

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

Civil Action No. 14-cv-00245-MSK-MJW

REVEREND MATT HALE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

CIVIL SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

A Scheduling Conference was held on November 17, 2015, at 2:00 p.m. in Courtroom A-502, Alfred A. Arraj U.S. Courthouse, 901 19th Street, Denver, Colorado. The following *pro se* party and counsel participated:

Reverend Matt Hale
ADX – Florence
P.O. Box 8500
Florence, CO 81226

Susan Prose
U.S. Attorney’s Office
1225 Seventeenth St., Suite 700
Denver, CO 80202
Tel: 303-454-0100
Counsel for Defendant

2. STATEMENT OF JURISDICTION

Plaintiff states that the Court has jurisdiction under 28 U.S.C. § 1331 (federal question). Defendant states that the Court lacks subject-matter jurisdiction over those claims for injunctive relief challenging conditions that no longer exist.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff:

Plaintiff raises the following claims:

Claim One: Violation of the First Amendment (the taking away of Reverend Hale’s mail rights due to his exercise of constitutionally protected speech, exercise of religion, and association with those of like mind).

Claim Two: First Amendment Retaliation (the taking away of Reverend Hale’s mail rights because of his engagement in constitutionally protected activity).

Claim Three: Violation of the Religious Freedom Restoration Act, 42 U.S.C. sec. 2000 bb-1 (the taking away of Reverend Hale’s mail rights because of his involvement in his Church and religious faith).

Claim Five: Violation of First Amendment (the refusal by defendants Berkebile, Redden and B.O.P. to allow Reverend Hale to have the scripture of his religious faith).

Claim Eight: Violation of First Amendment (the refusal by defendants Berkebile and B.O.P. to provide Reverend Hale with meals that comply with his Creativity religious dietary requirements).

Claim Nine: Violation of Religious Freedom Restoration Act, 42 U.S.C. sec. 2000 bb-1 (the refusal by defendants Berkebile and B.O.P. to provide Reverend Hale with his Creativity religious diet).

b. Defendant:

The Federal Bureau of Prisons (“BOP”) did not violate the First Amendment or the Religious Freedom Restoration Act (“RFRA”) in the decisions it made concerning Plaintiff’s conditions of confinement at the ADX.

Plaintiff is the former “Pontifex Maximus,” or “greatest priest,” of a white supremacist group variously known as the “World Church of the Creator” and the “Creativity Movement.” The Creativity Movement is not a “religion” protected under the Free Exercise Clause or RFRA, but a secular hate group espousing white supremacist views. Plaintiff and his followers in the Creativity Movement have a history of violence.

The former restrictions on Plaintiff’s social mail were in response to Plaintiff’s attempts to continue to lead and exert influence over the group. Those past restrictions did not violate the Free Exercise Clause or RFRA because Creativity is not a religion. But even if Creativity were found to be a protected religion, the restrictions were the least restrictive means of furthering compelling governmental security interests. The past restrictions also did not violate the First Amendment, including the free speech and association clauses, because there was a rational connection between the restrictions and the BOP’s legitimate penological interests. And because Plaintiff has no constitutional right to lead a group that includes affiliates who have executed acts of violence, the imposition of the former restrictions was not unconstitutional retaliation.

The BOP did not violate the First Amendment in allegedly denying Plaintiff access to *Nature’s Eternal Religion*, a book containing racially inflammatory language associated with the Creativity Movement. Not only is Creativity not a religion, the BOP has a legitimate penological interest in not providing this book to Plaintiff.

Finally, because Creativity is not a religion, the denial of Plaintiff’s request for a diet allegedly required by Creativity does not violate RFRA or the Free Exercise Clause. But if Creativity were found to be a religion, denial of the requested diet is the least restrictive means of further compelling governmental interests. Moreover, there is a rational connection between

denying Plaintiff's request for the highly specialized and expensive diet he seeks and the BOP's legitimate penological interests. Plaintiff is entitled to no relief.

c. Other Parties:

N/A

4. UNDISPUTED FACTS

The following facts are undisputed:

1. Plaintiff is a federal prisoner currently incarcerated at the United States Penitentiary – Administrative Maximum (“ADX”).
2. Plaintiff has been in the custody of the Federal Bureau of Prisons (“BOP”) since January 2003.

5. COMPUTATION OF DAMAGES

Defendant states that money damages are not at issue in this case because the Court has dismissed all individual-capacity claims. Plaintiff states that he will be appealing the dismissal of his individual-capacity claims, and thus, money damages may once again become an issue in this case.

**6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER
FED.R.CIV.P. 26(f)**

a. Date of Rule 26(f) meeting:

The parties conducted a Rule 26(f) meeting on October 27, 2015. The parties discussed the initial draft of the Scheduling Order and a draft of the Scheduling Order over the next ten days. The parties discussed all issues required by Rule 26(f)(2) during the Rule 26(f) conference.

b. Names of each participant and party he/she represented:

Reverend Matt Hale, *pro se*

Susan Prose, counsel for Defendant

- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made:

The parties respectfully state that, because Plaintiff is in federal custody and representing himself, this proceeding is exempt from the initial disclosure requirements under Fed. R. Civ. P. 26(a)(1). *See* Fed. R. Civ. P. 26(a)(1)(B)(iv) (“The following proceedings are exempt from initial disclosure: ... an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision.”).

- d. Proposed changes, if any, in timing or requirement of disclosure under Fed. R. Civ. P. 26(a)(1):

See § 6.c., above.

- e. Statement concerning any agreements to conduct informal discovery:

The parties did not reach any agreements to conduct informal discovery.

- f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The parties will consider agreements or procedures to reduce discovery and other litigation costs.

- g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties do not anticipate that the claims/defenses will involve extensive electronic information.

- h. Statement summarizing the parties’ discussions regarding the possibilities for promptly settling or resolving the case.

The parties agree to have reasonable discussions relating to resolution of the case as the case proceeds.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules:

Defendant states that each side should be limited to the presumptive number of ten (10) depositions, including experts, unless otherwise approved by the Court. There are no factors present in this case that warrant a greater number of depositions. Defendant states that ten depositions are sufficient to allow Plaintiff to pursue his claims with no prejudice to him.

Plaintiff wishes to increase the number of depositions to fifteen (15), in light of the fact that he proposes to depose all of the original individual defendants, as well as any experts Defendant may list.

Each party is limited to twenty-five (25) interrogatories, including subparts, unless otherwise approved by the Court.

- b. Limitations which any party proposes on the length of depositions:

One (1) day of seven (7) hours.

- c. Limitations which any party proposes on the number of requests for production and/or requests for admission:

Each side is limited to twenty-five (25) requests for production, including subparts.

Each side is limited to twenty-five (25) requests for admission, including subparts.

- d. Other Planning or Discovery Orders:

Defendant's position is that due to security issues, Plaintiff will participate in depositions by telephone, and the BOP agrees to facilitate this process. The BOP can provide a speaker telephone for Plaintiff to use during those depositions.

Plaintiff requests that he be allowed to participate in person and depose the individuals accordingly. Plaintiff objects to being on the telephone for depositions (1) because he would be

prevented from showing documents to the deponents and asking them questions based on the contents of those documents, (2) because he would be unable to detect dishonesty in their answers generally on the basis of their various non-verbal responses to his questions, and (3) because he would be unable to prevent the deponents from receiving scripted answers, notes, or other non-verbal cues from defense counsel or others to his questions, thus undermining the integrity of the proceedings likewise. Furthermore, it would be extremely difficult for him physically to hold a phone to his ear for several hours at a time. Plaintiff asserts that he has no “security issues” or violent history that would justify the undermining of the purpose of the Federal Rules of Civil Procedure in such a manner, and notes that since he will not be so hampered at trial, his position is that he should not be hampered in his conduct of depositions either.

Defendant will file a motion for entry of a protective order covering discovery generated in this case. Plaintiff opposes any such order, believing that the public should be allowed to know any and all facts involved in this case, as they are of great public concern and are otherwise non-protected.

9. CASE PLAN AND SCHEDULE

- a. Deadline for Joinder of Parties and Amendment of Pleadings:

December 29, 2015

- b. Discovery Cut-off:

August 17, 2016

- c. Dispositive Motion Deadline:

September 19, 2016

- d. Expert Witness Disclosures:

1. The parties shall identify anticipated fields of expert testimony, if any:

Plaintiff states that he will serve as an expert witness as to the religiosity of Creativity.

Defendant anticipates designating experts in the following areas: the Creativity Movement (also known as the “World Church of the Creator” or the “Church of the Creator”), including Plaintiff’s role in the Creativity Movement; prison security and the protection of the public; the determination by the BOP as to whether a group is deemed to be a “religion”; and theology, history and/or sociology.

The parties are not precluded from endorsing experts in other fields if required based on evidence and testimony produced during discovery.

2. Limitations which the parties propose on the use or number of expert witnesses: Four experts per side.

3. The parties shall designate all experts and provide opposing counsel and any *pro se* parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **April 18, 2016**.

4. The parties shall designate all rebuttal experts and provide opposing counsel and any *pro se* party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **May 23, 2016**.

e. Identification of Persons to be Deposed:

Plaintiff’s List:

1. David Berkebile
2. Blake Davis
3. Christopher Synsvoll
4. Benjamin Brieschke

5. S.M. Kuta
6. L. Milusnic
7. Patricia Rangel
8. Wendy Heim
9. S. Smith
10. H. Redden
11. Diana Krist
12. A. Tuttoilmondo
13. Any expert witnesses designated by the Defendant.
14. Any fact witnesses designated by the Defendant.

Defendant's List:

1. Mr. Hale
 2. Fact witnesses designated by Mr. Hale.
 3. Any expert witness designated by Mr. Hale.
- f. Deadline for Interrogatories: Served by **July 15, 2016**.
- g. Deadline for Requests for Production of Documents and/or Admissions: Served by **July 15, 2016**.

10. DATES FOR FURTHER CONFERENCES

- a. Status conferences will be held in this case at the following dates and times:
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- b. A final pretrial conference will be held in this case on _____ at _____ o'clock ____m. A Final Pretrial Order shall be prepared by the parties and submitted to the Court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

None.

- b. Anticipated length of trial and whether trial is to the court or jury.

Plaintiff demands a jury trial, and the parties anticipate an eight-day trial.

- c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado.

None.

12. NOTICE TO COUNSEL AND *PRO SE* PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order may be altered or amended only upon motion showing good cause.

DATED at Denver, Colorado, this _____ day of _____, 2015.

BY THE COURT:

MICHAEL J. WATANABE
United States Magistrate Judge

APPROVED:

REV. MATT HALE

JOHN F. WALSH
United States Attorney

s/ Rev. Matt Hale
Rev. Matt Hale
ADX – Florence
P.O. Box 8500
Florence, CO 81226

Plaintiff

s/ Susan Prose
Susan Prose
Assistant United States Attorney
1225 Seventeenth St., Suite 700
Denver, CO 80202
303-454-0100
Counsel for Defendant

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on November 10, 2015, I served the foregoing document to the following non-CM/ECF participant in the manner indicated by the non-participant's name:

Matthew Hale (U.S. Mail)
Reg. No. 15177-424
ADX – Florence
P.O. Box 8500
Florence, CO 81226

s/ Susan Prose
Susan Prose
United States Attorney's Office