider" terminating him. BRIAN DAWSON told Plaintiff he wasn't filling the vacant positions. Plaintiff stated he would then need to seek mental health, then, before returning to the same conditions and situations, in order to understand the effect COVID-19 had on him mentally and that put a post COVID-19 patient through so much physical toll wasn't right. BRIAN DAWSON then told Plaintiff not to return unless he obtained a medical excuse. (Exhibit #10).

39. Also, on April 27, 2021, the CDE raised restrictions on indoor and outdoor events.

40. On April 29, 2021, after receiving an attachment survey from mental health and filling it out submitting it, Plaintiff reported to VCE and informed Supervisor Lewis that the mental health process was moving forward seeking counseling and obtaining his medical excuse. BRIAN DAWSON then yelled at Lewis for calling Plaintiff to work and explain what was happening.

41. On May 4, 2021, BRIAN DAWSON responded to Plaintiff's 'Written Complaint'

that ended by stating "Job terminated 5/4/21," retaliating on Plaintiff by terminating him from VCE program even after Plaintiff asserted Appareil Shop Rule # 19. (Exhibit # 12).

COVID-19 Long Haul and Fungus Infection

42. In May of 2021, Plaintiff moved from VCE's workers 1B Dorm to 2B Dorm.

43. On May 20, 2021, Marine Chemist Service, Inc. analyzed a sample "EM-Tape 2.1" for W. Peyton Alkers, Esq., from HCC's 2B Dorm. The report indicated that the building had:
"Hyphal elements presence in indoor sample in a high quantity or as large segments indicate active fungal growth in the building. If the conditions are suitable, the hypha fragments begin to grow and eventually also lead to mold spore production. The moderate level of hyphal elements here indicate active fungal growth in the building." (Exhibit # 13).

44. Between June and July 2021, Plaintiff began complaining of, what was determined, to be, fungus on his rear-end and groin area. He was first prescribed Anti-fungal creams and a powder. Plaintiff also began to sweat pervasively. The infected areas would continue to sweat or dampen throughout the days. Plaintiff also began complaining about burning in his bladder.

45. In July 2021, because the fungus remained, before she left HCC medical department, Nurse Practitioner Hammonds prescribed a ~~seven~~ ^{seven} day 'Diflucan' treatment. (Exhibit # 14).

46. After several failures attempts to receive the Diflucan treatment, Plaintiff signed up for sick call on August 2, 2021, and asked Dr. LEONARD LEVIN ~~seven~~ ^{seven} day treatment for Plaintiff's fungal issue prescribed to him by Practitioner Hammond. However LEONARD LEVIN claimed he never heard of the treatment and told Plaintiff he would never get rid of the fungus. Plaintiff had also by then began breaking out with black head pimples, different from white head pimples in that no pus developed, and instead skin would pill off when wiped with a hot face cloth, exposing flesh and blood. Plaintiff insisted the black head pimples would only appear after exercising out in the sun. LEONARD LEVIN contended that it was acne and prescribed acne Benzoyl Peroxide Gel and Clindamycin Phosphate Solution. Plaintiff would stop going out in the sun for two to three weeks in order for the black head pimple break out to subside, but they would break out immediately after he would exercise again in the heat and sun. Other inmates would comment regularly about how abnormal the breakout looked.

47. Plaintiff also complained about a specific rash and dot on his left hand. The dot would develop red line in it, then break the dot out into an open rash. He was prescribed Hydrocortisone cream.

48. Plaintiff was taken of bp water pill because of an odor. He began drinking 8 cups of water per day. Bp checks ended during Aug. 2021 until the following summer. Head aches continued so was complaints.

49. Plaintiff's rear-end and groin fungus infection vanished Jan. 2022 through Feb 2022. Black head pimples subsided for the same time frame, then both resurfaced soon as temperatures

rouse in March 2022. Plaintiff continued complaining about head aches, blood pressure, rashes, black head pimples, and his fungus infected rear-end and groin area, throughout Spring and Summer 2022. (Exhibit #15).

New Administration

50. During the 2021 Governor's race, candidate McCullough led until his last debate stating that parents should have no say in what schools teach their children. Governor Glenn Youngkin won by a narrow margin. Governor GLENN YOUNGKIN and his Attorney General JASON MIYARES campaign vindictively ran against "decarceration" and pushed for un-Biblical and merciless system of mass incarceration, when all health science pointed to six feet social distancing in order to save lives during the COVID-19 era.

51. COVID-19 outbreaks continued regularly at HCC through all waves of 2021, 2022, and 2023. After taking office in January 2022, A.G. JASON MIYARES fulfilled campaign promises by swiftly firing the Parole Board for exercising judgement, mercy, and equity. He also terminated the Conviction Integrity Unit lawyers who on wrongful convictions. The administration then launched attempts to repeal HB 5148 which would cause the release of up to 4,500 inmates, who patiently waited for a year and months, to stop.

52. In June 2022, A.G. JASON MIYARES stated during an interview that, "we're trying to make the best out of a horrific situation... This is one of the most disturbing public policy issues I've seen since taking office," discussing HB 5148 and its enactment in July 2022. (Exhibit #16).

53. On June 17, 2022, the Virginia General Assembly approved a budget amendment change, which was purposed by Gov. GLENN YOUNGKIN to mercilessly decrease the number of stat eligible ESC(2) inmates. Many would not be released or eligible for the policy that would have freed up space in VDOC during the current and future COVID-19 waves. A memo of the disappointment went out June 24, 2022. (Exhibit #17).

54. After July 1, 2022, VDOC Court and Legal failed to apply ESC(1) and (2) good time to eligible inmates entire sentence and held other inmates, who's offenses were not enumerated in the bill, as ineligible who had inchoate offenses.

Eczema and Fungus Infection Breakout

55. In Sep. 2022, Plaintiff notice the rash on his left hand spreading. He saw

Dr. Roberts who gave him Hydrocortisone 2.5% and placed him on BP checks for a month. His readings was much higher and some normal through the month.

56. At the end of the month and through November 2022, Plaintiff's left hand rash continued to increase by spreading and began to crack and tear his skin into open sores. Rash also began to develop on his right hand, upper and lower torso, under arms, arms, neck, and privets. The infection on his rear-end and groin began to crack and skin between his privet and anal tore over and over. Plaintiff could not run or stretch.

57. By Nov. 18, 2022, both Plaintiff's eyes was red around the skin and face covered with rash. He was able to see the Nurse Practitioner who immediately identified the rash on his face and around his eyes as a fungus infection. She prescribed him three 'Diflucan' Tablets to be taken throughout the course of six days. He was also prescribed an antifungal cream, more Solution, Calmoseptine ointment. (Exhibit #18).

58. The infection continued to spread and covered $\frac{3}{4}$ ths Plaintiff's body. Plaintiff could not sleep through the day or night. His skin itched continually. His skin was red, warm, and painful sores on his body. Plaintiff complained of lymph nodes swelling in his groin, ~~and on his neck and face~~ on November 22, 2022.

59. On December 2, 2022, Plaintiff saw Dr. LEONARD LEVIN who examined Plaintiff's injuries and issues seven 'Diflucan' Tablets to be administered over the upcoming two weeks. He also issued Nystatin Ointment USP.

60. However, on Dec. 19, 2022, Plaintiff saw Dr. Roberts. They first discussed Plaintiff's hypertension diagnosis and him being a chronic care patient and placed him on bp medication. They then discussed more 'Diflucan' treatment due to injuries continuing to spread and worsen. Notably, Plaintiff's blackhead pimples on his forehead had cleared and smoothened out, but now the rash began to appear there. While discussing a possible blood work-test; Dr. Roberts went and got Dr. LEONARD LEVIN and they both examine Plaintiff's injuries. The two came under the impression to diagnose the rash as eczema, possible Atopic Dermatitis. Plaintiff asked to see a Dermatologist and was told to first take a Steroid treatment for six days. Both doctors stated the eczema was due to Plaintiff's body reacting to COVID-19 infection.

61. Plaintiff began Steroid treatment on Dec. 28, 2022, understanding that stress is known to trigger eczema outbreaks.

62. The treatment ended on Jan. 3, 2023, clearing up about 70% of the infected area. The treatment looked very promising.

HCC Petaliate

63. On Nov. 30, 2022, Plaintiff began exhaustin administrative remedies due to DA. LEONARD LEVID's deliberate indifference to Plaintiff medical issue.

64. On Dec 15, 2022, Plaintiff called his brother Anthony Simpson Jr. (A. Simpson), on A. Simpson's girl-friends phone. A. Simpson began questioning Plaintiff about his medical issues. Plaintiff explained. A. Simpson asked Plaintiff if he wanted him to call HCC? Plaintiff replied "no". A. Simpson sound very concerned for his brother. Later in the conversation, A. Simpson asked his own phone, via voice command, for HCC's phone number. Plaintiff repeated to A. Simpson's girl-friend phone that he did not want A. Simpson to call the prison, or something to that affect. A. Simpson then placed his girl-friend's phone on the other side of his bed while A. Simpson call and talked to Captain Bossie in a respectfull tone out of concern for his little brother. Bossie repeatedly told A. Simpson to tell his brother to file a complaint. A. Simpson spoke into his girlfriends phone telling his brother that. Plaintiff responded that he did to A. Simpson. Bossie then tells A. Simpson she can hear his brother and A. Simpson end his brother's call on his girl-friends phone. (Exhibit # 26).

65. Later that night, because Plaintiff had not received a reply to his 'written Complaint' he files his grievance. (Exhibit # 21).

66. On that weekend, of Dec. 17 and 18, 2022, Plaintiff's mom and god-mother calls HCC expressing their concerns.

67. Plaintiff's grievance was denied Dec. 22, 2022, he appealed to Regional (Exhibit # 21).

68. On Dec. 26, 2022, Plaintiff's mother visited him for the first time in two years. CAPTAIN D. C. JACKSON strip search Plaintiff upon entering and exiting. Plaintiff was never asked about his visable medical need, but he was ask who came to see him. Plaintiff replied that it was his mom. Plaintiff mother witnessd his injuries. However, that was the last time she was able to sign up on line for visit. (Exhibit # 28).

69. On Dec. 27, 2022, Regional Ombudsman M. Cosby denied Plaintiff's grievance on appeal stating that, "I will follow up with facility. Plaintiff's 1983 Complaint requesting injuntive relief was now ready. (Exhibit # 21). Plaintiff began having several phone conversations with his mother, in order to obtain Defendant's employment addresses, over the institutional phone system. Unbeknownst to Plaintiff, he was now under investigation allegedly. (Exhibit # 29, pg 5, Question # 1)

70. Plaintiff began his steroid treatment for his eczema / fungus on Dec. 28, 2022, and ended Jan 3, 2023, understanding stress is know to trigger outbreaks.

71. On Jan. 4, 2023, Plaintiff had his § 1983 Complaint notarized around 9:30-10:00 am. (see COMPLAINT pg 20). Around 10:58 am, Investigator S.C. KING submitted his results from a 20 day investigation, charging the Plaintiff with a fabricated offense of 'Unauthorized Use of Mail or Telephone' alleging that:

"While investigating GTL phone calls it was found where T. Simpson was talking to his brother about a medical issue when his brother 3 way called HCC and talked to Capt. Bossie about the problem. Inmate Simpson could be heard on the phone call and when Capt. Bossie stated she heard inmate Simpson the call ended" (Exhibit # 25).

CAPTAIN D.C. JACK, at 6:30 pm later that night, became the Officer-in-Charge bring or approving the charge against the Plaintiff. Around 8:15 pm Plaintiff was served with his first institutional charge, the very same day he had his § 1983 Complaint notarized, which charge had also revealed that he had been under investigation during the time he was exhausting his administrative remedies, searching for Defendants service addresses, and searching for and undergoing medical treatment. (id).

72. On Jan. 5, 2023, Plaintiff filed 'Written Complaint' alleging retaliation for him filing § 1983 and filing grievance because his brother made no 3 way call. On Jan. 18, 2023, MAJOR A. WHITE called Plaintiff to resolve the complaint. Plaintiff explained the phone call as described herein and his medical issues, which was still visible. MAJOR A. WHITE made a verbal ~~agreed~~ agreement that if the call happened the way Plaintiff said it did, as described in paragraph 64, that it was not a "3 way" call. He said he would testify to that at Plaintiff's hearing. Plaintiff agreed to withdraw complaint based on those conditions. (Exhibit # 27).

73. On Jan. 6, 2023, Plaintiff asked S.C. KING questions, via 'Reporting Officer Response Form', also informing him of Plaintiff's serious medical condition and that the stress he was causing Plaintiff may worsen his condition because of the "mental, physical, and emotional" damage HCC was now placing him under, via institutional infraction. He also informed S.C. KING and S. W. ALLEN that the infraction was retaliation for Plaintiff filing his § 1983 Complaint and part of an ongoing "Campaign of harassment" which violates Plaintiff Fourteenth Amendment rights. Also, that "failure of VPOC administration to answer the question on this page can be used as evidence in future further adjudication". (Exhibit # 29).

74. On Jan. 23, 2023, Plaintiff had his disciplinary hearing pleading "Not Guilty". At the onset he objected to several due process violations of: (1) O.P. 861 § IV(1)(6) and § XI for not first providing an advisor to assist Plaintiff in calling his brother A. Simpson and Capt. Bossie as witnesses; (2) Plaintiff requested adjournment in order to request witnesses. Plaintiff's objections was denied. Plaintiff then objected to the phone call recording evidence pursuant to O.P. 861.1 § II in that the hearings "Practice and procedure shall comply with applicable State and Federal laws..."; and the phone call recording was not authenticated, and there

was reliability concerns because the Plaintiff believed the recording was manipulated due to: (1) not being able to hear the Plaintiff's voice; and (2) the call seemed to be cut and pasted parts from Plaintiff on his brother's girl-friend's phone and his brother on his phone talking to Capt. Bossie on HCC's line. However, Plaintiff's objections was overruled by hearing officer S.W. ALLEN. She then found him "guilty", issuing an "Informal Resolution" which would cause the charge to desolve if the Plaintiff remained charge free for a year. (Exhibit #30 and #31(B)).

75. On Jan. 24, 2023, Plaintiff tried to explain his due process violations to U.N. DOBYNS, who has final approval over findings of disciplinary hearings. However, U.N DOBYNS had already signed and "Approved" S.W. ALLEN's findings, penalizing him with a 'Reprimand'. Plaintiff answered that he did want to appeal. (Exhibit #30).

76. During the end of January and beginning of Feb. 2023, Plaintiff had a conversation with Warden TONY DARDEN. Plaintiff asked him what a 3 way phone call was? TONY DARDEN answered, something to the effect of, "When I pick up a phone and call person 1 and he clicks over and ~~and~~ 3 way call person 2, then merge all three parties together on one same line." He told Plaintiff to appeal, which Plaintiff already had. However, on Feb. 16, 2023, the Warden ~~replied~~ replied to appeal stating: "The decision of the Hearing officer was to give you an Informal Resolution. This does not go on your record. Informal Resolutions are not able to be appealed." (Exhibit #31(A)).

77. Since Plaintiff's mother visited him on Dec. 26, 2023, and witnessed his injuries, she then became unable to sign up online for contact visits. She had to call and schedule a visit. Once they scheduled the visit for a prison in Northern Virginia instead of HCC. She is still denied the right.

78. On July 16, 2023, She was denied the minimal amount of time for a visit with the Plaintiff on CAPTAIN D.C. JACKSON's watch, after she arrived at HCC an hour and a half late for a visit she had to call and schedule days in advance, due to flash flood advisories she traveled through, losing a windshield wiper. That caused a detour, while she drove sitting in the middle seat of her vehicle in order to see the road. The visit was scheduled for 12:30 - 2:30 pm. The Flash Flood advisories was issued around 11:00 am. Between 1:50 - 2:00 pm, after Plaintiff's mother hadn't arrived, Plaintiff was told by staff that he could leave and return to his dorm. CAPTAIN D.C. JACKSON came to strip search Plaintiff and other inmates entering for their 2:30 pm visit. D.C. JACKSON followed Plaintiff out as he headed back to his dorm, looking towards him while others was waiting to be stripped searched by him and changed into visitation jumps. Around the same time Plaintiff's mother, Melissa Williams, arrived and tried to get staff's attention, which took several minutes. Plaintiff was called to his dorm's booth around 2:10 pm and told his mother had arrived. He asked the CO in the booth if they were going to be

allowed the minimum time of an hour for their visit because it was going to be over by the time he was strip searched. After making a call, the CO told Plaintiff "no," that the person on the other end of the phone said "no" they won't be allowed the minimum time for visitation, their visit ended at 2:30 pm. Plaintiff reasoned that by the time he'd make it back to the waiting area, be subject to another degrading strip search by CAPTAIN D.C. JACKSON, put his visitation clothes on, and enter the visitation room, it would be well passed 2:30 pm when the visit ended. Also because there was other inmates ahead of him for their 2:30 pm visit. Plaintiff filed a complaint on the issue of not being allowed the minimum time afforded him and his mother for contact visit by O.P. of one hour by CAPTAIN D.C. JACKSON on July 16, 2023, a denial of constitutional rights.

79. After filing the above grievance, on July 19, 2023, Plaintiff submitted a routine money order request for his court-ordered video visits with his children for July 27, 2023. However, S.C. KING approved the request on July 21, 2023, but kept it, withholding sending the request to the business office until July 26, 2023, causing the Plaintiff and his sons to miss their July 27, 2023, visit. (Exhibit #33).

80. The following week, Plaintiff was told that all video visits was canceled, but his son sat waiting for him to show up, being able to view and hear the empty visit. As of November 1, 2023, all video visits was canceled without official notice or posting.

III. LEGAL CLAIMS

81. The Plaintiff is suffering from physical, mental, and emotional pain due to prison conditions, COVID-19 infection which resulted in COVID-19 Long Haul, fungal infection at Haynesville Correctional Center (HCC), risk of further injuries while in Virginia Department of Corrections (VDOC) as a ward of the state, eczema outbreaks, and from a campaign of harassment by prison officials in retaliation of Plaintiff exercising his protective conduct. (Exhibit #35).

82. Humanity has faced a medical crisis which, not only killed hundreds of thousands of Americans, but is now revealing that it has altered the long term health of individuals who contracted COVID-19 and survived, and that the best protection was not to have contracted COVID-19 at all.

83. Plaintiff challenges that prison conditions in Security Level 2 VDOC facilities, of housing Seventy-four (74) individuals in an estimated 3750 square foot (ft²) living-space or 48,300 ft³ air-space, is no longer human and imposes a serious medical risk each COVID-19 cycle, flu cycle, Rsv cycle, and common cold cycle, preventing his personal interest in protecting his health during this post COVID-19 pandemic era.

84. Plaintiff's physical appearance has changed due to COVID-19 Long Haul. His eczema/fungal breakout covered over two-thirds his body leaving physical scars on his arms, hands, face, neck, ears, upper torso, thighs, and privates. Hypertension has affected him mentally and emotionally as a prisoner.

A. Cruel and Unusual Punishment / Prison Conditions

Standard of Review:

85. The Eighth Amendment of the United States Constitution, applied to the state by the Fourteenth Amendment, prohibits "cruel and unusual punishment", and protects inmates rights to safe and somewhat decent conditions in prisons. Eighth Amend. prohibits only "cruel and unusual punishment" and "the infliction of punishment is a deliberate act intended to chastise or deter." Wilson v. Seiter, 501 U.S. 294, 297-303 (1991). The Wilson court reasoned that, "some mental elements must be attributed to the inflicting officer before it can qualify as cruel and unusual punishment." id at 300.

86. A prisoner must demonstrate: (1) a "sufficiently serious" deprivation of "the minimal civilized measure of life's necessities;" and (2) that the official acted with a "sufficiently culpable state of mind," known as "deliberate indifference" standard. Wilson, 501 U.S. at 298.

87. The "totality of the conditions" theory may be used arguing that even though certain

conditions might not be unconstitutional on their own, they add up to create an overall affect that is unconstitutional. Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999).

Causation and Injuries:

88. SARS-CoV-2, famously known as Coronavirus Disease and COVID-19, is an airborne pathogen disease causing infection by targeting a molecule on the walls of the cells lining the lungs and the blood vessels leading to injury. The Coronavirus Disease-19 is the biggest medical challenge in decades resulting in a global pandemic. (<http://www.goodrx.com/COVID-19>).

89. COVID-19 "spread mainly through close person to person contact and respiratory droplets. Close contact is considered being within 6 feet of one another." (Exhibit #23). Air borne respiratory droplets quickly spread when someone sneezes or coughs and its droplets landing on individuals or surfaces.

90. Injuries of COVID-19 contractions begin by one having symptoms of the upper respiratory sinus infections such as runny or congestive nose, head ache, and sore throat. The infection then travels to ones lower respiratory causing coughing or trouble breathing. COVID-19 affects the lungs, causing bronchitis, then if conditions worsen, one develop interstitial pneumonitis and severe acute respiratory distress syndrome, resulting in deaths to thousands.

91. However, if one recovers from their COVID-19 infection, long term injury may have accrued called COVID-19 Long Haul or Long Covid.

92. The injury to the "molecule on the walls of the cells lining the lungs and the blood vessels" and "the damage sustained by these cells may have long-term consequences including blood pressure, stroke, and heart attacks." id.

93. LOCHINVAR, which is a study based on a pilot study "COVID-19 blood pressure endothelium interaction study," revealed that "patients with normal blood pressure at the time of hospital admission with COVID-19 showed a nine-point higher blood pressure $\geq$ 12 weeks after recovery compared to a group without COVID-19." (<https://www.goodrx.com/covid-19>).

94. Hypertension is the state of having high blood pressure, which is above the normal range of no more than 120/80. There are two types of hypertension. Essential Hypertension is when the cause of the increased pressure is unknown or idiopathic. The other is Secondary Hypertension where there is an associated lesion responsible for the elevated blood pressure. Your blood pressure elevating can cause, among a number of issues, cardiovascular conditions.

95. According to the Center for Disease Control and Prevention, "COVID-19 associated fungal infections can lead to severe illness and death." ([cdc.gov/fungal/c](https://www.cdc.gov/fungal/c)) (Fungal Diseases and COVID19).

To determine if someone has a fungal infection, laboratory test is necessary. id. Having a COVID-19 and fungal infection at the same time can be deadly. Mucormycosis, also known as "black fungus", and an early diagnosis have four major factors to eradicate it: (1) early diagnosis; (2) removal of predisposing factors; (3) timely antifungal therapy with surgical removal of all infected tissues; (4) and adjunctive therapies.

96. Eczema is an inflammatory condition of the skin and most is caused by stress. There is seven different types of eczema: atopic dermatitis, contact dermatitis, dyshidrotic eczema, neurodermatitis, nummular dermatitis, seborrheic dermatitis, and stasis dermatitis. Dr. LEONARD LEVIN and Roberts stated that Plaintiff's COVID-19 infection caused his rare eczema/fungal breakout, reaction of COVID-19 LONG HAUL.

CLAIM I. THAT TIKKI HICKS, HAROLD W. CLARKE, AND BRIAN DAWSON PROVIDED PLAINTIFF WITH UNSAFE PRISON CONDITIONS BY FAILING TO PROVIDE PLAINTIFF WITH SIX FEET SOCIAL DISTANCING LIVING SPACE WHICH CAUSED PLAINTIFF TO CONTRACT THE COVID-19 VIRUS, VIOLATING PLAINTIFF'S RIGHT PROTECTING HIM FROM CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

97. TIKKI HICKS and BRIAN DAWSON overcrowded 1B Dorm with 70 plus inmates, sharing 3750 ft² living-space and 48,300 ft³ of air space, forcing Plaintiff to share a 3ft living-space with another inmate, ~~which~~ caused him to contract COVID-19 because Inmate 1 was four bunks away from him, ~~and 3 ft away~~ Inmate 3 contracted the virus, and BRIAN DAWSON's omission and failure to report possible COVID-19 infections in his 1B Dorm workers pod, because he could have prevented further spread of the virus, which amounts to gross negligence. (¶¶ 7, 16)

A. Deprivation of "Basic Human Needs" / Objective Evidence:

98. Failure to reasonable shelter and sanitation is a deprivation of basic human need which is sufficiently serious. Also, COVID-19 is an airborne pathogen making overcrowding a violation of those basic human needs. Failure to provide Plaintiff six feet social distancing to protect him from contracting COVID-19 deprived Plaintiff of his Constitutional right to be free from cruel and unusual punishment and is a "sufficiently serious" deprivation. "[T]here exists a clearly established right for individuals in custody to be free from heightened exposure to a serious, easily communicable disease" and that "precedent clearly establishes the right of an individual in custody to protection from heightened

exposure to a serious disease." Maney v. Brown, 464 F. Supp. 2d 1191 (D. OA 2020) and (Maney v. Brown, 2021 U.S. Dist. LEXIS 19665. In 2020, Dr. Fred Rothneth, Professor and Director of Community Medicine at Saint Louis University, former Medical Director and Lead Physician for the Corrections Medicine Division of the Saint Louis County Department of Health, concluded in Coreas report, after examining prison conditions in a prison during the COVID-19 pandemic, that "enforcement of social distancing, [I] remains the best line of defence against COVID-19." Coreas v. Bounds, 2020 U.S. Dist. LEXIS 171386 (4th Cir).

99. Plaintiff basic human right to six feet social distancing in order to protect himself from contracting COVID-19, was deprived from him by warden TIKKI HICKS, Director HAROLD W. CLARKE, and VCE manager BRIAN DAWSON. Furthermore, Gov. Ralph Northam made six feet social distancing law through Executive order 55. (115). Plaintiff's infection resulted in his COVID-19 Long Haul.

b. Causal Connection:

100. TIKKI HICKS, HAROLD W. CLARKE, and BRIAN DAWSON caused Plaintiff Constitutional harm by their actions and omissions.

101. Many prisons across the country provided inmates social distancing by implementing policies in order to afford inmates 6 feet living-space. "Prisoner had not demonstrated 8th Amend. violation of officials actions to COVID-19 because state officials had relocated inmates within and in some cases between facilities to increase space, and they committed to implementing the amount of physical distancing" and had "directed state officials also to take steps to reduce the prison population." Plata v. Newsom, 445 F. Supp. 3d 557 (2020), and "thinning out the population" and dorm beds were spaced more than 6 ft apart. Coreas, 2020 (4th Cir).

102. The Plaintiff contracted COVID-19 by the defendants overcrowding 1B Dorm with 70 plus inmate workers in order to keep VCE running. French v. Owens, 777 F.2d 1250 (7th Cir. 1985) (must show that overcrowding caused serious deprivation of basic human needs such as sanitation). Sharing a 3ft living area with three other individuals was unsanitary. One of the individuals, Inmate 3, contracted the virus and cause the Plaintiff to become infected thereafter. The virus moved from Inmate 3 at 7 Bunk towards Plaintiff at 11 Bunk.

103. Brian Dawson also caused Plaintiff's injuries by waiting for the medical department to shut down VCE four days after he knew inmates in his workers program was sick with COVID-19 symptoms. Multiple inmates failed to show up to work for days. Their absences caused BRIAN DAWSON to make a scene when he yelled at CO Hudnall to call and see where everyone was. The Plaintiff also told him about the illnesses. (see 119). Still, four days went by from then before Inmate 3 went to medical and the worker pool was shut-

down. The omissions of Brian Dawson, and the gross negligence of him and TIKKI HICKS in failing to provide 6ft social distance, before and after 1B Dorm's lockdown, caused Plaintiff to contract COVID-19 from Inmate 3 who was 3ft away from him. He now suffers from COVID-Long Haul.

C. Deliberate Indifference/Subjective Evidence:

104. Plaintiff must now show that the Defendants acted with a "sufficiently culpable state of mind." Wilson, 501 U.S. at 298. The Defendants must have "knew that an inmate faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it." Farmer v. Brown, 511 U.S. 825, 838-42 (1994).

105. First, the Defendants must have knew of the condition. TIKKI HICKS and HAROLD W. CLARKIE knew or had reason to know of the risk they was taken of causing injury to another by not providing inmates with 6ft of social distancing, due to the April 8, 2020 suit which was filed against them both. Whorley et al. v Northam, Case No. 3:20-cv-00255. (see it 9, 13, and 14).

106. Further more, the Virginia General Assembly provided HAROLD W. CLARKIE and TIKKI HICKS with an 'Early Release COVID-19 Response Plan' affording them the ability to release inmates a year early before their release date, if the qualified. However, TIKKI HICKS and HAROLD W. CLARKIE held inmates, who did qualify, until 40 to 30 days before their original release date, instead of the year allowed. Some inmates like Roger Teal (see it 15), who qualified for release early, was held all the way to their release date and then had to stay longer due to contracting the virus. The Defendants was given the proper tool to use in order to free up prison space at HCC during the pandemic, but they choose not to use it reasonably in order to afford inmates 6ft social distancing space. This is deliberate Indifference and proves that the prison officials purposefully ignored it, the unsafe prison conditions of inmates not having 6ft social distance. This also amounts to gross negligence and an unreasonable response.

107. Therefore, TIKKI HICKS And HAROLD W. CLARKIE unreasonably disregarded the risk COVID-19 posed on overcrowding. They failed to take reasonable measures to abate infections and the spread of COVID-19 at HCC, by ignoring the tool of the 'Early Release Plan', but instead held inmates until they was 40 to 30 days away from release, instead of the year mark. Defendants did not care to give Plaintiff 6ft social distance which was afforded to him by law of EO55.

108. Other measures the Defendants could have taken or used, was providing infrastructure or partitions to separate inmates living space. The Defendant failed to take reasonable measures to abate harm."

109. BRIAN DAWSON also knew that inmates faced a substantial risk, as described earlier, and disregarded the slites care by failing to respond reasonably. When he knew inmates was not showing up to work because they was sick, he should have contacted officials in order to respond in a reasonable way to

COVID-19 threat with correct policies.

110. The Defendants broke the law implemented through EO55 by failing to afford Plaintiff the basic human decency of left social distancing in order to protect himself from ever contracting the COVID-19 virus, which threatened his life and because of his infection his constitutional right to be protected from cruel and unusual punishment is violated everyday due to Plaintiff suffering from COVID-19 Long Haul injuries of Hypertension, eczema / fungal infection, causing mental, psychological, emotional, and physical damage to Plaintiff's person. (see rr 5).

d. Exhaustion of Legal Remedies:

111. Plaintiff used the prison grievance procedure available at HCC on ~~February 10, 2021~~ February 10, 2021, facts presented relating to complaint; March 23, 2021 denied; March 24, 2021 appealed denial of grievance (Exhibit #19).

112. And Plaintiff presented more facts relating to complaint Nov. 4, 2021; and on Nov 5, 2021 denied; on Nov 8, 2021, appealed grievance. (Exhibit #20).

CLAIM II. THE UNSAFE PRISON CONDITIONS TIKHI HICKS EXPOSED PLAINTIFF TO BY FORCING HIM TO SLEEP ON THE VISITATION ROOM CONCRETE FLOOR AND PLAINTIFF BEING INFECTED WITH COVID-19 VIOLATED PLAINTIFFS RIGHTS AND CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

a. Deprivation of "Basic Human Needs" / Objective Evidence

113. TIKHI HICKS the Warden at HCC knew or had reason to know that having inmates, who just tested positive for COVID-19, was sleeping on her visitation room concrete floor. (see rr

114. Plaintiff had tested positive for a virus that attacks ones respiratory system. The Defendant knew or had reason to know that exposing Plaintiff to a cold concrete floor to sleep on while suffering with COVID-19, would add to Plaintiff's physical, mental, psychological, and emotional injuries. Plaintiff began coughing and finding it hard to breath. Cold air entered into his already contracted lungs. He was unable to sleep. (see rr 22-24).

115. The American Correctional Association 18 prohibits inmates from having to sleep several inch from or on the floor in such a manner. Therefore, Defendant's conduct put Plaintiff at serious risk of further COVID-19 harm and injury, possible death. Also, it contributed to his COVID Long

Haul. The emotional injury effects the Plaintiff now and his fear of contracting the virus again due to the prison officials' conduct. Plaintiff's basic need of shelter and sanitation was inhumanly violated causing cruel and unusual punishment in violation of the 8th Amend. causing him to feel less than a human.

b. Deliberate Indifference:

116. Plaintiff must show that Defendant acted with a "sufficiently culpable state of mind." *Wilson*, 501 U.S. at 298. *TIMOTHY HICKS* must have "knew that an inmate faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 838-42 (1994).

117. Defendant knew or had reason to know the health of the Plaintiff as explained in CLAIM I. and the medical risk to injury he faced along with the other 20 plus inmates who positive test returned positive. As Warden, she knew or had reason to know 20 plus inmates were being quarantining in her prison. She also knew or had reason to know they would be sleeping on the concrete floor. Plaintiff wrote an emergency grievance but never received a receipt or response. see *Pole v. Chandler*, 438 F.3d 804, 811-12 (7th Cir. 2006) (PLRA exhaustion requirement inapplicable when grievance timely placed in mail but lost and never received by prison board). Video evidence would testify to that. (CLAIM II Exhaustion of Legal Remedies)

118. Not only did the Plaintiff file a grievance, but other inmates the night of January 18 through the day of the 19th, 2021, also filed emergency grievances. For 24 plus hours the Plaintiff and others sleep on the concrete floor with a mat. This was a serious medical condition because they and the Plaintiff just tested positive and was infected with a virus that attacks the lungs. Instead of having prison officials retrieve cots immediately, the Defendant and her WDOC HCC Administration put it off, got their COVID-19 vaccination the next day, waiting until close to 5:00pm to provide cots to COVID-19 infected inmates. (see TT 22-24).

119. The Deliberate indifference by Warden *TIMOTHY HICKS* obvious that officials must have purposefully ignored it to not know about it. Complaints was made and the Warden and staff was on the other side of the door getting the first COVID-19 vaccination ignoring the suffering inmates. *Vance v. Peters*, 97 F.3d 987 (7th Cir. 1996).

c. Causation:

120. Plaintiff has a rare COVID-19 Long Haul condition which includes seasons of excessive coughing fits. Defendant's acts and omissions exposed Plaintiff to cruel and unusual punishment.

CLAIM III. THE PHYSICAL, MENTAL, PSYCHOLOGICAL, AND EMOTIONAL ANGUISH AND INJURY BRIAN DAWSON GROSSLY EFFECTED ON THE PLAINTIFF BY TRIPLING PLAINTIFF'S WORKLOAD AS A POST COVID-19 LONG HAUL WARD OF THE STATE VIOLATED PLAINTIFF'S RIGHTS AND CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

121 Plaintiff began suffering from COVID-19 and COVID-19 Long Haul due to BRIAN DAWSON'S cruel and unusual punishment as discussed earlier in CLAIM I. (see ¶ 26-38 and Exhibit # 35). Throughout the pandemic BRIAN DAWSON practiced a pattern of abuse and violating inmates Constitutional Rights "under color of state law". (see ¶ 16, 18). Defendant was able to operate unlike other businesses during the height of the COVID-19 pandemic. (Exhibit #35 ¶ 9-19).

122 As a COVID-19 Long Haul ward of the state inmate worker, Plaintiff was experiencing a number of health issues. Hypertension's high blood pressure would effect Plaintiff's anxiety and mental. He expressed to Defendant that he could not handle three to four jobs. However, Defendant would not relieve his workload by hiring another permanent worker to relieve the stress brought by the job.

a. Deprivation of "Basic Human Needs" / Objective Evidence

123 BRIAN DAWSON violated Plaintiff's rights to decent conditions in prison by, taking past physical injury violations "totality" theory, and physically tripling Plaintiff's workload, which then caused serious health affects mental, psychological, and emotional injury. 42 U.S.C.A § 1997e(a) (that there must be a "prior showing of physical injury" in order to bring a claim of mental or emotional injury), and see *Barney v. Pelsipher*, 143 F.3d 1299, 1311 (10th Cir. 1998) and *Wilson*, 501 U.S. at 298 (1991).

124 Plaintiff was suffering physically from his COVID-19 infection long term effects. Conditions was ~~not~~ fairly new, but concerning. Physically, hypertension effects ones organs and known to cause strokes. Plaintiff's physical condition was affecting him psychologically, which Plaintiff didn't understand at that point. However, Defendant knew Plaintiff was suffering from COVID-Long haul: (1) he was responsible for 20 plus inmates contracting COVID-19 by his omissions and act of packing 20 plus individuals in 1B Dorm without affording them 6 ft social distancing, which violated state law EO55; and from several conversations with Plaintiff. Defendant should have known or had reason to know that over-working a COVID-19 Long haul ward of the state would cause cruel and unusual punishment. Plaintiff was healthy enough to perform his job VCE. Rule's stated and VDOC policies protected.

125 Conditions taken in "totality" deprived Plaintiff of physical, mental, and emotional health. *Barney*.

b. Deliberate Indifference:

126. BRIAN DAWSON also acted with a "sufficiently culpable state of mind." *Wilson*, 501 U.S. at 298 (1991). He knew Plaintiff suffered from COVID-19 Long Haul. Plaintiff also discussed with Defendant how the workload was too much and was affecting his high standard of quality and work ethic. (Exhibit #).

127. However, BRIAN DAWSON ignored the Plaintiff's medical needs purposefully. (see 126-30). Defendant knew Plaintiff was overworked, affecting his health, being an ex-COVID-19 patient now suffering from COVID-19 Long Haul. He told Plaintiff that he was the boss and that the Plaintiff would do whatever work needed to be done and that he wasn't hiring help after the April 21, 2021, incident. Defendant caused further injury when he fired Plaintiff for seeking mental health. (see 128-41).

128. Therefore, Defendant acted with a "sufficiently culpable state of mind," which physical injury resulted in mental and emotional injury. *Thompson v. Carter*, 284 F.3d 411 (2d Cir. 2002) (mental or emotional injury). Defendant's actions violated VDOC operation procedure and VCE's.

c. Exhaustion of Legal Remedies

129. Plaintiff used prison grievance procedures available at HCC by: Filing Written Complaint April 27, 2021; Filing grievance May 10, 2021; and appealing grievance on June 20, 2021.

CLAIM III. THE UNSAFE PRISON CONDITIONS BY TIKKI HICKS IN GROSS NEGLIGENCE
HOUSING PLAINTIFF IN 2B DORM WHERE FUNGUS GROWTH WAS DETECTED AND THE
DELIBERATE INDIFFERENCE TO PLAINTIFF MEDICAL NEEDS BY LEONARD LEVIN
REFUSAL AND FAILURE TO PRESCRIBE HIM DIFLUCAN AS A COVID-19 LONG HAUL
WARD OF THE STATE WITH A FUNGUS INFECTION VIOLATED PLAINTIFF'S RIGHT AND
CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

130. The Plaintiff's serious medical condition of a rare Eczema/Fungal infection outbreak caused by his COVID-19 Long Haul, but heightened due to 2B Fungus growth and LEONARD LEVIN's refusal to treat Plaintiff with DIFLUCAN knowing Plaintiff had COVID-19 Long Haul and is in serious danger with a fungal infection, and TIKKI HICKS unsafe 2B Dorm. (Exhibit # 15) (see 42-49)

(i) Unsafe Prison Conditions

a. Deprivation of "Basic Human Needs" / Objective Evidence

131. Defendant TIKHIL HICKS violated the Plaintiff's Constitutional right by ignoring lab results of active fungal growth in 2B Dorm. (Exhibit #13) (see Tr 43).

132. First, a "sufficiently serious" deprivation of "the minimal civilized measure of life's necessities" of health and safety, was ignored amounting to gross negligence and 8th Amend. violation. The Plaintiff contracted a fungus infection after moving into 2B Dorm. It has remained an injury for 29 months now. (Exhibit #35 Tr 26-38) (Exhibit #24).

133. Because the Plaintiff is a COVID-19 Long Haul patient, he is prone to serious and sometime life threatening infections, including black fungus infection. It still have yet to be determined what type of fungus infection he has, but he is in pain consistently. (Exhibit #35 id). The fungus infection mixed with an eczema outbreak. *Barney*, 143 F.3d 1311 (10th Cir. 1998) (Court consider how bad it is and how long the conditions have lasted).

134. The CDC found that "COVID-19 associated fungal infections can lead to severe illness and death." (See Tr 95). Therefore, for TIKHIL HICKS to house inmates in 2B Dorm she knew to have tested for fungal posed serious harm and deprived Plaintiff of "Basic human needs". And based on *Palmer* "Totality" amounts to constitutional violations.

b. Deliberate Indifference / Subjective Evidence:

135. Next, Plaintiff must show that the formal Warden knew of the conditions and yet did not respond to it in a reasonable way. TIKHIL HICKS had reason to know in May 2021 that fungus was detected in 2B Dorm. Inmate Neil Hegamvyer had his attorney, W. Peyton Alters, Esq., send a sample of EM-Tape 2.1 from 2B Dorm's ceiling to Marine Chemist Service, Inc., for analysis. A copy of the results was provided to HCC and TIKHIL HICKS. It is also believed that Neil Hegamvyer filed a grievance in regards to the results of fungus growth, due to his medical conditions.

136. Therefore, TIKHIL HICKS acted with deliberate indifference towards Plaintiff and others living in 2B dorm with knowing of the fungal growth in a dorm with inmates who have or may have COVID-19. Her gross negligence amounts to deliberate indifference which resulted in the Plaintiff's serious medical condition and rare eczema / fungal infection. Such omission is unreasonable and amounts to cruel and unusual punishment.

(ii) Medical Care

137. Dr. LEONARD LEVIN violated Plaintiff's guarantee right to medical care for his fungal

outbreaks by denying him medical treatment of Diflucan and delaying it for 16 months.
(see tr 46). Plaintiff must show three prongs to challenge his medical care. Estelle v. Gamble, 429 U.S. 97 (1976).

a. Serious Medical Need:

138. Plaintiff contracted the COVID-19 virus in Jan. 2021. He began complaining about his fungal infection between June and July 2021. CDC warns that "COVID-19 associated fungal infections can lead to severe illness and death." ([cdc.gov/fungal/c](https://www.cdc.gov/fungal/c)) (see also tr 95).

139. Plaintiff's body broke out into a full blown body infection together with fungal and eczema outbreak in October 2022 until January 2023. The infection covered over 2/3 his body. Fungus became active on his face and eyelids causing them to crack into open wounds. Plaintiff also experienced swelling in his groin. His eyelids also swelled close. This caused everyone around to comment including nurses, doctors, counselors, and other inmates, with sympathy of a need to be treated. Plaintiff's skin would crack and still does between his privates. He can't enjoy jogging or running.

140. Since June 2021, Plaintiff COVID-19 Long Haul and fungal infection posed a serious medical need, and still do. It seems to be a serious chronic infection due to the delayed treatment by LEONARD LEVIN. Defendant refused to treat him with Diflucan in July 2021, after Nurse Practitioner Hammond prescribed the seven day treatment after other treatment failed. "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." Estelle v. Gamble, 429 U.S. 97, 103 (1976). Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994) (one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention).

141. Therefore, Plaintiff's COVID-19 Long Haul and fungal infection posed a serious medical need be it was "one that, if left unattended, 'poses a substantial risk of serious harm.'" Taylor v. Adams, 231 F.3d 1254, 1258 (11th Cir. 2000).

142. (1) Nurse Practitioner Hammond considered it worthy to treat Plaintiff's fungal infection with Diflucan. Defendant even prescribed the treatment 16 months later. (2) Together with Plaintiff's COVID-19 Long Haul, according to CDC, Plaintiff lived with a medical condition which affected his daily activities because it lead to severe illness. (see tr 95) (Exhibit #35 tr 26-45). Plaintiff could not be exposed to the sun and his skin would crack open between his butt cheeks, and still does, affecting daily activities. And (3) Plaintiff had chronic and serious pain for the past 29 months, which reach its worse in Nov. 2022. see Brack v. Wright, 315 F.3d 158 (2d Cir. 2003) (3 prong for serious medical need). Therefore Plaintiff had a serious medical need.

b. Deliberate Indifference

143 . Plaintiff can prove an Eighth Amendment violation of medical care is the same when challenging prison conditions. Estelle, 439 U.S. at 104 and Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

144 . First, LEONARD LEVIN knew Plaintiff was a COVID-19 Long Haul. Defendant also knew Plaintiff had a fungus infection in July and August of 2021. He knew the fungal infection was serious. He examined Plaintiff's infected area and Plaintiff explained several times to him about his black head pimples which broke out just from Plaintiff sweating in the summer heat. Defendant would prescribe acne medication. Defendant knew about Plaintiff's serious medical need. (Exhibit #35 (Tab-B)) (see TT 46)

145 . Secondly, LEONARD LEVIN failed to respond reasonably to Plaintiff's medical needs. Nurse Practitioner Hammond prescribed Diflucan to Plaintiff in July 2021 after several treatments failed. She then left HCC. Plaintiff visited Defendant after he had not received the treatment from the peel window. Defendant refused to prescribe Diflucan to him, then told the Plaintiff he would never get rid of the fungus and that he never heard of Diflucan treatment. However, Defendant was the Dr. who prescribed Plaintiff Diflucan 16 months later. Therefore, Defendant delayed Plaintiff's access to treatment which also caused Plaintiff's Nov. 2022 eczema/fungal outbreak. Such gross negligence amounts to deliberate indifference by LEONARD LEVIN to Plaintiff's serious medical need. Estelle, 439 U.S. 104-105; Meloy v. Bachmeier, 302 F.3d 845, 849 (8th Cir. 2002). (Exhibit #35 (Tab-B)) (see TT 56-62)

c. Causation:

146 . LEONARD LEVIN was deliberately indifferent which cause Plaintiff suffering for years and his Nov. 2022 outbreak. Defendant purposefully denied and delayed medical treatment to the Plaintiff. To have COVID-19 Long Haul and a fungus disease can be deadly. Had Defendant taken Plaintiff's fungal infection serious and was not deliberately indifferent his Nov. 2022 breakout would not have happened. Defendant's deliberate indifference caused Plaintiff cruel and unusual punishment violating his Constitutional right.

d. Exhaustion of Legal Remedies:

147 . Plaintiff used all prison grievance procedures available by: filing grievance on Dec. 15, 2022 which was denied Dec. 18, 2022; and appealing denial Dec. 22, 2022. (Exhibit #21).

Poor Prison Conditions Due to Restrictive Regulations

CLAIM I. THE UNSAFE PRISON CONDITIONS OF GLENN YOUNGKIN, JASON MIYARES, ROBERT MOSIER, HAROLD W. CLARK, AND CHADWICK DOTSON VIOLATES PLAINTIFF'S RIGHTS AND CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

148. The Defendants placed Plaintiff in ~~an~~ serious and extreme conditions because he is suffering from COVID-19 Long Haul, and their official regulations are prejudiced by their individual support of the inhumane system of mass incarceration resulting in overcrowding in prisons, causing unsanitary conditions depriving Plaintiff of the basic human right of six feet living space, in the post COVID-19 era.

149. Eighth Amendment objective evidence standard can be met showing that Plaintiff is deprived of a basic human need. By showing officials knew he was deprived, but ignores his conditions, satisfies subjective evidence prong. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Serfer*, 501 U.S. 294 (1991).

150. Prison Conditions can violate the Plaintiff's rights if he can show that the conditions puts him at serious risk for an injury in the future. *Helling v. McKinney*, 509 U.S. 25 (1993).

a. Deprivation of "Basic Human Needs" / Objective Evidence :

151. Prison conditions in VPOC security Level 2 at HCC could and does seriously affect Plaintiff's health because he is deprived of a sanitary six-foot living-space (see Tr Exhibit # 35). *Barney*, 143 F.3d 1399, 1311 (10th Cir. 1998). He is constantly threatened by airborne pathogens because he can not control the sanitation of surface or air quality by having 3 other individuals within 3 ft, and 2 other within 5 ft of him. His past COVID-19 infection injuries cause 42 U.S.C.A. § 1997e(e) mental and emotional injury. *Thomas v. Carter*, 284 F.3d 411 (3d Cir. 2002). Six-foot living conditions are a basic human right exposed by the COVID-19 pandemic, which virus is still a serious threat due its long haul harm. The best way to avoid COVID-19 Long Haul is to not have caught the virus at all. The virus has caused a HCC compound pandemic twice a year, every year since 2020.

152. Plaintiff's unfortunate COVID-19 Long Haul means a common cold isn't just a common cold, as well as the flu, RSV, or diseases caused by airborne pathogens or chronic illness.

153. Plaintiff is a ward of the state and Defendants are officials who constantly put him in serious and harmful prison conditions, violating his constitutional rights because he is deprived of controlling air and surface 6 ft around him, revealing the inhumanity of mass incarceration.

b. Deliberate Indifference :

154. The Defendants know or should have reason to know that COVID-19 causes serious harm and long term effects, (see Tr 3-4) and that six-foot social distancing is the best defense preventing infection.

155. The Defendants know or should have reason to know individuals in VPOC security Level 2 do

not afford individuals the right to six feet living space, which conditions are serious and extreme for COVID-19 Long Haul patients in chronic care. *Rhodes*, 452 U.S. 337 (1981).

156. The Defendants know or should have reason to know that: (1) HCC places 70+ individuals in a 3750 ft² living-area with 48,300 ft³ of air space, which is the perfect breathing ground, easily spreading airborne pathogens and that the common cold is no longer just the common cold for COVID-19 Long Haul patients; and (2) From February 2021 to currently, Plaintiff has suffered as a COVID-19 Long Haul patient, yet his living conditions are grossly neglected.

157. That Defendants openly, purposefully, deliberately, and mercilessly support mass incarceration, which science negate, and prevent as far as to prevent Va. Code § 53.1-202.3 from fully going into affect, which would have freed up the living-area space affording security level 2 six feet living-space.

(ii) Restrictive Regulations Cause Unsafe Prison Conditions

158. First, Defendants maliciously intended to prevent a 'de-Carceration' law, Va. Code § 53.1-202.3, from fully going into affect on July 1, 2022, telling disappointed inmates days before on Father's day. The administration ran on a merciless hate campaign against prisoners, supporting the failed decaying system of mass incarceration. JASON MIYARES revealed as much when he stated to James Bacon of *fredericksburg.com* that, "we're trying to make the best out of a horrific situation," referring to § 53.1-202.3 effective date on July 1, 2022, when individuals would gain their liberty and civil right back. (see rr 50-54). The Budget Amendment 19 was meant to punish individuals who earned their right to liberty, preventing 4,500 plus inmates from being release within 2 months. Such prejudice deprived Plaintiff of his basic human right to six feet living-space, making Defendants liable.

159. Secondly, the Budget Amendment 19 achieved no legitimate goal, except mass incarceration. Financially it would be less expensive to free individuals who earned their liberty and had a personal interest in § 53.1-202.3 July 1, 2022, effective date, then to house them at \$30,000 plus every body/year. Budget Amendment 19 had no purpose but to punish and promote mass incarceration which violates individuals Civil Rights. The regulation was an exaggerated response to inmates being released early and the administration's concern of the new ESC-2 effective date of July 1, 2022, because they looked for unconstitutional way to continue to illegally detain individuals (see rr 54). *Prease v. Clarke*, 2023 Va Sup. Record No. 220605 (2023) (Defendants Unconstitutionally held him detained past ESC(2) July 1, 2022, effective date). However, it also ignored the new post COVID-19 Long Haul era exposing how mass incarceration violates basic human rights. *Piercem v. County of Orange*, 536 F.3d 1190 (9th Cir., 2008).

160. Defendants have violated Plaintiff's Constitutional rights by housing him in serious and extreme inhuman conditions by failing to afford him safe and sanitary living-space conditions by adjusting new levels

to what would now be overcrowding, post COVID-19 era, constituting cruel and unusual punishment. The Defendants maliciously intended to further punish inmates through restrictive regulations of Budget Amendment 19, which failed to provide safe conditions for Plaintiff's COVID-19 Long Haul and Chronic health, depriving him of his Constitutional protection and depriving individuals of their personal interest of liberty.

B. Retaliation by Campaign of Harassment

161. The First Amendment guarantees individuals the right to petition the government for a redress of grievances through freedom of speech and expression. *Barber v. S.C. Dept of Corr.*, 855 F.3d 533 (4th Cir. 2017) and *Toolasprashad v. Bureau of Prison*, 286 F.3d 576, 584-85, 351 U.S. App D.C. 64 (D.C. Cir. 2002) (recognizing that prisoners "undoubtedly" exercise First Amend. petition right when filing grievance and stating that prison "officials may not retaliate against prisoners for filing grievances").

CLAIM VI. CAPTAIN D.C. JACKSON IS LIABLE UNTO PLAINTIFF IN HIS INDIVIDUAL/ PERSONAL AND OFFICAL CAPACITY FOR VIOLATING PLAINTIFF'S FIRST AMENDMENT RIGHT TO FREE SPEECH AND EXPRESSION AND TO BE FREE FROM WRONGFUL INTERFERENCE AND UNLAWFUL RETALIATION FOR THE EXERCISE OF SUCH RIGHTS, AND FOURTEETH AMENDMENT RIGHT VIOLATION OF ASSOCIATION AND COMPANIONSHIP.

162. The family right to association and companionship is based on the "concept of liberty in the FOURTEENTH AMENDMENT RIGHT," ~~which is specifically for Black~~ specifically for Black African Americans. see *Kraft v. Jack's*, 872 F.2d 862, 871 (9th Cir. 1989).

163. CAPTAIN D.C. JACKSON violated Plaintiff's Constitutional right to companionship when he denied Plaintiff and his mother the minimum hour for contact visits, on his watch. (see rr 77-78) Defendant act and omission was in retaliation of Plaintiff protected activity of: (1) filing his §1983 complaint earlier in the year; and (2) filing a grievance on Defendant in Jan. 2023, for issuing a false institutional infraction in support of S.C. KING's retaliation against Plaintiff for filing §1983 complaint. Defendant's acts and omissions was not that of an official, constituting an adverse action for Plaintiff engagement in a protected liberty. *Wells (2000)* and *Compare*, 227 F.3d 220 (3rd Cir. 2000). (Exhibit # 36)

164. Plaintiff is entitled to association and companionship with his mother. VDOE C.P. affords him a minimum of one hour contact visit with her. Because his mother ran into unforeseen events she was late, does not mean the both wasn't st entitled to a minimum one hour contact visit. (rr 78)

165. HCC practices which denies Plaintiff mother and him the guaranteed one hour visit once visitor arrived on visitation day within visitation hours, violates VDOC policies which result in a violation of Plaintiff's constitutional rights to association and companionship.

166. There exist a causal connection between Plaintiff filing a §1983 Complaint and grievance against Defendant, which is an adverse action. Defendant approved his Jan 2023 false disciplinary charge. Plaintiff filed grievance against Defendant for approving the false report. Defendant asked Plaintiff on Dec 2022, who it was who came to visit him? Plaintiff said it was his mother. It was when his mother seen his injuries from the fungal/eczema infection, also when Plaintiff was exhausting his grievance remedies for the §1983 complaint. After that visit she has been brutal from HCC practice of visitors signing up on line 3 days before a contact visit. She is forced to call around to get scheduled.

167. Therefore, in retaliation of Plaintiff filing §1983 Complaint and using grievance procedure, Defendant denied Plaintiff the minimum time allowed for contact visit, violating both constitutional rights. *Boother v. S.C. Dept of Corr.*, 855 F.3d 533 (4th Cir. 2017).

CLAIM VII. S.C. KING, CAPTAIN D.C. JACKSON, S.W. ALLEN, MAJOR A. WHITE, UNIT MANAGER DOBYNS ARE LIABLE UNTO PLAINTIFF IN THEIR INDIVIDUAL/PERSONAL AND OFFICIAL CAPACITY FOR VIOLATING PLAINTIFF FIRST AMENDMENT RIGHT AND ARTICLE 19 OF THE UNITED NATIONS DECLARATION OF HUMAN RIGHTS TO FREE SPEECH AND EXPRESSION, AND TO BE FREE FROM WRONFUL INTERFERENCE AND UNLAWFUL RETALIATION FOR THE EXERCISE OF SUCH RIGHTS.

168. The Defendants all engaged in a campaign of harassment in retaliation of Plaintiff engagement in his 'protective conduct' of filing §1983 complaint, by committing 'adverse actions' (see pp 63-80) in support of a false and fabricated institutional infraction, which process, the average person would be deterred from continuing their 'protective conduct' because the process is mentally and emotionally stressful causing anguish for one who knows they are 'not guilty'. All acts and omissions of the Defendants are causally connected to Plaintiff filing his §1983 complaint because the institutional infraction was based on false and fabricated charge of making a 3 way call which never happened. All Defendant's act and omissions supported a 'guilty' finding. Plaintiff had informed all Defendant's his 'protected conduct' and that their acts and omissions constitute retaliation. (Exhibit #26) (Exhibit #27) (Exhibit #28) (Exhibit #29) (Exhibit #25).

169. S.C. KING filed a false disciplinary institutional infraction against the Plaintiff because he filed §1983 Complaint and grievances. Defendants act constitute 'adverse action' based on fraud.

170. The Universal Declaration of Human Rights Article 19 provides that, "Everyone has a right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through media and regardless of frontiers."

a. Protected Conduct:

171. S.C. KING, CAPTAIN D.C. JACKSON, S.W. ALLEN, MAJOR A. WHITE, UNIT MANAGER DOBYNS began a campaign of harassment in retaliation of Plaintiff, which all 'causally connect' to a false disciplinary charge against Plaintiff for engagement in 'protective activity' of § 1983 Complaint and filing grievances in order to exhaust administrative remedies. (TIG3-80). *Wells v. Wade*, 2000 WL 1239085 (S.D.N.Y. 2000) (allegations that officials filed a false misbehavior report in retaliation for filing a grievance stated a valid claim). (Exhibit # 28)

b. Adverse Action and Average Person

172. S.C. KING's retaliatory conduct against Plaintiff have cause or deterred a person of ordinary firmness from continuing to engage in Plaintiff's § 1983 Complaint. Defendant investigated Plaintiff will he was in serious pain, not to get him medical treatment as an official should, but to find a way to charge him with a disciplinary charge. Instead of bring a charge within 48 hours, Defendant claimed he was investigating. The Defendant then filed a false disciplinary infraction after Plaintiff had his § 1983 Complaint notarized, on the same day. (See T71). He then takes the opportunity to deter Plaintiff's video visits with his sons. He signs the money order approving it, but holds it for several days causing him to miss his visit. His delay caused the turn around time to exceed WOC operation Procedures. Furthermore, immediately after all video visits were canceled with no post or reasoning for 4 months. Plaintiff complained and it was said to be hard-drive problems. S.C. KING cause Plaintiff extreme stress, mental and emotional abuse because of his continued campaign of Harassment, which would prevent a ordinary person from continuing to engage in the protected conduct. Compare *Allan v. Seiverling*, 229 F. 3d 220 (3d Cir. 2000) (Exhibit # 33).

173. There was a 'causal connection' between S.C. KING's acts and omissions because he filed a false complaint, which phone call was manipulated, cut and paste. Plaintiff had never had an infraction until he had his § 1983 Complaint notarized. *Bart v. Telford*, 677 F. 2d 622 (7th Cir. 1982) (Small events may be enough to make retaliation claim by "campaign of harassment").

174. CAPTAIN D.C. JACKSON acted acts and omissions against Plaintiff for engaging in a 'protected conduct' caused, and still does, Stress, mental and emotional abuse and anguish, which would prevent the average person from continuing suit. Defendant failed to perform

his official duties as OIC and investigate to see if Plaintiff was involved in a 3 way phone call. The phone call was manipulated and cut and paste. You could not hear the Plaintiff's voice. All you heard was the separate phone call A. Simpson had with Bossie, which Plaintiff didn't hear. Had Defendant performed his official duties no charges would have been brought. Defendant also failed to provide Defendant with an inmate advisor within 48 hours of him being charged, so he could call A. Simpson and Capt Bossie as witnesses, because the process was new to Plaintiff. Defendant is to be believed to be the one preventing his mother from signing up online to see him like every other inmate visitors can do. He also denied Plaintiff and his mother contact visits for the minimum hour allowed via VDOC O.P.. Defendant has caused Plaintiff extreme mental and emotional anguish and abuse the past 11 months. He is not operating in his official capacity by doing so and is liable for damages. (rr

175. There is a 'causal connection' between CAPTAIN D.C. JACKSON's acts and omissions against Plaintiff for engaging in his 'protected conduct', causing mental and emotional abuse, the average person would have failed at continuing suit. Defendant fails to perform in his official capacity making him liable for damages. Bort, 677 F.2d 622 (7th Cir. 1982) (small events may be enough to make retaliation claim by "Campaign of harassment").

176. S.W. ALLEN was placed on notice of S.C. HINE's conduct. However, Defendant's acts and omissions against Plaintiff for engaging in a 'protected conduct', caused stress, mentally and emotionally, abuse and anguish, which would prevent the average person from continuing suit. During Plaintiff's disciplinary hearing he raised several due process violations which Defendant ignored. (rr T4). By doing so she failed to perform her official duties. Plaintiff was not afforded an advisor within 48 hours to assist him in calling A. Simpson and Capt Bossie as witnesses, testimony that it wasn't a 3 way call. Furthermore, he challenged the phone call recording based on manipulations in the volume of voices, you could not hear Plaintiff's voice, and that the call recording was altered and cut and pasted, which challenge called for authentication which Defendant failed to call for. Defendant ignored all violations, and the fact that S.C. HINE stated A. Simpson called her on another phone line, (see Exhibit #26(A)), and that no 3 way call was made, but found her guilty. Such acts and omissions made S.W. ALLEN implicit in the campaign of harassment in retaliation of Plaintiff engaging in his 'protected conduct', which constitute an 'adverse action' against Plaintiff. Defendant failed to act in an official capacity by participating in violations of Plaintiff's engagement in his 1st Amendment rights. (Exhibit #29).

177. There is a "causal connection" between S.W. ALLEN's acts and omissions

against Plaintiff for engaging in his 'protected conduct' because the charges was false and had Defendant acted in her official capacity, Plaintiff would have been found 'not guilty'. Bart, 677 F.2d 622 (7th Cir. 1982) (small events may be enough to make retaliation claim by 'campaign of harassment').

178. MAJOR A. WHITE acts and omission against Plaintiff for engaging in a 'protected conduct', which HCC staff members were retaliating against, caused him to fail in his official capacity because he was reviewing Plaintiff's grievance against S.C. KING and CAPTAIN D.C. JACKSON's a ~~rehearing~~ and determined that if the call happened the way Plaintiff described (see p 72), then it was not a 3 way call and he would testify to that at Plaintiff's disciplinary hearing. He only would ask if Plaintiff withdraw his 'written complaint' (Exhibit #72²⁷). However, Defendant failed in his official capacity to come to Plaintiff's hearing. Defendant's testimony was material to Plaintiff. Defendant has years of experience in VDOC to say that Plaintiff did not make a 3 way call. Defendant failure and omission caused him to be complicit in the campaign of harassment S.C. KING, CAPTAIN D.C. JACKSON, and S.W. ALLEN was engaged in because Plaintiff explained the harassment, as it was unfolding, and Defendant had an official duty to bring a end to his staff members unconstitutional violations of the Plaintiff's freedom of speech and expression. Failing to do so makes him liable to the Plaintiff. His failure contributed to the mental stress and anguish the abuse of his staff members was causing, which would have caused an ordinary person from continuing suit. Such was an 'adverse action'

179. Therefore, it was a 'Causal Connection' between S.C. KING and CAPTAIN D.C. JACKSON's actions because his testimony provided they was acting in retaliation of Plaintiff 'protected activity' and the two's action was an 'adverse action' against Plaintiff. Geder, 875 F. Supp. 13334 (N.D.I. 11, 1995) and Bart, 677 F.2d 622 (7th Cir. 1982) (small events may be enough to make retaliation claim by 'campaign of harassment').

180. Unit MANAGER DOBYNS has an official duty to review disciplinary offense reports after the hearing to determine if proper procedures were followed. He has a duty to approve or disapprove the actions of the Hearing Officer. (VDOC O.P. 861.1; XVIII (E)). Defendant's acts and omissions against the Plaintiff for approving S.W. ALLEN finding, which contained several due process violations, brought on in retaliation by S.C. KING and CAPTAIN D.C. JACKSON of the Plaintiff, caused him to fail in his official capacity because Plaintiff explained the campaign of harassment to him. Defendant admitted he listened to the recording. Furthermore, Defendant knew by approving the findings, made it an unappealable issue. However, he ask Plaintiff if he wanted the appeal. The phone call recording was manipulated and altered, cut and paste. You could not hear Plaintiff's voice but you could hear A. Simpson's and altered, cut and paste. You could not hear Plaintiff's voice but you could hear A.S. and Capt Bossie plain as day. Authentication was therefore warranted. In addition, Plaintiff

was never afforded an adviser within 48 hours to help him call A. Simpson and Capt Rossie as witness. Plain due process violations, which Defendant chose to ignore, is evidence to the campaign of harassment. Defendant had a duty to the Plaintiff to protect due process proceedings and correct the wrongs against Plaintiff's protected activity. Defendant's failure to do so makes him implicit, constituting an 'adverse action'. Such gross negligence caused and contributed ~~to~~ to Plaintiff's stress, mental anguish, and abuse, who had been suffering already from a physical illness of COVID-19 Long Haul and chronic issues. By Defendant's acts and omissions, he participated in a campaign of harassment brought on by false disciplinary charges, in retaliation of Plaintiff's engagement of his 'protected conduct'. *Bart*, 677 F.2d 622 (7th Cir. 1982) (small events may be enough to make retaliation claim by 'campaign of harassment'). Ordinary person would be deterred from continuing suit, 181. Therefore, there exist a 'causal connection' between S.C. KING and CAPTAIN D.C. JACKSON'S 'adverse action' against Plaintiff for filing §1983 Complaint because the charges was fabricated and not a 3 way phone call. The two defendant's needed UNIT MANAGER DOBENS to uphold the ruling regardless of due process violations. He also, by doing that, made it an unappealable issue. Such abuse was done by him failing to perform his official duty in order to punish Plaintiff for his §1983 Complaint, proving a 'causal connection'. *Gedder*, 875 F. Supp. 1324 (1995). (Exhibit #30 & #31)

C. Injunctive Relief

182. The Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which Plaintiff seek, which are as follows:

A. That the Court assume jurisdiction over this action;

B. That VDOC conduct a health science study on the effects a COVID-19 Long Haul prisoner may have and the risk posed due to multiple COVID-19 infections, in a timely manner and provide quarterly educational updates to VDOC inmates on the effects, symptoms, and treatment available for COVID-19 Long Haul;

C. That VDOC protect inmates from the very harm and injury of merely contracting COVID-19 by implementing basic human right of six feet social distance living-space for individuals in VDOC housing Dorms in order to create sanitary air and surfaces individuals can control to prevent any and every airborne pathogens due to post COVID-19 era long term effects;

D. That VDOC establish policies that protect COVID-19 Long Haul individuals from VDOC's administration and employees' from abuse to inmates physical and mental Long Haul effects of anxiety;

E. That VDOC ensure and establish policies protecting that such COVID-19 Long Haul inmates involved in VDOC workers program, ESC(1), and ESC(2) shall not be forced to perform task which policy and rules do not require;

F. That Defendants, VDOC Staff, workers, administration, officers, employers, and all under color of state law will refrain from retaliation of any kind against the Plaintiff and his visitors and S.C. KING CEASE INVESTIGATION on him;

G. That VDOT provide Plaintiff with the best COVID-19 Long Haul care and treatment and any other reasonable medical care;

H. That VDOC provide Plaintiff with the best fungal treatment due to Defendants' deliberate indifference, and any other reasonable care;

I. That VDOC provide Plaintiff with the best eczema care and treatment due to defendants' deliberate indifference, and any other reasonable care;

J. That VDOC provide Plaintiff with the best medical care for his back pain and any other reasonable medical care;

K. That VDOC provide Plaintiff with the best medical care for his abdominal pain and any other reasonable medical care;

L. That VDOC provide Plaintiff with the best medical care for his hypertension and fasting opportunity to have his blood pressure checked twice a day and be provided bottled water due to sodium amount detected in HCC's drinking water and proper meal diet;

M. That HCC abide by VDOC visitation policies;

N. That Plaintiff be afforded two free 30 min. video visits per month;

O. That Defendants cease delaying Plaintiff legal mail by up to 15 days due to sending it to Central location to be checked for drugs because they assume Federal and State Courts are mailing drugs but impeding on Plaintiff's legal actions against them, the Defendants;

P. That S.C. KING cease from holding Plaintiff's court order visitation money orders for video visits;

Q. That due to fungal detection in 2 Building at HCC, it is uninhabitable for humans, and ordered condemned

WHEREFORE, Plaintiff respectfully prays that this Court enter judgement granting Plaintiff:

183. A declaration that the acts and omissions described herein violated Plaintiff's rights under the Constitution and laws of the United States

184. A preliminary and permanent injunction order in paragraphs

185. Compensatory damages in the amount to be determined by a jury against each Defendant sued for jointly and severally.

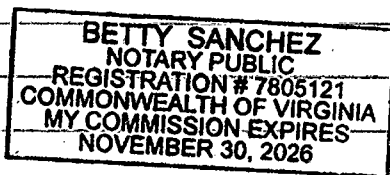
186. Punitive damages in the amount to be determined by a jury against each defendant sued for

187. A jury trial on all issues triable by jury.

188. Plaintiff's cost in this suit.

189. Any additional relief this court deems just, proper, and equitable.

Respectfully Submitted,



Thomas B. Simpson 11/16/23
Thomas B. Simpson #1532237
Haynesville Correctional Center
P.O. Box 139
Haynesville, VA 22472

I certify that the above Notary
is not a party to this action

Thomas B. Simpson

VERIFICATION

I have read the foregoing complaint and hereby verify that the matter alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Subscribed and sworn to before me this 16 day of November, 2023

Betty Sanchez
Notary Public

My Commission Expires: 11-30-2026

APPENDIX D

IN THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF VIRGINIA Richmond Virginia

THOMAS B. SIMPSON,
Plaintiff,
V.

GLENN YOUNGKIN,
ROBERT MOSIER,
JASON MIYARES,
HAROLD W. CLARKE,
TIKKI HICKS,
TONY DARDEN,
BRIAN DAWSON, and
LEONARD LEVIN,
Defendants.

DECLARATION

THOMAS B. SIMPSON

Civil Action No.:

COME I, Thomas B. Simpson here by declares:

1. That I was transferred to the custody of the Virginia Department of Corrections in November 2016, to Haynesville Correctional Center in Haynesville, Virginia, becoming a ward of the State in excellent health, working out on a regular bases.
2. That I joined the Virginia Correctional Enterprise (VCE) work program located there at HCC in January 2017 and three months later I was promoted to a new position and joined VCE's Embroidery Department, accepting two job duties of Quality Control and Shipping Clerk.
3. That VCE is an apparel shop which offers a workers program to inmates in the Commonwealth of Virginia different DOC facilities. VDOC requires inmates involved in good time earning programs (ESC1 or ESC2) to maintain a job in the worker programs in order to earn credit off our sentence.
4. That VCE had, at the time of the allegations, its Embroidery Department located at HCC. The EMB department would embellish non-profitable organizations fabrics, such as shirts, pants, jackets, backpacks, blankets, beanies, caps, ect. They would obtain orders from Virginia's college programs, VDOT, DOC facilities, church organizations, Virginia Veteran Service, Virginia Department of Health, ect.

At the time of the allegations VCE at HCC paid its workers between \$0.55 and \$0.80 an hour, offering 32 hours a week.

5. That my first job of Quality Control entailed inspection of all finished embellished products by verifying that all organization's names, departments, and positions was spelled correctly. Also, that the logos, colors of thread, locations of embellishment; colors of products, size, and the type of products was all correct. I would check that the products and fabrics was not damaged by stains, holes, cuts, or other defects of accessories.

6. That my second job of shipping clerk entailed folding, bagging, packaging finished products and pilotizing shipments. He then documented out going orders, damaged goods, re-ordered products, and verified that all finished products got shipped on time and to the correct locations.

7. That I would then assist two other workers at the EMB Snip Table on my down-time, which rarely occurred. The job prepared all embellished products from machines for inspection. They would cut off 'cut-away backing', remove and dissolve solving if attached to products embellishment, and snip all loose and excessive threads from the embellishment (jump stitches). Also, rarely, would I help run the embroidery machines.

8. That I loved my job and had a high standard of quality, not only in the finished product, but in my work ethic. I took my job serious as an inmate worker in the VCE program being paid \$0.80 a hour. I helped improved the EMB department in a big way in 2018 by requesting to implement a 'quality control verification check list' for each production station to insure that any mistakes would be detected before it was too late to fix once it reached Quality Control station, being that the department embellished expensive fabrics and materials.

COVID-19 Pandemic

9. That before my COVID-19 infection, I was in perfect health. Worked out several times a week. Now, COVID-19 Long Haul and its effects has injured me physically, mentally, and emotionally.

10. That during the COVID-19 pandemic I wore my mask everywhere I should have. I washed my hands everytime I touched a common surface like the phones, microwaves, handles, ect.

11. That in each 'day room' common area floor are three circle signs reminding inmates to social distance by staying 6ft. apart. However, in the approximated 3750 sq.-ft. living-area

We are 3ft. away from several individuals and share a 3ft. cut (living-space) with one other inmate.

12. That the living conditions are mentally challenging because you are not allowed to control the area you live in. One can be sleeping under 3 individuals at a time. If you sleep against a wall, like I was when I contracted COVID-19, when someone in the area sneezes, the area space is limited. You and another individual share such a small space that breathing over and next to three individuals just by standing in your own living-space, changing cloths, or talking to others. When I lived in a 3ft living-space sharing it with another, one would sit in the space just to relax and be out the way. If a person is laying down he has another individual sitting a foot away. All such scenarios, and more make it impossible to protect yourself from contracting COVID-19 and is emotionally troubling because you live in an environment health science prohibits. Not only science but the law prohibited it, when I contracted COVID-19 for that very same reason, through EO 55.

13 That I spoke to Brian on the morning of January 8, 2021, around 7:30 pm. after a good number of other inmate workers didn't show up to work. I asked him, "You know their sick in the dorm right?" To which he replied by pulling up his mask.

14. That after Inmate Q went to medical the following Wednesday, VCE was shutdown and we was sent back into the dorm with the others to quarter. Conditions in the living-space remained the same and no one was forced to stay 6ft. away from others. I keep my mask on. That Friday we was tested for COVID-19.

15. On that Saturday, I was told by a CO to pack my stuff up and go to the restricted housing for contact tracing quarter.

16. On January 10, 2021, two days later, the results returned of the COVID-19 test, and I was moved back together with others from 1B dorm into the visiting room, where we was told we had tested positive for the virus. It was emotionally disheartening because I know I did everything possible to avoid and protect myself from contracting the virus, including letting Brian Dawson know people was sick in the dorm a week and some earlier. The only protection I never had was the human right to 6ft. social distancing, which the law provided me.

17. That moving to the visitation room we had only our 2 to 3 inch mattress. We had to lay on them directly on the floor to sleep. The floor was cold and my coughing escalated. Around or before midnight I wrote a emergency grievance about our living condition as a COVID-19 patient but I never received a receipt back. Other inmates complained also.

18. On the next day HCC wasn't in a rush to get us off the floor because the administration was receiving the limited supply but high demand COVID-19 vaccination through the door in the gym right next to us. The situation was emotionally disheartening because here we was, positive COVID-19 inmates, placed on the floor, while HCC admin. receive the life saving vaccination first, before the rest of the compound who hadn't caught the virus. Although it was to late for me, we was thought very low of by HCC admin. just leaving us on the floor for their own personal interest to our detriment. Science has since revealed that you can still contract the virus although you were vaccinated. Later that evening I had a chance to talk to Tiki Hicks about our living conditions.

Hypertension

19. That before I contracted COVID-19, in March 2020, my blood pressure was 123/83. After having a post COVID-19 follow-up, my bp was 145/105. Was told it was due to COVID-19.

20. That I began to experience throbbing head aches every morning when waking up.

21. That my anxiety was high and experienced confusion.

22. That when Brian Dawson made me carry a workload meant for four people, my two jobs plus the Snip Table two man job, I would feel physically, mentally, and emotionally distressed and abused. I was experiencing chronic pain for the first time in my life. My memory was not as sharp and my work suffered as a result. I knew something long term was effecting me and all I could focus was my job in order to do my best and not extra work loads.

23. That my coughing was getting worse and small rashes was breaking out arms, chest, sides, and belt line.

24. That I talked with Brian Dawson and Lead Man Belk together and both agreed to hire help to feel the Snip Table job. However, Brian Dawson continued to ignore my request and gross neglect my health. I became emotionally and mentally distressed and tried my best to act in a civil manner. I felt as an inmate worker who had contracted COVID-19 and was going through COVID-19 Long Haul, I was being physically abused and battered by being forced to triple and quadruple jobs, and my distress was showing in my work quality. My bp was affecting me and Brian Dawson showed no regard to relieve my health concerns when he failed to place one of three new inmate workers at the Snip Table position.

25. That my body would soon prove that due to high blood pressure, infections and other

preexisting conditions, are not just common as "a cold isn't just a common cold for people with high blood pressure."

Fungal Infection

26. In the month of June 2021, my fungal infection first began on my buttocks. The first stage was a throbbing at the lower or posterior opening of the alimentary canal, the anus, which was sensitive and painful. Second would be a rash which flared up and itched, and burn uncontrollably. Third, the rash area would then scab into thin layers. Fourth, the thin scabs would pill off or wash off during showers onto face cloths. The area scabs pill off of would burn.

27. That with no antifungal cream the infection would spread rapidly. Changing the antifungal brand from time to time helped. However, the infection only subsided then repeated the process. It subsided for the longest period in the month of February 2022, but began the infection process that March.

28. That the painful infection process has repeated for 19 months now. The infected area would itch, sting, and burn. The scabbing process would cause my skin to tighten and shrivel my skin into dry areas which would crack. Missing one shower would cause the fungus to spread rapidly and further. So I showered twice a day for 19 months and continue to. My butt would sweat constantly.

29. That the infection would clear at times for a day then immediately come back. My anus would burn and swell for two days which indicated that the infection was active and about to spread.

30. That using the toilet was extremely painful. Whipping with toilet paper hurt, burned, and was extremely sensitive.

31. That during spring 2021, Nurse Practitioner Hammond prescribed me Diflucan as a last resort of failed treatment. This was before she left HCC medical department. I would report to the pill window, which came to the dorms at that time, asking for the Diflucan 7 pill treatment but never received it.

32. That I seen Dr. LEONARD LEVIN and he examined the infected area. I asked him about the seven day fungus treatment and he said never heard of it. He then told me that I would never get rid of the fungus infection. This affected me emotionally because the pain was so severe. I long to have a life back without having to shower two times every day, and constantly sweating around my private infected areas which caused my boxers and clothing to dampen. I longed for the itching, and burning, and pain to stop, but Dr. Levin was telling me it wouldn't and denying me a treatment Nurse Practitioner Hammond said was available. He didn't even get on the

internet to search it out, which he is famous doing.

33. That Dr. Levin treated my blackhead pimples on my forehead as acne after I stressed to him that they only appear after working out in the sun and would only subside after staying out of the sun working out. Also that the top of the pimple would pill of revealing flesh after washing the area with hot water. I felt the blackhead pimples was directly linked to the fungus because the pimples would not pus up, and only appeared after working out in the sun on a day that was 69° or more.

34. That my private area was, and is, constantly perspiring and stay warm. Around the month of July 2022, I began to feel the skin between my anus and penis tear and crack open revealing flesh and preventing me from exercising.

35. That concurrent with the unbeknownst eczema spread in November 2022, my face began to form the fungus rash around my mouth and eyes. The Nurse Practitioner diagnosed it as a fungus infection on Nov. 18, 2022. She prescribed me three Diplican pills to be administered over a period of two weeks.

36. Before starting, my eyelids swelled. The rash covered my mustache area, facial cheeks, eyelids, neck and jaw. All the infected area skin would crack and tear open. My eyelids would tear into open wounds. The Diplican treatment began to work but wasn't enough and the infection spread.

37. That I then saw Dr. Levin on Dec. 2, 2022, who examined my injured areas and then prescribed the seven Diflucan tablets for the fungus, which he denied me in August 2021, as never knowing about such treatment.

38. On Dec. 19, 2022, Dr. Roberts examined me, joined by Dr. Levin. They both concluded that my body was having a rare reaction to my COVID-19 infection called COVID-19 Long Haul and that areas on my body which was breaking out was also eczema.

Eczema

39. On December 19, 2022, Dr. Roberts and Dr. Levin diagnosed breakouts on my body as Eczema. They explained it was a rare form and my body's response to COVID-19 called COVID-19 Long Haul.

40. That my eczema outbreak of Sept. through current has left physical scars on my arms, hands, fingers, face, neck, upper torso, thighs, and privates. (Exhibits #24)

41. That my skin is now two-tone complexions. Areas which broke out now leaves light dots and patches.

42. That the breakout begins with small dots which pop up and spreads. Next, the dots would develop a red line in it. It would then breakout into a wound like rash. The rashes would crack my skin open at joints and creases. (Exhibit 24(A through J). Some areas of my skin, like both my hands, would scab into line layers, pill, then scab over again repeating the process. (Exhibit 24(G) and (H)).

43. That during the October, November, and December 2022 eczema breakout I suffered mentally and emotionally. My injuries are clear and obvious. I spent my time in my shared living-space in depression and physical pain. I felt other inmates didn't want me touching the phones or microwaves, or even didn't want me around them. I had no privacy. Nights of constant itching keep me awake and agitated. Mornings of pain from my skin rashes are discomforting and shameful.

44. On December 28, 2022, I started a steroid treatment MethylPREDNISolone for six days. The eczema subsided about 50% but is coming back.

45. My outbreak is ongoing and I have fears of further injuries which will result in permanent scars. I sometimes think that maybe it is best for the breakout to cover my whole body in order to blend the complex of my skin.

46. THEREFORE, the inexplicable and intractable chronic pain brings a flood of emotions of doubt, depression, and despair. All my pain is as a result of contracting COVID-19 due to Brian Dawson and TIKKI Hicks gross negligence in violating my Constitutional rights. I now suffer from the chronic conditions of COVID-19 Long Haul. And ask for relief in Complaint paragraphs 100 through 107.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Haynesville, Virginia on January, 12, 2023.

Respectfully Submitted,

Thomas B. Simpson
Thomas B. Simpson #1532237
Haynesville Correctional Center
P.O. Box 124
Haynesville, VA 22472

1/12/2023
Date

APPENDIX E

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. 3:23CV60

GLENN YOUNGKIN, *et al.*,

Defendants.

MEMORANDUM ORDER
(Filing and Screening Action upon Inmate's Payment of the Initial Partial Filing Fee)

The Court ordered Plaintiff to pay an initial partial filing fee. Plaintiff has paid the initial partial filing fee. Accordingly, upon review of Plaintiff's submissions, it is ORDERED that:

1. The action is FILED and Plaintiff is GRANTED leave to proceed *in forma pauperis*. The action will now be screened in conformity with 28 U.S.C. § 1915(e)(2).

2. The institution where Plaintiff is confined will mail twenty percent (20%) of all of Plaintiff's deposits to the Court until the balance of \$318.94 is paid. The payments shall be made on a monthly basis. The payments shall be DIRECTED to:

Clerk's Office
United States District Court for
the Eastern District of Virginia
Richmond Division
701 East Broad Street, Suite 3000
Richmond, Virginia 23219-3528

The payments shall bear the civil action number for this action.

In the event that Plaintiff is transferred, the balance due shall be collected and paid to the Clerk by the custodian at Plaintiff's next institution.

3. Plaintiff is reminded that he must retain a balance of twenty percent (20%) of his previous month's income in his prison account.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff. A copy of this Memorandum Order and Plaintiff's consent to collection of fees shall be sent to the accounting department at Plaintiff's place of incarceration.

It is so ORDERED.

/s/ MRC

Mark R. Colombell
United States Magistrate Judge

Date: May 4, 2023
Richmond, Virginia

APPENDIX F

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. **3:23CV32**

GLENN YOUNGKIN, et al.,

Defendants.

**MEMORANDUM ORDER
(Filing and Screening Action upon Inmate's Payment of the Initial Partial Filing Fee)**

The Court ordered Plaintiff to pay an initial partial filing fee. Plaintiff has paid the initial partial filing fee. Accordingly, upon review of Plaintiff's submissions, it is ORDERED that:

1. The action is FILED and Plaintiff is GRANTED leave to proceed *in forma pauperis*. The action will now be screened in conformity with 28 U.S.C. § 1915(e)(2).
2. The institution where Plaintiff is confined will mail twenty percent (20%) of all of Plaintiff's deposits to the Court until the balance of \$317.63 is paid. The payments shall be made on a monthly basis. The payments shall be DIRECTED to:

Clerk's Office
United States District Court for
the Eastern District of Virginia
Richmond Division
701 East Broad Street, Suite 3000
Richmond, Virginia 23219-3528

The payments shall bear the civil action number for this action.

In the event that Plaintiff is transferred, the balance due shall be collected and paid to the Clerk by the custodian at Plaintiff's next institution.

3. Plaintiff is reminded that he must retain a balance of twenty percent (20%) of his previous month's income in his prison account.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff. A copy of this Memorandum Order and Plaintiff's consent to collection of fees shall be sent to the accounting department at Plaintiff's place of incarceration.

It is so ORDERED.

/s/ MRC
Mark R. Colombell
United States Magistrate Judge

Date: May 8, 2023
Richmond, Virginia

APPENDIX G

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. **3:23CV60**

GLENN YOUNGKIN, et al.,

Defendants.

**MEMORANDUM ORDER
(Providing Plaintiff Notice of Intent to Close Action)**

The matter is currently before the Court for screening in conformity with 28 U.S.C. § 1915(e)(2). Plaintiff submitted a "DECLARATION" and a "MEMORANDUM IN SUPPORT OF PLAINTIFF'S 1983 COMPLAINT" (ECF No. 1), that was filed on January 25, 2023, and was opened as the present action. Plaintiff references a "Complaint" in his memorandum, but there was no complaint accompanying the above submissions. On further review, it appears that a Complaint naming the same Defendants was submitted and filed on January 11, 2023. *See Simpson v. Youngkin*, No. 3:23CV32 (E.D. Va. filed Jan. 11, 2023). The documents that were opened as the present case appear to be supporting documents for *Simpson v. Youngkin*, No. 3:23CV32. However, Plaintiff never indicated to the Court that he only wished to bring one civil action and instead completed the paperwork for both actions.

Because it appears case No. 3:23CV60 and No. 3:23CV32 are, in fact, intended by Plaintiff to be one case, the Court will close No. 3:23CV60 as a duplicate of 3:23CV32. Absent any objection from Plaintiff, in twenty (20) days from the date of entry hereof, the Court will close this case, *Simpson v. Youngkin*, No. 3:23CV60, and will direct the Clerk to file both the

“DECLARATION” and a “MEMORANDUM IN SUPPORT OF PLAINTIFF’S 1983 COMPLAINT,” in the case *Simpson v. Youngkin*, No. 3:23CV32 (E.D. Va. filed Jan. 11, 2023).

The Clerk is DIRECTED to send a copy of the Memorandum Order to Simpson.

It is so ORDERED.

/s/ MRC
Mark R. Colombell
United States Magistrate Judge

Date: August 22, 2023
Richmond, Virginia

APPENDIX H

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

THOMAS B. SIMPSON,

Plaintiff,

v.

Civil Action No. 3:23CV32

GLENN YOUNGKIN, *et al.*,

Defendants.

MEMORANDUM ORDER
(Directing Plaintiff to File a Particularized Complaint)

In order to state a viable claim under 42 U.S.C. § 1983,¹ a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). Courts must liberally construe *pro se* civil rights complaints in order to address constitutional deprivations. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Nevertheless, “[p]rinciples requiring generous construction of *pro se* complaints are not . . . without limits.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). Plaintiff has filed three different documents, a Complaint, a Declaration, and a Memorandum. Each document contains supporting facts, claims, and arguments. (See ECF Nos.

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

1, 11.) Plaintiff's current allegations and the manner in which he has submitted his claims fail to provide each defendant with fair notice of the facts and legal basis upon which his or her liability rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). As explained below, Plaintiff must file **one** document, a Particularized Complaint, that contains all facts, claims, and arguments.

Accordingly, Plaintiff is DIRECTED, within thirty (30) days of the date of entry hereof, to particularize his complaint in conformance with the following directions and in the order set forth below:

a. At the very top of the particularized pleading, Plaintiff is directed to place the following caption in all capital letters "PARTICULARIZED COMPLAINT FOR CIVIL ACTION NUMBER 3:23CV32."

b. The first paragraph of the particularized pleading must contain a list of defendants. Thereafter, in the body of the particularized complaint, Plaintiff must set forth legibly, in separately numbered paragraphs, a short statement of the facts giving rise to his claims for relief. Thereafter, in separately captioned sections, Plaintiff must clearly identify each civil right violated. Under each section, the Plaintiff must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to him. Such explanation should reference the specific numbered factual paragraphs in the body of the particularized complaint that support that assertion. Plaintiff shall also include a prayer for relief.

c. The particularized pleading will supplant the prior complaint. This means that the particularized complaint will REPLACE any other complaint, declaration, or memorandum and the Court will not consider any old complaint or submission. The particularized pleading must stand or fall of its own accord so Plaintiff should include all facts and all legal claims that he wishes the Court to consider. Plaintiff may not reference statements in the prior complaints.

FAILURE TO COMPLY WITH THE FOREGOING DIRECTIONS WILL RESULT IN

DISMISSAL OF THE ACTION. *See* Fed. R. Civ. P. 41(b).

Federal Rule of Civil Procedure 18(a) provides that: "A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as