

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

HARRIS, et al.)	Consolidated
)	Case No. 3:07-cv-03225
)	
Plaintiffs,)	Judge Harold Baker
)	
vs.)	
)	REQUEST FOR INJUNCTIVE
BROWN, et al.)	RELIEF AND JURY DEMAND
)	ENDORSED HEREIN
Defendants.)	

**PLAINTIFFS' FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL- CORRECTED COPY**

Pursuant to this Court's Minute Entry of April 21, 2009 and Fed.R.Civ.Proc 65, Plaintiffs hereby file their First Amended Complaint seeking preliminary and other injunctive relief against all Defendants and seeking damages against the individual and corporate Defendants who have acted in their personal capacity under color of law for their violations of federal constitutional and Illinois common law. Plaintiffs allege as follows:

GENERAL ALLEGATIONS

Nature of the Action

1. This is an action brought by Plaintiffs under, in part, the First, Eighth and Fourteenth Amendments to the Constitution of the United States; the Civil Rights Act, 42 U.S.C. 1981 *et seq.*; and Illinois' common law on torts.
2. Plaintiffs seek, in part, to enjoin the implementation and enforcement of the policy and custom of the State of Illinois and its Department

of Corrections and its Central Management Services to feed Plaintiffs a diet that contains too much soy.

3. Plaintiffs also seek to enjoin the individual and corporate Defendants who are acting under color of law to provide Plaintiffs an alternative diet to them that is free of soy.

4. Finally, Plaintiffs seek to enjoin the individual and corporate Defendants acting under color of law to provide them with adequate and necessary medical treatment.

5. A preliminary injunction is necessary at this time because Plaintiffs will suffer and are suffering irreparable, actual harm by being forced to continue to eat food that has too much soy in it. Specifically, Plaintiffs have either already been physically damaged by their forced consumption of a diet that is high in soy or they will continue to suffer bodily injury if they are forced to continue to consume the prison diet.

The Parties

6. Plaintiff Larry Harris, N57672, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Western, February 2007 to the present; Menard, July 1997 to February 2007.

7. Plaintiff Kendrick Adams, R48185, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Western, November 2005 to the present; Stateville, November 2005.

8. Plaintiff Dominick Giampaolo, R04860, has been incarcerated at the following IDOC Correctional Centers during the following time frames:

Danville, April 2007 to the present; Pickneyville, October 2006 to April 2007; Galesburg, October 2004 to October 2006; Dixon, March 2002 to October 2004.

9. Plaintiff Jeffrey Knight, K73004, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Danville, April 2008 to the present; Menard, April 2001 to April 2008.

10. Plaintiff Thomas Juresic, K82580, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Danville, October 2005 to the present; Western, February 2002 to October 2005.

11. Plaintiff Gilbert Sanabria, N41046, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Danville, January 2008 to the present; Shawnee, February 2006 to January 2008.

12. Plaintiff Carl Moss, B18364, has been incarcerated at the Menard, Graham, Danville, Pontiac and Lawrence IDOC Correctional Centers.

13. Plaintiff Gary Oliphant, K99408, has been incarcerated at the following IDOC Correctional Centers during the following time frames: Western, December 2008 to the present; Jacksonville, August 2005 to February 2006; Shawnee, September 2004 to December 2004.

14. Defendant State of Illinois (“the State”) is the sovereign that is responsible for protecting the public from incarcerated persons and is the entity that has created its several administrative agencies, including but not limited to the Illinois Department of Corrections and the Department of Central Management Services.

15. Defendant Michael Randle, Director, Illinois Department of Corrections (“IDOC”) is Director of an administrative agency of the State which is, according to IDOC’s website, the administrative agency that administers “all state prisons, juvenile centers and adult and juvenile parole services under one direction,” which includes but is not limited to the provision of medical and mental health care and dental care of the State’s incarcerated persons. IDOC operates such correctional centers as Danville, Western, Menard, Stateville, Shawnee, Pickneyville, Dixon and Hill. The immediate former Director of IDOC was Roger Walker but the Governor of the State has appointed Michael Randle as new Director to become effective in June 2009. Mr. Randle is being named in his official capacity as Director of IDOC.

16. Defendant James Sledge is the Director of the Department of Central Management Services (“CMS”), an administrative agency of the State that, according to CMS’ website, “provides a broad range of programs and services to other state agencies and to the general public ranging from procurement and IT expertise to personnel and benefits to management of many properties around Illinois.” This includes but is not limited to the entering into of contracts with third parties for the procurement of necessary food ingredients to be used in the diet supplied to prisoners supervised by IDOC. James Sledge is the Director of CMS and is being named in his official capacity as Director of CMS.

17. The Defendants identified in paragraphs 14, 15 and 16 will hereafter be referred to as the “State Agency Defendants.”

18. Defendant John Doe #1 is the Medical Director of IDOC (“Medical Director”), an employee of IDOC who reports to Roberta Fewes, IDOC Deputy Director, Office of Programs and Support Services. Medical Director is head of IDOC’s Office of Health Services which, according to IDOC’s website, “sets standards for the delivery of inmate health care and evaluates the care provided throughout the correctional system, including preventive and public health, mental health, primary and secondary medical care and occupational health and safety.” Medical Director is the person who consults with the medical staff and prison staff at all correctional centers regarding the proper medical care to provide to the State’s prisoners and is the person in charge of IDOC policy and procedure on the provision of medical care at all IDOC facilities. Medical Director is being sued in his personal capacity for the constitutional violations he has committed under color of law.

19. Defendant John Doe #2 is the Food/Dietary Services Administrator of IDOC (“Food Services Administrator”), an employee of IDOC who reports to James Reinhart, IDOC Chief of Staff. Food Services Administrator is head of the Dietary/Food Services units at the various correctional facilities which, according to IDOC’s website, allegedly provides incarcerated persons “with nutritious and well-balanced meals that promote health and prevent diseases” by preparing and serving “approximately 100,000 meals per day.” According to IDOC’s website, Food Services Administrator was part of a committee that “planned a five-week cycle master menu that will incorporate menu flexibility. This master menu should reflect a reduction of food costs while continuing to provide nutritious

meals for both offenders and staff. The new menu is scheduled to begin in mid 2004.” Food Services Administrator consults with the dietary staff and prison staff at all correctional centers regarding the proper diet to provide to the State’s prisoners and is in charge of IDOC policy and procedure on the provision of dietary care at all IDOC facilities. Food Services Administrator is being sued in his personal capacity for the constitutional violations he has committed under color of law.

20. Defendant Keith Anglin (“Anglin”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Danville Correctional Center. As Chief Administrative Officer, Anglin is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Anglin is being sued in his personal capacity for the constitutional violations he has committed under color of law.

21. Defendant J. R. Walls (“Walls”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Western Correctional Center. As Chief Administrative Officer, Walls is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Walls is being sued in his personal capacity for the constitutional violations he has committed under color of law.

22. Defendant Donald Gaetz (“Gaetz”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Menard Correctional Center. As Chief Administrative Officer, Gaetz is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Gaetz is being sued in his personal capacity for the constitutional violations he has committed under color of law.

23. Defendant Frank Shaw (“Shaw”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Stateville Correctional Center. As Chief Administrative Officer, Shaw is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Shaw is being sued in his personal capacity for the constitutional violations he has committed under color of law.

24. Defendant Jody Hathaway (“Hathaway”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Shawnee Correctional Center. As Chief Administrative Officer, Hathaway is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set

forth in 20 IL ADC 504.800 *et seq.* Hathaway is being sued in his personal capacity for the constitutional violations he has committed under color of law.

25. Defendant Gregory Schwartz (“Schwartz”) is the acting Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Pickneyville Correctional Center. As Chief Administrative Officer, Schwartz is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Schwartz is being sued in his personal capacity for the constitutional violations he has committed under color of law.

26. Defendant Nedra Chandler (“Chandler”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Dixon Correctional Center. As Chief Administrative Officer, Chandler is ultimately responsible for a decision on all issues involving segregation in accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Chandler is being sued in his personal capacity for the constitutional violations he has committed under color of law.

27. Defendant Gerardo Acevedo (“Acevedo”) is the Warden, or Chief Administrative Officer as that term is defined at 20 IL ADC 504.602 and 504.802, at the Hill Correctional Center. As Chief Administrative Officer, Acevedo is ultimately responsible for a decision on all issues involving segregation in

accordance with the procedures set forth in 20 IL ADC 504.600 *et seq.*, and for all decisions involving inmate grievances in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Acevedo is being sued in his personal capacity for the constitutional violations he has committed under color of law.

28. Defendant Jackie Miller (“Jackie Miller”) is employed by the IDOC as a member of IDOC’s Administrative Review Board (“ARB”) and is responsible for investigating claims made in grievances she reviews in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Jackie Miller is being sued in her personal capacity for the constitutional violations she has committed under color of law.

29. Defendant Melody Ford (“Ford”) is employed by the IDOC as a member of IDOC’s ARB and is responsible for investigating claims made in grievances she reviews in accordance with the procedures set forth in 20 IL ADC 504.800 *et seq.* Ford is being sued in her personal capacity for the constitutional violations she has committed under color of law.

30. Defendant Mary Miller (“Mary Miller”) is the Health Care Unit administrator at the Danville Correctional Center and is an employee of IDOC. As the HCU Administrator, Mary Miller person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Danville HCU receive medical treatment for all their medical needs, including their serious medical needs. Mary Miller is being sued in her personal capacity for the constitutional violations she has committed under color of law.

31. Defendant John Doe #3 is the Health Care Unit administrator at the Western Correctional Center (“HCU Admin. #1) and is an employee of IDOC. As the HCU Admin. #1, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Western HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #1 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

32. Defendant John Doe #4 is the Health Care Unit administrator at the Menard Correctional Center (“HCU Admin. #2) and is an employee of IDOC. As the HCU Admin. #2, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Menard HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #2 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

33. Defendant John Doe #5 is the Health Care Unit administrator at the Stateville Correctional Center (“HCU Admin. #3) and is an employee of IDOC. As the HCU Admin. #3, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Stateville HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #3 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

34. Defendant John Doe #6 is the Health Care Unit administrator at the Shawnee Correctional Center (“HCU Admin. #4) and is an employee of IDOC. As the HCU Admin. #4, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Shawnee HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #4 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

35. Defendant John Doe #7 is the Health Care Unit administrator at the Pickneyville Correctional Center (“HCU Admin. #5) and is an employee of IDOC. As the HCU Admin. #5, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Pickneyville HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #5 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

36. Defendant John Doe #8 is the Health Care Unit administrator at the Dixon Correctional Center (“HCU Admin. #6) and is an employee of IDOC. As the HCU Admin. #6, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Dixon HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #6 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

37. Defendant John Doe #9 is the Health Care Unit administrator at the Hill Correctional Center (“HCU Admin. #7) and is an employee of IDOC. As the HCU Admin. #7, this person has authority to enforce all institutional directives pertaining to medical care and is responsible to ensure that patients in the Hill HCU receive medical treatment for all their medical needs, including their serious medical needs. HCU Admin. #7 is being sued in his personal capacity for the constitutional violations he has committed under color of law.

38. Defendant Lieutenant (First Name Unknown) Ashcraft (“Ashcraft”) is employed by IDOC at the Western Correctional Center. Lt. Ashcraft is responsible for placing prisoners into segregation only in accordance with 20 IL ADC 504.600 *et seq.* Ashcraft is being sued in his personal capacity for the constitutional violations he has committed under color of law.

39. Defendant Officer (First Name Unknown) Jennings (“Jennings”) is employed by IDOC at the Western Correctional Center. Officer Jennings is responsible for placing prisoners into segregation only in accordance with 20 IL ADC 504.600 *et seq.* Jennings is being sued in his personal capacity for the constitutional violations he has committed under color of law.

40. Defendant (First Name Unknown) Willamen (“Willamen”) is the Assistant Warden and is employed by IDOC at the Danville Correctional Center. Willamen is responsible for placing prisoners into segregation only in accordance with 20 IL ADC 504.600 *et seq.* Willamen is being sued in his personal capacity for the constitutional violations he has committed under color of law.

41. Defendant Major (First Name Unknown) Majewski (“Maj. Majewski”) is employed by IDOC at the Danville Correctional Center. Maj. Majewski is responsible for placing prisoners into segregation only in accordance with 20 IL ADC 504.600 *et seq.* Maj. Majewski is being sued in his personal capacity for the constitutional violations he has committed under color of law.

42. Defendant Kerrick Kiley (“Kiley”) is a Grievance Office and is employed by IDOC at the Danville Correctional Center. Kiley is responsible for placing prisoners into segregation only in accordance with 20 IL ADC 504.600 *et seq.* Kiley is being sued in his personal capacity for the constitutional violations he has committed under color of law.

43. The Defendants identified in paragraphs 18 through 42, inclusive, will hereafter be referred to as the “State Individual Defendants.”

44. Defendant Wexford Health Services, Inc. (“Wexford”) is a private for-profit corporation organized under the State of Pennsylvania with its principal place of business located at 425 Holiday Drive, Foster Plaza 2, Pittsburgh, PA 15220. According to its website, Wexford “provides physician-driven institutional health care programs in the United States” including “regional health care programs for state agencies in” Illinois. Wexford has assumed the State’s obligation to provide medical, mental and dental care to the State’s prisoners under a contract that has delegated this authority to it that was voluntarily assumed by Wexford. Wexford will hereinafter be referred to as the “Private Corporate Defendant.”

45. Defendant (First Name Unknown but believed to be Dennis) Larson is a Regional Administrator for Wexford (“Larson”) for the region that includes the State of Illinois. Larson has the authority to and is responsible for coordinating activities between Wexford physicians and for coordinating treatment by Wexford personnel of IDOC’s prisoners. Larson is being sued in his personal capacity for the constitutional violations he has committed under color of law.

46. Defendant Lowell Brown (“Brown”) is a medical physician and, based on information and belief, was employed by Wexford from at least 2004 to at least December 2008. Brown had been employed as a physician at one or more of IDOC’s Correctional Centers. As a Wexford employee, Brown had a duty to provide competent, adequate, effective and necessary medical treatment to IDOC’s prisoners. Brown also had the authority to prescribe an alternative diet. Brown is being sued in his personal capacity for the constitutional violations he has committed under color of law.

47. Defendant Bashirahmed Ameji (“Ameji”) is a medical physician and is employed by Wexford. Ameji has been employed as a physician at one or more of IDOC’s Correctional Centers. As a Wexford employee, Ameji has a duty to provide competent, adequate, effective and necessary medical treatment to IDOC’s prisoners. Ameji also has the authority to prescribe an alternative diet. Ameji is being sued in his personal capacity for the constitutional violations he has committed under color of law.

48. Defendant Adrian Feinerman (“Feinerman”) is a medical physician and is employed by Wexford. Feinerman has been employed as a physician at

one or more of IDOC's Correctional Centers. As a Wexford employee, Feinerman has a duty to provide competent, adequate, effective and necessary medical treatment to IDOC's prisoners. Feinerman also has the authority to prescribe an alternative diet. Feinerman is being sued in his personal capacity for the constitutional violations he has committed under color of law.

49. Defendant (First Name Unknown) Shau ("Shau") is a medical physician and is employed by Wexford. Shau has been employed as a physician at one or more of IDOC's Correctional Centers. As a Wexford employee, Shau has a duty to provide competent, adequate, effective and necessary medical treatment to IDOC's prisoners. Shau also has the authority to prescribe an alternative diet. Shau is being sued in his personal capacity for the constitutional violations he has committed under color of law.

50. Nurse practitioner Andrea Bowers ("Bowers") is employed by Wexford at the Danville Correctional Center. As a Wexford employee, Bowers has a duty to provide competent, adequate, effective and necessary medical treatment to IDOC's prisoners. Bowers is being sued in her personal capacity for the constitutional violations he has committed under color of law.

51. Nurse practitioner Paula Clawson ("Clawson") is employed by Wexford at the Danville Correctional Center. As a Wexford employee, Clawson has a duty to provide competent, adequate, effective and necessary medical treatment to IDOC's prisoners. Clawson is being sued in her personal capacity for the constitutional violations he has committed under color of law.

52. The Defendants referred to in paragraphs 45 through 51, inclusive, will hereafter be referred to as the “Private Individual Defendants.”

53. The Private Corporate Defendant and each of the Private Individual Defendants have acted under color of law in the fact that: the State has the obligation to provide medical care to its prisoners; that obligation has been delegated to Wexford via a contract for services; Wexford has voluntarily assumed that contract; each of the Private Individual Defendants employed by Wexford have voluntarily entered into contracts with Wexford to provide medical services; the services provided by the Private Individual Defendants have been for the alleged benefit of Plaintiffs.

Jurisdiction and Venue

54. This Court has jurisdiction pursuant to 28 U.S.C.S. 1331 because this case addresses a federal question, 28 U.S.C.S. 1343(a)(3) because the case alleges claims brought under the Civil Rights Laws, and 28 U.S.C.S. 1367 because the case also alleges claims brought under State law.

55. Venue lies with this Court under 28 U.S.C.S. 1391(b) and (c) because this action involves a federal question and most of the activities in this case occurred in this District and all of the Defendants reside in this District.

56. As a general rule, a citizen may not sue a state in federal court. U.S. Const. Amend. XI. However, state officials may be sued in federal court to enjoin ongoing and future violations of federal statutory and constitutional law. *Ex Parte Young*, 209 U.S. 123 (1908); *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14, 105 S.Ct. 3099, 3106 n. 14, 87 L.Ed.2d 114 (1985). In this case,

jurisdiction over the State, Randle as Director of IDOC, and Sledge as Director of CMS is proper to enjoin prospective and ongoing violations of federal constitutional and statutory law, i.e., the 1st Amendment, the 8th Amendment and the 14th Amendment to the United States Constitution.

Effects of Soy

57. Soybeans are seed type legumes of the genus *Glycine*. All soybeans naturally contain phytoestrogens in the form known as isoflavones, which have been proven to be potent endocrine disrupters and have thyroid suppressing effects when ingested in quantity.

58. Soybeans also naturally contain anti-nutritional factors, including protease inhibitors (which inhibit the digestion of protein), phytates (which inhibit the absorption of needed minerals such as calcium and zinc), oxalates (which have been linked to digestive distress as well as kidney stones) and oligosaccharides (which cause flatulence).

59. In November 1999, the FDA approved a health claim that a diet low in saturated fat and cholesterol that includes no more than 25 grams of soy protein a day may reduce the risk of heart disease. However, given findings by Israel, France and Germany as described below, FDA is contemplating removing its approval of this health claim.

60. In 2005, the Israeli Health Ministry warned its citizens that babies should not receive soy formula; that children to age 18 should not eat soy foods or drink soy milk more than once per week; and that adults should exercise caution because of adverse effects on fertility and increased breast cancer risk.

61. In 2006, the French Food Agency announced that it would soon require labels on soy foods, warning against their use by children under age 3; those with thyroid problems; and women with a diagnosis of or family history of breast cancer.

62. In 2007, the German Institute of Risk Assessment warned against the dangers of the estrogenic isoflavones that are contained in soy protein.

63. Persons who consume more than 25 grams per day of soy protein are at risk for suffering some or all of the following health effects:

- a. Thyroid disorders, most often manifesting as hypothyroidism or the autoimmune thyroid disease Hashimoto's thyroiditis. Symptoms can include fatigue, lethargy and depression.
- b. Digestive distress, including pancreatitis and gastrointestinal disorders such as irritable bowel syndrome ("IBS") or colitis. Acute and chronic symptoms would include painful cramping, ongoing or intermittent diarrhea, alternating constipation and diarrhea, flatulence and other symptoms.
- c. Immune system breakdown, leading to frequent colds and flu as well as increased risk for autoimmune disorders, cancers and other chronic conditions.
- d. Soy allergies of either the immediate hypersensitivity or delayed reaction type. Immediate hypersensitivity reactions are acute allergic reactions, including coughing, sneezing, runny nose, hives, diarrhea, facial swelling, shortness of breath, swollen tongue, difficulty swallowing, lowered blood pressure, excessive perspiration, fainting and anaphylactic shock. The more common but less dramatic delayed reactions include sleep disturbances, chronic rashes and other skin problems, sinus and ear infections, anxiety, irritability, joint pain, chronic fatigue, and other symptoms.

Standing

64. From the inception of their incarceration or from at least mid-2004 (whichever is later) until at least the present, Plaintiffs have had to eat the food provided by IDOC and their respective Correctional Centers.

65. From the inception of their incarceration or from at least mid-2004 (whichever is later) until at least the present, Plaintiffs have complained of personal and bodily injury to the Defendants as a result of having to consume the prison food that is high in soy. Prior to the introduction of soy into the prison diet, Plaintiffs had no complaints associated with a high soy intake as identified in paragraph 63.

66. The personal injuries that Plaintiffs have complained of and that require serious medical attention include, but are not limited to, stenosis, heart problems, arterial blockage, varicose veins, shortness of breath, fluctuation of weight, stalactites or hard lumps in the abdomen, fainting, thyroid problems, irritable bowel syndrome, fatigue, vomiting, pain after eating, passing out, severe constipation and/or diarrhea, and rashes.

67. Plaintiffs' injuries have been caused by their consumption of the food provided by the State, IDOC and CMS, which is high in soy.

68. From at least mid-2004 to the present, the State, IDOC and CMS have served food in the IDOC correctional centers that average 8 servings of soy per week, food that all Plaintiffs have had to consume since their incarceration or mid-2004, whichever is later.

69. Plaintiffs have requested from the State Individual and Private Individual Defendants either an alternative diet or medical treatment for their medical conditions resulting from consuming too much soy.

70. Plaintiffs have not been granted any permanent alternative diet by and have not received adequate and necessary medical care from any of the Defendants.

71. In fact, some of Plaintiffs' symptoms have been ignored or misdiagnosed by the Private Individual Defendants. For example, Plaintiff Moss has had his thyroid removed, pacemakers have been implanted in Plaintiffs Harris and Oliphant, and Juresic has suffered a heart attack.

72. All Plaintiffs have had tests, i.e., TSH, T4 and lipids, conducted on their thyroids and all have out of range levels consistent with a medical condition(s) that is having an adverse impact on their thyroid.

73. Plaintiffs have submitted grievances to the State Individual Defendants as a result of their being denied either an alternative diet or the receipt of adequate and necessary medical care for their serious medical needs.

74. All of Plaintiffs' grievances have been denied by the State Individual Defendants.

FEDERAL CLAIMS

COUNT ONE – EIGHTH AMENDMENT

75. Paragraphs 1 through 74 are incorporated in this Count as if rewritten herein.

76. The Eighth Amendment to the United States Constitution provides that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

77. At all times relevant to this Amended Complaint, the State, IDOC and CMS have entered into contracts with third parties to procure soy and soy related flour and other soy products for use in the meals provided by IDOC to its prisoners, including to Plaintiffs.

78. The soy in the meals provided by IDOC to Plaintiffs causes Plaintiffs to ingest more than 25 grams of soy per day.

79. The soy content of the meals provided by IDOC to Plaintiffs is excessively high and has caused Plaintiffs bodily injury in one form or another as identified in paragraph 63.

80. Plaintiffs either must eat the meals provided by the State, IDOC and CMS, they must purchase commissary food if they have enough money, or they must starve.

81. The State’s, IDOC’s and CMS’ providing of meals to Plaintiffs that contain more than 25 grams of soy per day constitutes cruel and unusual punishment.

82. The conduct of the State, IDOC and CMS as described in this Count constitutes a violation of and a continuing violation of the Eighth Amendment to the United States Constitution, for which preliminary and other injunctive relief is appropriate.

COUNT TWO – FOURTEENTH AMENDMENT

83. Paragraphs 1 through 82 are incorporated in this Count as if rewritten herein.

84. The Fourteenth Amendment to the Constitution of the United States, as made applicable to the States, provides, in part, that “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.”

85. At all times relevant to this Amended Complaint, Defendants State, IDOC and CMS have, entered into contracts with third parties to procure soy and soy related flour and other soy products for use in the meals provided by IDOC to its prisoners, including to Plaintiffs.

86. At all times relevant to this Amended Complaint, the State, IDOC and CMS have had a duty to provide life’s basic necessities, including an adequate diet, to Plaintiffs while they are incarcerated.

87. The soy content of the meals provided by IDOC to Plaintiffs is excessively high and has caused Plaintiffs bodily injury in one form or another as identified in paragraph 63.

88. Plaintiffs either must eat the meals provided by the State, IDOC and CMS, they must purchase commissary food if they have enough money, or they must starve.

89. The State’s, IDOC’s and CMS’ providing of meals to Plaintiffs that contain more than 25 grams of soy per day constitutes a denial of their privileges

and immunities, and also constitutes a denial of their life, liberty and property without due process.

90. The conduct of the State, IDOC and CMS as described in this Count constitutes a violation of and a continuing violation of the Fourteenth Amendment to the United States Constitution, for which preliminary and other injunctive relief is appropriate.

COUNT THREE – SECTION 1983 VIOLATION

**FEEDING FOOD THAT HAS A HIGH SOY CONTENT CONSTITUTES CRUEL
AND UNUSUAL PUNISHMENT**

91. Paragraphs 1 through 90 are incorporated in this Count as if rewritten herein.

92. 42 U.S.C.S. 1983 provides, in part, that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

93. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have personally allowed food high in soy content to be administered and provided to Plaintiffs.

94. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have had personal knowledge that Plaintiffs have complained about the food they have had to eat. Specifically, Plaintiffs have filed grievances about the food they have had to eat and have complained that consuming that food has been causing them bodily injury, grievances and complaints of which these Defendants have personal knowledge. Those injuries are described above in paragraph 63.

95. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have known about the risk of harm caused by the food they have been providing to Plaintiffs yet they have done nothing about it and have ignored that risk.

96. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have had the personal authority to discontinue the provision of food that is high in soy to Plaintiffs yet have failed to exercise that authority.

97. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have personally refused to prescribe an alternative diet for Plaintiffs, continuing to cause Plaintiffs bodily injuries as described above in paragraph 63.

98. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have had the personal authority to prescribe an alternative diet to one that is high in soy, yet have failed to exercise that authority.

99. At all times relevant to this Amended Complaint, but from at least mid-2004 to the present, Defendant Wexford has had a policy or custom of allowing its physicians and medical staff to recommend an alternative diet to one that contains a high soy content, yet Wexford refused to allow its physicians and medical staff to authorize such an alternative diet. Defendant Wexford knew that refusing to allow its physicians and medical staff to prescribe an alternative diet created an unreasonable risk of injury to Plaintiffs, Wexford was aware that this unreasonable risk existed, Wexford was indifferent to that risk, and Wexford's failure to follow that practice or procedure of proscribing an alternative diet resulted in Plaintiffs' injuries.

100. The conduct of all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley), all of the Private Individual Defendants, and the Private Corporate Defendant as described in this Count constitutes, under color of law, cruel and unusual punishment upon Plaintiffs and a deprivation of Plaintiffs' life and property without due process in violation of the Eighth and Fourteenth Amendments of the Constitution of the United States, for which these Defendants are liable to Plaintiffs for damages and injunctive relief and attorneys' fees and costs.

COUNT FOUR – SECTION 1983 VIOLATION
INDIFFERENCE TO MEDICAL NEEDS CONSTITUTES CRUEL AND
UNUSUAL PUNISHMENT

101. Paragraphs 1 through 100 are incorporated in this Count as if rewritten herein.

102. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have had personal knowledge that Plaintiffs have filed grievances about the food they have had to eat and have complained that consuming that food has been causing them bodily injury, grievances and complaints of which these Defendants have personal knowledge.

103. At all times relevant to this Amended Complaint, the symptoms that Plaintiffs have presented with include those identified in paragraph 63 above, which have been known to all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants, and those symptoms have been caused by consuming the prison food that is high in soy.

104. At all times relevant to this Amended Complaint, Plaintiffs have not received adequate, necessary or appropriate medical treatment for the serious medical needs they have presented with as described in paragraph 63.

105. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen,

Majewski and Kiley) and all of the Private Individual Defendants have had the personal authority to discontinue the provision of food that is high in soy to Plaintiffs yet have failed to exercise that authority.

106. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have had the personal authority to prescribe an alternative diet to one that is high in soy, yet have failed to exercise that authority.

107. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have known about the risks associated with feeding to Plaintiffs the food that is high in soy content but have ignored that risk.

108. At all times relevant to this Amended Complaint, all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants have been deliberately indifferent to Plaintiffs' serious medical conditions which require medical treatment.

109. At all times relevant to this Amended Complaint, Defendant Wexford has had a policy or custom of allowing its physicians and medical staff to recommend an alternative diet to one that contains a high soy content, yet Wexford refused to allow its physicians and medical staff to authorize such an alternative diet. Defendant Wexford knew that refusing to allow its physicians

and medical staff to prescribe an alternative diet created an unreasonable risk of injury to Plaintiffs as described in paragraph 63, Wexford was aware that the unreasonable risks described in paragraph 63 existed, Wexford was indifferent to those risks, and Wexford's failure to follow that practice or procedure of proscribing an alternative diet resulted in Plaintiffs' injuries.

110. The conduct of all of the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley) and all of the Private Individual Defendants Defendants' as described in this Count constitutes, under color of law, cruel and unusual punishment upon Plaintiffs and a deprivation of Plaintiffs' life and property without due process in violation of the Eighth and Fourteenth Amendments of the Constitution of the United States, for which Defendants are liable to Plaintiffs for damages and injunctive relief and attorneys' fees and costs.

COUNT FIVE – SECTION 1983 VIOLATION

RETALIATION - HARRIS

111. Paragraphs 1 through 110 are incorporated in this Count as if rewritten herein.

112. 20 IL ADC 504.600 *et seq.* provides, in part, the means by which a prisoner may be placed in segregation.

113. From on or about May 8, 2009 and continuing until the present, Defendants Ashcraft and Jennings placed Plaintiff Larry Harris in segregation without complying with the requirements of 20 IL ADC 504.600 *et seq.*

114. Specifically, Defendants Ashcraft and Jennings placed Plaintiff Harris in segregation in retaliation against him because Harris had been assisting other inmates on how to file grievances and exhaust their State remedies as required by the Prison Litigation Reform Act and in assisting other inmates in writing letters to this Honorable Court complaining about soy in their diet.

115. Plaintiff Harris filed a grievance for this placement in segregation by Defendants Ashcraft and Jennings and that grievance was reviewed but denied by Defendant Walls.

116. Plaintiff Harris has a right to assist other prisoners in filing grievances and seeking the aid of the Court, and has a protectable liberty interest in not being placed in disciplinary segregation absent a finding of major misconduct.

117. The conduct of Walls, Ashcraft and Jennings as described in this Count constitutes, under color of law, a deprivation of liberty without due process in violation of the Fourteenth Amendment of the United States Constitution, for which preliminary and other injunctive relief is appropriate, for which these Defendants are liable to Plaintiff Harris for damages and injunctive relief and attorneys' fees and costs, including but not limited to \$1,000 per day for which he has been placed in segregation.

COUNT SIX – SECTION 1983 VIOLATION

RETALIATION – HARRIS

118. Paragraphs 1 through 117 are incorporated in this Count as if rewritten herein.

119. Prior to the end of April 2009, Plaintiff Harris had been on medication, Metamucil, for his medical condition. Harris had been taking two tablets of Metamucil a day.

120. Beginning on or about April 22, 2009, Defendant Shau refused to renew Plaintiff Harris' Metamucil for no reason except that the budget for medical treatment, supplies and facilities had been reduced. Defendant Larson is responsible for, in part, the budget for medical treatment, supplies and facilities.

121. Failure to prescribe Metamucil for Harris results in his inability to relax his muscles, causes rectal bleeding and results in bodily injury to his bowels.

122. Plaintiff Harris filed a grievance for having his Metamucil cancelled without sufficient reason but that grievance was denied.

123. Defendants Larson and Shau have been deliberately indifferent to Plaintiff Harris' serious medical condition.

124. At all times relevant to this Amended Complaint, Defendant Wexford has had a policy or custom of allowing its physicians and medical staff to render effective, adequate and necessary treatment, yet Wexford refused to allow Dr. Shau to authorize such treatment. Defendant Wexford knew that refusing to allow Dr. Shau to prescribe Metamucil created an unreasonable risk of injury to Plaintiff Harris, Wexford was aware that this unreasonable risk existed, Wexford was indifferent to that risk, and Wexford's failure to follow that

practice or procedure of proscribing Metamucil resulted in Plaintiff Harris' injuries.

125. The conduct of Shau, Larson and Wexford as described in this Count constitutes, under color of law, cruel and unusual punishment upon Plaintiff Harris in violation of the Eighth Amendment of the Constitution of the United States, for which Defendants Shau, Larson and Wexford are liable to Plaintiff Harris for damages and injunctive relief and attorneys' fees and costs.

COUNT SEVEN – SECTION 1983 VIOLATION

RETALIATION – GIAMPAOLO

126. Paragraphs 1 through 125 are incorporated in this Count as if rewritten herein.

127. 20 IL ADC 504.600 *et seq.* provides, in part, the means by which a prisoner may be placed in segregation.

128. From on or about October 28, 2008 and continuing until on or about November 15, 2008, Defendants Willamen, Assistant Warden at Danville, and Major Majewski placed Plaintiff Dominick Giampaolo in segregation without complying with the requirements of 20 IL ADC 504.600 *et seq.*

129. Specifically, Defendants Willamen and Majewski placed Plaintiff Giampaolo in segregation for no reason and said the “request came from outside.”

130. Plaintiff Giampaolo filed a grievance for this placement in segregation, that grievance was denied by Grievance Officer Kerrick Kiley, and Officer Kiley's decision was reviewed but denied by Defendant Anglin.

131. Plaintiff Giampaolo had a protectable liberty interest in not being placed in disciplinary segregation absent a finding of major misconduct.

132. The conduct of Defendants Anglin, Willamen, Majewski and Kiley as described in this Count constitutes, under color of law, a deprivation of liberty without due process in violation of the Fourteenth Amendment of the United States Constitution, for which preliminary and other injunctive relief is appropriate, for which Defendants are liable to Plaintiffs for damages and injunctive relief and attorneys' fees and costs.

COUNT EIGHT – SECTION 1983 VIOLATION

RETALIATION – GIAMPAOLO

133. Paragraphs 1 through 132 are incorporated in this Count as if rewritten herein.

134. 20 IL ADC 504.600 *et seq.* provides, in part, the means by which a prisoner may have privileges removed.

135. On or about March 15, 2009, Plaintiff Giampaolo had gone to the health care unit to seek medical attention for his medical needs related to varicose veins, bleeding tailbone and sore knee but was denied treatment by Defendants Clawson and Bowers.

136. When Giampaolo was refused treatment, he asked Defendants Clawson and Bowers for their names, and Defendants in turn accused Plaintiff Giampaolo of being insolent, intimidating and threatening.

137. As a consequence of Defendant Clawson's and Bowers' actions, Plaintiff Giampaolo was denied commissary privileges for at least thirty days.

138. Plaintiff Giampaolo has a protected free speech interest in asking for the names of individuals in order to lodge a grievance and in not being denied commissary privileges without a finding of major misconduct.

139. At all times relevant to this Amended Complaint, Defendant Wexford has had a policy or custom of allowing its physicians and medical staff to render effective, adequate and necessary treatment, yet Wexford refused to allow Defendants Bowers and Clawson to authorize such treatment. Defendant Wexford knew that refusing to allow Bowers and Clausen to provide such treatment created an unreasonable risk of injury to Plaintiff Giampaolo, Wexford was aware that this unreasonable risk existed, Wexford was indifferent to that risk, and Wexford's failure to follow that practice or procedure of providing treatment resulted in Plaintiff Giampaolo's injuries..

140. The conduct of Defendants Bowers, Clawson and Wexford as described in this Count constitutes, under color of law, a deprivation of free speech in violation of the First Amendment of the United States Constitution, for which Defendants are liable to Plaintiffs for damages and injunctive relief and attorneys' fees and costs.

SUPPLEMENTAL JURISDICTION

COUNT NINE - STATE BASED COMMON LAW CLAIM OF NEGLIGENCE

141. Paragraphs 1 through 140 are incorporated in this Count as if rewritten herein.

142. The Private Corporate Defendant and all of the Private Individual Defendants have a duty to provide adequate and necessary medical care to Plaintiffs.

143. At all times relevant to this Amended Complaint, the symptoms that all Plaintiffs have presented with include those identified in paragraph 63 above, and those symptoms have been caused by consuming the prison food that is high in soy.

144. The Private Corporate Defendant and all of the Private Individual Defendants have failed to provide adequate and necessary medical care to Plaintiffs. Instead, these Defendants deliberately gave Plaintiffs a certain kind of treatment knowing that it was ineffective, either as a means of toying with them or as a way of choosing the easier and less efficacious treatment.

145. The Private Corporate Defendant's and all of the Private Individual Defendants' failure to provide adequate and necessary medical treatment to Plaintiff constitutes a breach of their duty to Plaintiffs.

146. The injuries complained of by Plaintiffs in paragraph 63 above are the proximate cause of Defendants' breach of duty.

147. The injuries complained of by Plaintiffs in paragraph 63 above have caused Plaintiffs damage in the form of bodily injury.

148. The conduct of the Private Corporate Defendant and all of the Private Individual Defendants as described in this Count constitutes negligence, for which these Defendants are liable to Plaintiffs for damages, attorney's fees, injunctive relief and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- A. An injunction against the State, IDOC and CMS from entering into any more contracts with third parties for the procurement of soy or soy related materials to be used in foods for prisoners;
- B. An injunction against the State, IDOC and CMS from continuing to honor any existing contract with any third party that requires the procurement of soy or soy related materials that are used in foods for prisoners;
- C. An injunction against the State, IDOC and CMS from continuing to serve to Plaintiffs any food in the prisons that contains soy;
- D. An injunction against the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley), the Private Corporate Defendant and the Private Individual Defendants enjoining them to prescribe an alternative diet that excludes soy;
- E. An injunction against the State Individual Defendants (except for Defendants Ashcraft, Jennings, Willamen, Majewski and Kiley), the Private Corporate Defendant and the Private Individual Defendants enjoining them to provide adequate and necessary medical treatment;
- F. An injunction against Defendants Anglin, Ashcraft, Jennings, Willamen, Majewski and Kiley, Wexford, Shau, Larson, Bowers and Clawson from engaging in any more retaliation against any Plaintiffs;

- G. An award of Damages against the State Individual Defendants, the Private Corporate Defendant, and the Private Individual Defendants, including compensatory and punitive damages;
- H. An award of attorneys fees and costs;
- I. Any other relief the Court deems appropriate.

PLAINTIFFS DEMAND A JURY ON ALL ISSUES TO BE TRIED BY A JURY

Date: June 11, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filings(s) to the following:

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