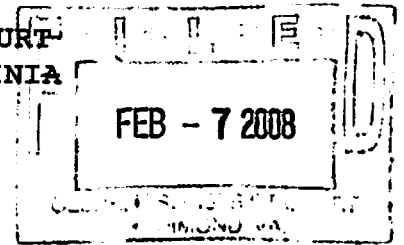


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



SHERON MONTREY,  
et al.,

Plaintiffs,

v.

Civil Action No. 3:07cv476

COMMONWEALTH OF VIRGINIA,  
VIRGINIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

Having reviewed the Motion to Dismiss Amended Complaint (Docket No. 41 in Billings, et al. v. Commonwealth of Virginia, et al., Civil Action No. 3:07cv545), the supporting and opposing memoranda, it is hereby ORDERED as follows:

(A) finding that the plaintiffs have advised that they are willing to withdraw Count III as a separate count of the Second Amended Complaint, Count III is hereby dismissed without prejudice as to all defendants;

(B) finding that the allegations of Counts I and IV of the Second Amended Complaint, as to the defendant, Marilyn Hill, are adequate under the principles articulated in Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955 (2007), the Court denies the motion to dismiss Counts I and IV of the Second Amended Complaint as to the defendant, Marilyn Hill; and

(C) finding that the allegations of the Second Amended Complaint, as respects Count II are conclusory and inadequate when

measured against the principles articulated in Bell Atlantic Corp. v. Twombly, the Court dismisses Count II with leave to file an amendment to Count II (by filing a Third Amended Complaint) not later than March 14, 2008 which, if filed, shall be answered within fifteen (15) days after service thereof. In respect of the possible amendment of Count II, counsel for the plaintiffs is admonished carefully to research whether there exist any claims under the Fourth, Fifth or Fourteenth Amendments as to these plaintiffs before filing any further amended complaint including any such claims and counsel further is admonished to study Fed. R. Civ. P. 11 before making any such filing.

It is further ORDERED that the facts and legal contentions are adequately presented in the materials before the Court and oral argument would not aid the decisional process.

It is therefore ORDERED that the hearing on the Motion to Dismiss Amended Complaint (Docket No. 41 in Billings, et al. v. Commonwealth of Virginia, et al., Civil Action No. 3:07cv545) scheduled for 9:30 a.m. on February 15, 2008 is cancelled.

It is so ORDERED.

\_\_\_\_\_/s/ REP  
Robert E. Payne  
Senior United States District Judge

Richmond, Virginia  
Date: February 7, 2008