

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MASTON WILLIS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:09-cv-815 JMS-TAB
	)	
COMMISSIONER, INDIANA	)	
DEPARTMENT OF CORRECTION, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**Amended Verified Petition for Contempt**

Come now Alex Witmer and Zofo Benjamin, being duly sworn upon their oaths, and file their amended contempt petition pursuant to this Court’s Order of January 22, 2015 (Dkt. 269) and say that:

1. Pursuant to the January 22, 2015 Order they have been permitted to intervene as class representatives in this case.
2. On December 8, 2010, this Court entered its Final Judgment and Injunction in this case stating, among other things, that:

The Commissioner of the Indiana Department of Correction (“Commissioner”) must supply a kosher meal option for all meals served within any facility within the Department of Correction,. The kosher meals must be certified as kosher by appropriate religious authorities selected by the Indiana Department of Correction, which may be accomplished by purchasing pre-packaged meals certified as kosher. If the meal option is not utilized, the kosher meals must be recertified as kosher at the frequency specified by religious authorities.

The Commissioner must provide certified kosher meals to all inmates who, for sincerely held religious reasons, request them in writing.

(Dkt. 114).

3. Alex Witmer is an adherent of the House of Yahweh, a religion that requires its followers to eat a kosher diet and has a sincere belief that a kosher diet is a religious necessity.

4 He is an adult person currently confined within the DOC at the Pendleton Correctional Facility.

5. The DOC acknowledged his religious need for a kosher diet by providing him a kosher diet beginning in October of 2011.

6. However, in February of 2014 he received the attached notice from the Deputy Director of Religious and Volunteer Services for the DOC informing him that he was being terminated from his kosher diet because he had purchased the following items from commissary: Keefe Kitchen Grape Jelly, Sharp Bar Cheese, and Butterscotch Buttons on July 29, 2013. (Exhibit1).

7. The DOC provided no warning to Mr. Witmer before deciding to terminate his kosher diet.

8. Although the above commissary items were not marked as kosher on the commissary order sheets, Mr. Witmer believes they are kosher. Mr. Witmer did submit documentation as requested in the February 19, 2014, letter but the decision to terminate his kosher diet was not changed and his diet was terminated.

9. Mr. Witmer is aware that, at least in the past, items have not been marked on the commissary sheets as kosher, even though they are.

10. Mr. Witmer attempted to appeal the denial. His grievance was denied at the initial level and he sent his appeal to the final level by certified mail but he has heard nothing further.

11. Mr. Witmer has been denied a kosher diet since the notice he received in February of 2014.

12. Because the regular institutional meals are not kosher, and because of his religious beliefs and the continued denial of his kosher diet, Mr. Witmer has been attempting to eat only kosher food off commissary as his sole food source since his kosher diet was removed.

13. This has required Mr. Witmer to spend money that he would not have had to spend if his kosher diet had not been revoked.

14. Mr. Witmer believes that beginning in March of 2014 he has expended, on average, approximately \$120 a month in commissary charges that he would not have spent if he was still receiving a kosher diet.

15. Mr. Witmer will be again requesting a kosher diet.

16. Zofo Benjamin is an adult person currently confined within DOC at the New Castle Correctional Facility.

17. He was born a Jew and for more than the last year has attempted to comply with the commandments that he believes are imposed on Jews by the Torah.

18. He is listed as Jewish on the DOC's Offender Information System where prisoner's religious affiliations are noted.

19. One of the requirements that he believes are imposed on adherents of Judaism, including on him, is to comply with the requirements of kosher.

20. He is therefore required by his religion to eat a kosher diet and has a sincere belief that he must keep kosher.

21. In September of 2013 he formally applied for a kosher diet. In his application he explained that he was Jewish and explained why he was required to eat a kosher diet. (Exhibit 2)

22. Instead of ruling on this application, which clearly specified his need, as a Jew, to receive a kosher diet, he was informed that he needed to provide more information as to why he needed a kosher diet, and he was required to identify:

- What foods are prohibited or required by your faith.
- Food preparation standards required by your faith.
- How following your requested diet relates to your religious practice
- How a standard or vegan tray does not meet your religious needs.

(Exhibit 3).

23. He grieved this refusal to provide him a kosher diet. The grievance was ultimately denied in April of 2014.

24. He provided the further information required by the Kosher Review Committee (Exhibit 4), and in April of 2014 he was denied a kosher diet by the Kosher Review Committee. The notice said, in part, “[y]our request for a special diet has been denied, based on the information provided in your request. The foods you identified as being prohibited by your faith are not served in our standard or vegan tray.” (Exhibit 5).

25. He did not receive this denial until September 30, 2014.

26. He again requested a kosher diet in September or October of 2014. He received no response to this request and he will be reapplying for a kosher diet as he received no response.

27. Because the regular institutional meals are not kosher, and because of his religious beliefs and the continued denial of his kosher diet, Mr. Benjamin has been attempting to eat only kosher food off commissary since his kosher diet was removed. The only food he eats from the food trays provided is bread, if it is separately wrapped, drinks when they are in sealed individual containers, fresh fruit, and peanut butter packages.

28. Mr. Benjamin believes that since September of 2013 he has expended, on average, approximately \$75 a month in commissary charges that he would not have spent if he was receiving a kosher diet.

29. The denials of kosher diets to Mr. Witmer and Mr. Benjamin were erroneous and represent contempt of this Court's Judgment in that the DOC has violated this Court's unambiguous command, has failed to substantially comply with the Judgment and has failed to make reasonable and diligent efforts to comply.

30. The DOC has erroneously denied kosher diets to many other class members, demonstrating a failure to substantially comply with the judgment and a failure to make a reasonable and diligent effort to comply, by imposing rigorous standards and requirements to obtain a kosher diet that greatly exceed the "delicate task" of assessing sincerity. *Thomas v. Review Board of Indiana Employment Sec. Division*, 450 U.S. 707, 714 (1981).

31. Among other things the DOC has improperly denied kosher diets:

a. after demanding that the prisoner, who states that he or she needs a kosher diet because of his or her religion, articulate in detail: the foods that are prohibited or required by his or her faith, how his or her faith requires food to be prepared in a kosher way; how the requested diet relates to his or her religious practice; how the standard or vegan tray does not meet his or her religious needs.

b. because of the prisoners' lack of sophisticated knowledge of kosher requirements or other requirements of their faith.

c. because the DOC makes a judgment that the prisoners do not "need" a kosher diet to satisfy the obligations of their faiths, despite the prisoners' articulation that they do need a kosher diet and despite the fact that the prisoner may belong to a religion (*e.g.*, Judaism, House of Yahweh) that recognizes that its adherents should keep kosher.

d. because the DOC draws negative conclusions from the foods the prisoner identifies as required by his or her faith and ignores the declaration that the prisoner needs a kosher diet.

e. because of the commissary purchases of the prisoners even though the purchases do not demonstrate a lack of religious sincerity.

32. In further support of this motion the plaintiffs separately submit their Memorandum of Law that is incorporated by reference.

WHEREFORE, plaintiffs request that this Court:

- a. Find that the Commissioner of the Indiana Department of Correction is in contempt of the Judgment of this Court.
- b. Order that, within 30 days, the DOC create a new system for determining sincerity with regard to the receipt of kosher diets that:
  1. Provides that if a prisoner is an adherent of a religion, as determined by the prisoner's Offender Information System category or by his or her declaration, that has a recognized requirement that its members keep kosher that the prisoner must be allowed a kosher diet absent compelling evidence of a lack of sincerity.
  2. Evaluates sincerity without focusing on the prisoner's knowledge of religious doctrine.
  3. Evaluates sincerity without focusing on the prisoner's articulating the precise foods allowed and not allowed by his or her faith.
  4. Draws no conclusions from a prisoner's commissary purchases during the time that he or she was not being provided kosher food by the DOC.
  5. Provides that if it is determined that the prisoner is sincere in his or her request for a kosher diet that the prisoner be provided such a diet without any determination by the DOC as to whether or not the prisoner "needs" the diet.
  6. Prohibits revocation of a kosher diet because of the consumption of non-kosher foods unless the prisoner is given an opportunity to stop consuming such foods.
- c. Notify all prisoners of the revision of the kosher policy.
- d. Review the applications of all prisoners, still in the DOC at the current time, who were denied a kosher diet at any time since kosher diets were reinstated following the decision in this case to determine if, based on the application, a kosher diet can now be provided and, if so, provide such a diet.
- e. Allow, for the next six months, prisoners to reapply for a kosher diet even if final action concerning the earlier application or kosher diet was within the last six months.

- f. Order that Zofo Benjamin and Alex Witmer be given kosher diets and be compensated for the monies they have had to expend for additional commissary purchases to attempt to maintain a kosher diet.
- g. Impose all other sanctions to remedy the Commissioner's contempt.
- h. Award plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
- i. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana  
1031 E. Washington St.  
Indianapolis, IN 46202  
317/635-4059  
fax: 317/635-4105  
kfalk@aclu-in.org

Attorney for Plaintiffs

Certificate of Service

I hereby verify that on this 14th day of May, 2015, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

David A. Arthur  
Deputy Attorney General  
David.Arthur@atg.in.gov

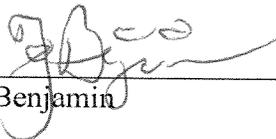
s/ Kenneth J. Falk

Kenneth J. Falk  
Attorney at Law

**Verification**

I verify, under the penalties for perjury, that the foregoing representations are true.

Executed on: 5-17-15

  
\_\_\_\_\_  
Zofu Benjamin

**Verification**

I verify, under the penalties for perjury, that the foregoing representations are true.

Executed on: 5-14-15

Alex Witmer  
Alex Witmer