

41034.00114-HBM

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ATTORNEYS FOR DEFENDANTS - JACKSON TOWNSHIP, JACKSON TOWNSHIP
TOWN COUNCIL AND ROBERT A. NIXON

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON**

**** ELECTRONICALLY FILED ****

ISAAC TAWIL,

Plaintiff

v.

JACKSON TOWNSHIP; JACKSON
TOWNSHIP TOWN COUNCIL; ROBERT
A. NIXON individually and as
Member of the JACKSON
TOWNSHIP TOWN COUNCIL; and
ABC Corporations (#1-#10),
JOHN DOES (#1-#10) and JANE
DOES (#1-#10)

Defendants

CASE NO.: 3:18-CV-00706-PGS-DEA

Civil Action

NOTICE OF MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED
COMPLAINT PURSUANT TO
FED. R. CIV. PRO. 12(b)(6)

PLEASE TAKE NOTICE that on a date and time to be set by the
Court, the undersigned, Marshall, Dennehey, Warner, Coleman &
Goggin, by Howard Mankoff, Esq. on behalf of defendants, Jackson

Township, Jackson Township Town Council and Robert A. Nixon, shall move before the above Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608 for an Order dismissing plaintiff's Second Amended Complaint without prejudice pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim upon which relief can be granted.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
Attorneys for Defendants,
Jackson Township, Jackson
Township Town Council And
Robert A. Nixon

By: /s/ Howard B. Mankoff
HOWARD B. MANKOFF, ESQ.

Dated: June 5, 2018

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DEFENDANTS, JACKSON TOWNSHIP, JACKSON TOWNSHIP TOWN COUNCIL AND
ROBERT A. NIXON'S BRIEF IN SUPPORT OF NOTICE OF MOTION TO
DISMISS SECOND AMENDED COMPLAINT PURSUANT TO FED. R. CIV. PRO.
12(b)(6)

Howard B. Mankoff, Esq.
Of Counsel and on The Brief

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STATEMENT OF FACTS

The Plaintiff, Isaac Tawil, alleges that he is an Orthodox Jew and that the Defendants "staked out" his home, which intimidated the Plaintiff's guests at the Plaintiff's home for religious observances. Based on this claim, the Plaintiff pleads violations of the Federal and State Constitutions, as well as civil rights statutes. The claims are so vague, that they prevent the Defendants from pleading a meaningful response. In addition, the Plaintiff fails to plead the requisite elements of each cause of action, and as such, the second amended complaint should be dismissed, pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a cause of action.

LEGAL ARGUMENT

I. The Complaint Fails to State a Cause of Action and Should Be Dismissed Pursuant to Fed. R. Civ. Pro. 12(b)(6) for Failure to State a Cause of Action.

A. Standards Governing a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6).

The Court may grant a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) if, "accepting all well-pleaded allegations in the Complaint as true, and viewing them in the light most favorable to the plaintiff, plaintiff is not entitled to relief." Oatway v. Am. Int'l Group, Inc., 325 F.3d 184, 187 (3d Cir. 2003)

(citations omitted). Fed. R. Civ. Pro. 12(b)(6) allows a party to move for dismissal of a Complaint based upon the pleader's failure to state a claim upon which relief can be granted. The Court does not need to credit a plaintiff's "bald assertions" or "legal conclusions." Morese v. Lower Merion School District, 132 F.3d 902, 906 (3rd Cir. 1997). The Rule 12(b)(6) analysis "is not whether a plaintiff will ultimately prevail but whether he or she is entitled to offer evidence to support the claims." Oatway, 325 F3d at 187. "A Rule 12(b)(6) dismissal is appropriate if, as a matter of law, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations, without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one..." [w]hen a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate..." Wilson v. Rackmill, 878 F.2d 772, 774 (3d. Cir. 1989) (Citing Neitzke v. Williams, 490 U.S. 319, 104 L. Ed. 2d 338, 109 S. Ct. 1827. 1832 (1989)).

A Court "has the discretion to accept the extraneous material" submitted in support of a motion to dismiss under Rule 12(b)(6) which are outside the pleadings and "convert the motion

into one for summary judgment." Gunson v. James, 364 F. Supp. 2d 455, 460-61 (D.N.J. 2005); see also Fed. R. Civ. Pro. 12(b).

B. Standards Governing a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 56.

Where a motion for relief is filed under Fed. R. Civ. Pro. 12(b) and the Court looks beyond the pleadings, the summary judgment standard is the appropriate standard for disposition. Nesbit v. Gears Unlimited, Inc., 347 F3d. 72, 83-84 (3d Cir. 2003). Summary Judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that it is "entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(c). A fact is "material" if, under the applicable substantive law, it is "essential to proper disposition of the claim." Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). An issue of fact is "genuine" if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." Id. at 248.

The moving party bears the initial burden of demonstration an absence of genuine issue of material fact and entitlement to judgment as a matter of law. In attempting to meet that standard, a movant that does not bear the ultimate burden of persuasion at trial and need not negate the other party's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rather, the

movant need simply point out to the Court a lack of evidence for the other party on an essential element of that party's claim. Id. at 325. Once the movant has met this initial burden, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Anderson, supra, 477 U.S. at 256. The non-moving party may not simply rest upon its pleadings to satisfy its burden. Id. The non-moving party "must set forth specific facts that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the non-movant." Id. Summary judgment is an important procedure "designed to secure the just, speedy and inexpensive determination of every action." Celotex, supra, 477 U.S. at 327. To successfully defend against a motion for summary judgment, a plaintiff cannot merely rely on the unsupported allegations of the Complaint, and must present more than the "mere existence of a scintilla of evidence" in his favor. Anderson, supra, 477 U.S. at 252.

C. The Plaintiff Fails to Satisfy the Pleading Requirements of Rule 8 of the Federal Rules of Civil Procedure.

In order to survive a motion to dismiss, the plaintiff is obligated to provide factual allegations that "raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "A complaint must nudge the allegations across the line from conceivable to plausible."

Ashcroft v. Iqbal, 556 U.S. 662, 680 (2009). "A formulaic recitation of a cause of action's elements will not do; something more is required, such as an expectation that discovery will reveal support for the basis of the allegation." Bell Atlantic, *supra* at 555-556. This heightened pleading requirement applies to all civil actions. Iqbal at 684. Claims that do not meet this heightened pleading standard must be dismissed as matter of law. Bell Atlantic, *supra* at 555.

In general, the plaintiff seems to allege that the presence of municipal employees imposed a substantial burden on the free exercise of religion. The plaintiff fails to allege or explain how he was prevented from engaging in any particular religious practice.

In Count I, the Plaintiff pleads a violation of the Equal Protection Clause of the Fourteenth Amendment. (The Plaintiff entitled the Count "Violation of the Equal Protection Clause of the Fourteenth Amendment," but later alleges a violation of 42 U.S.C.1983. This claim fails because the Plaintiff fails to cite to a comparator. The Plaintiff does not plead that he was singled out because of his religion.

In Count II, the Plaintiff alleges a violation of "his right to practice his religion." Count III is based on 42 U.S.C. 2000 *et seq*, which is the Religious Land Use and

Institutionalized Persons Act (RLUIPA). In this count, the Plaintiff fails to allege which part of the statute was violated by the Defendants, making it impossible for the Defendants to respond to the complaint. Count IV appears to be a claim, based on the State Constitution, that the Defendants somehow substantially burdened the plaintiff's free exercise of religion. This claim fails for the same reasons as Count I and II.

Finally, in Count V, the Plaintiff alleges a civil conspiracy. This claim fails for several reasons, discussed below.

II. Count I, for violation of the Equal Protection Clause of the Fourteenth Amendment, Fails Because the Plaintiff Does Not Cite to Any Comparators.

The Plaintiff alleges that the Defendants violated the Equal Protection Clause of the Fourteenth Amendment. The basis of the claim is that "Defendants sent government officials on multiple occasion to stake out Mr. Tawil's home..." (Paragraph 22 of the Second Amended Complaint). The Plaintiff does not cite to any secular or non secular comparators.

To state a claim under the Equal Protection Clause, a plaintiff must show that he received "different treatment from that received by other individuals similarly situated." Shuman v. Penn Manor School District, 422 F.3d 141, 151 (3d Cir. 2005).

"An essential element of a claim of selective treatment is that the comparable parties were similarly situated...Persons are similarly situated under the Equal Protection Clause when they are alike in all relevant aspects." Startzell v. City of Philadelphia, 533 F.3d 183, 203 (3d Cir. 2008). See also Zitter v Petrucelli, 2017 U.S. Dist. LEXIS 124724 at 23 (D. N.J. 2017); Martin v. Monroe Township, 2011 U.S. Dist. LEXIS 6996 at 22-23 (D. N.J. 2011).

The Equal Terms provision of RLUIPA is found at 42 U.S.C. 2000(cc)(b)(1). The Third Circuit has held that in order to establish a claim under the Equal Terms clause of the statute, the Plaintiff must demonstrate a "secular comparator that is similarly situated to the regulatory purpose of the regulation in question, similar to the First Amendment Free Exercise jurisprudence. Al Falah Center v. Township of Bridgewater, 2013 U.S. Dist. LEXIS 190076 at 45-46 (D.N.J. 2013)(citing Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 252, 264 (3d Cir. 2007)).

Here, the Plaintiff does not cite to any comparators. Although the Plaintiff alleges he is Jewish, he does not allege that he was treated worse than adherents of other faiths, nor similarly situated individuals engaged in secular activities.

Because the Plaintiff fails to plead an essential element of an Equal Protection claim, the First Count must be dismissed.

III. Counts II and IV, Which Appear to Allege the Defendants Enforced the Zoning Ordinance in a Way Which Inhibited the Plaintiff's Free Exercise of Religion, Fail to State a Cause of Action and Should be Dismissed.

The First Amendment prohibits Congress from enacting any laws "respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. First Amendment I. The Free Exercise Clause applies to the states and local governments through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940). The Free Exercise clause does not define land use as a religious exercise. Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253, 274 (3rd Cir. 2007).

The Court will find a substantial burden of the free exercise of religion where (1) a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available versus abandoning one of the precepts of his religion in order to receive a benefit; or (2) the Government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs. Mack v. Warden Loretto FCI, 839 F.3d 286, 304 (3rd Cir. 2016).

Here, the Plaintiff does not plead any facts, which would allow the Court to find a substantial burden on the free exercise of religion. The Plaintiff does not plead that he was forced to choose between following the precepts of his religion in order to obtain a benefit, nor does the Plaintiff plead that he was forced to modify his behavior or violate his beliefs. The Plaintiff does not plead how the Defendant's conduct forced him to modify his religious observances.

The analysis for the alleged violation of the State Constitution in Count IV is the same as the analysis for Count II. To determine whether a zoning ordinance violates the free exercise clause of the New Jersey Constitution, the Court must determine whether the ordinance imposes a significant burden on religious practice. Al Falah Center v. Township of Bridgewater, 2013 U.S. Dist. LEXIS 190076 (D. N.J. 2013). The test is the same as the claims brought based on the United States Constitution, and must be dismissed for the same reasons.

Because of these deficiencies, Counts II and IV fail to state a cause of action and should be dismissed.

IV. Count III, Which is for Violation of RLUIPA, Fails to State a Cause of Action and Should be Dismissed.

In Count III, the Plaintiff, in vague and conclusory terms, alleges the Defendants violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). This count should be

dismissed because (1) the Plaintiff does not plead any facts, which would allow the Court to find a violation of RLUIPA; and (2) the Plaintiff does not plead which section of the statute the Defendants allegedly violated.

RLUIPA is "the latest of long running congressional efforts to accord religious exercise heightened protection from government imposed burden, consistent with Supreme Court precedent. " Cutter v. Wilkinson, 544 U.S. 709, 714, 125 S. Ct. 2113, L Ed. 2d 1020 (2005). RLUIPA addresses land use regulations and the rights of institutionalized persons. The land use section of the statute is divided into two sections: Substantial Burdens, 2000cc(a) and Discrimination and Exclusion, 2000cc(b). The Plaintiff here does not plead which section of the statute the Defendants allegedly violated, making it impossible and unfair for the Defendants to respond. Lighthouse Institute for Evangelism v. Long Branch, *supra* at 261.

If the Plaintiff alleges that the Defendants somehow used the Zoning Ordinance as basis to substantially burden the free exercise of religion, the claim fails to explain how the Plaintiff's free exercise of religion has been burdened. The Plaintiff does not explain which religious practices have been burdened.

The claim also fails if it is brought pursuant to the Equal Terms provision of RLUIPA.

A Plaintiff asserting a claim under the RLUIPA Equal Terms provision must show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution (5) that causes no lesser harm to the interest the regulation seeks to advance.

Lighthouse Inst., 510 F.3d at 270.

It is self evident that the Plaintiff in the present case fails to plead any of facts, which would allow the Court to find a violation of the equal terms provision of RLUIPA. The Plaintiff does not plead any facts, which compare the Plaintiff's use of the property to a non religious assembly or institution, which means that any such claim the Plaintiff meant to plead fails.

RLUIPA's non discrimination clause provides that "no government shall impose or implement a land use regulation that discriminate against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. 2000cc(b)(2). "This provision is rooted in Establishment Clause jurisprudence and is intended to prevent governmental bodies from treating groups differently on the basis of their religious denomination." United States v. Bensalem Township, 220 F. Supp. 3d 615, 612 (E.D. Pa. 2016). Although the Plaintiff here appears to allege the Defendants acted based on the Plaintiff's religion, the Plaintiff does not plead that he was treated differently or less favorably than other township residents, who practice other religions. As such the Plaintiff does not plead a cause of action for violation of the Equal Terms provision of RLUIPA.

RLUIPA also contains an Unreasonable Limitations clause, which states that "no government shall impose or implement a land use restriction...that unreasonably limits religious assemblies, institutions or structures within jurisdiction." 42 U.S.C. 2000cc(b)(3)(B). The Plaintiff here does not plead any facts which would allow the Court to find a violation of the Unreasonable Limitations Clause. The Plaintiff does not plead that the Defendants imposed or implemented a land use restriction that unreasonably limits the Plaintiff's ability to assemble for religious observances and in fact, does not describe any land use restriction at all. To the extent the Plaintiff meant to plead a violation of the Unreasonable Limitations clause of RLUIPA, the claim fails and should be dismissed.

V. Count V, in Which the Plaintiff Alleges Civil Conspiracy, Fails to State a Claim and Must be Dismissed.

Here again, the Plaintiff's complaint is so vaguely plead, it is difficult to discern the basis of the conspiracy claim in Count V. The Defendants assume, based on the other counts, in which there are claims for violation of civil rights in the Federal and State Constitutions, that the Plaintiff meant to invoke 42 U.S.C. 1983 and 1985. If so, the claims fail as a matter of law.

A civil conspiracy under 42 U.S.C. 1983 is:

A Combination of two or more persons acting in concert to commit an unlawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage.

Jones v. Dalton, 867 F. Supp. 2d 572, 585 (D. N.J. 2012). Under 42 U.S.C. 1985, a plaintiff must prove:

- (1) A conspiracy; (2) for the purpose of depriving...any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Id.

Both statutes require a meeting of the minds. *Id.* A 1985 conspiracy also requires "some racial , or perhaps class based invidiously discriminatory animus behind the conspirators' action." *Id.* at 585-586. In this case, the Plaintiff alleges only that defendant Nixon conspired with fictitiously named defendants to deprive the Plaintiff of unspecified civil rights. The Plaintiff does not describe the allegedly unlawful act, or an agreement between conspirators to inflict a wrong on the Plaintiff. The Plaintiff also fails to describe the alleged injury. For these reasons, any claims the Plaintiff meant to plead under 1983 and 1985 fail and must be dismissed.

CONCLUSION

The Defendants' motion to dismiss the Second Amended Complaint should be granted for the reasons discussed above.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
Attorneys for Defendants,
Jackson Township, Jackson
Township Town Council And
Robert A. Nixon

By: /s/ Howard B. Mankoff
HOWARD B. MANKOFF, ESQ.

Dated: June 5, 2018

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the Notice of Motion and
supporting documents on behalf of Defendants Jackson Township,
Jackson Township Town Council and Robert A. Nixon pertaining to

the above captioned matter has been served upon the following as follows:

**** ELECTRONICALLY FILED ****

Clerk of the Court
United States District Court
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

**** ELECTRONICALLY FILED / COURTESY COPY**

Honorable Peter G. Sheridan, U.S.D.C.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

**** VIA ECF ****

All Counsel of Record

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
Attorneys for Defendants,
Jackson Township, Jackson
Township Town Council And
Robert A. Nixon

By: /s/ Howard B. Mankoff
HOWARD B. MANKOFF, ESQ.

Dated: June 5, 2018

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Defendants

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ORDER

THIS MATTER, having been brought before the court by Howard
B. Mankoff, Esq., of Marshall Dennehey Warner Coleman & Goggin,
counsel for defendants, upon notice to plaintiff's counsel and
for good cause shown:

IT IS on this _____ day of _____,
2018, ORDERED:

1. The Second Amended Complaint is dismissed without prejudice pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim upon which relief can be granted.

U.S.D.J.

41034.00114-HBM

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

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TRENTON

**** ELECTRONICALLY FILED ****

ISAAC TAWIL,

Plaintiff

v.

JACKSON TOWNSHIP; JACKSON
TOWNSHIP TOWN COUNCIL; ROBERT
A. NIXON individually and as
Member of the JACKSON
TOWNSHIP TOWN COUNCIL; and
ABC Corporations (#1-#10),
JOHN DOES (#1-#10) and JANE
DOES (#1-#10)

Defendants

CASE NO.: 3:18-CV-00706-PGS-DEA

Civil Action

CERTIFICATION OF COUNSEL

I, Howard B. Mankoff, Esq., being of full age, do hereby
certify as follows:

1. I am a shareholder in the firm of Marshall, Dennehey,
Warner, Coleman & Goggin, counsel for the defendants, Jackson

Township, Jackson Township Town Council and Robert A. Nixon and in this capacity, I am familiar with the facts of this, matter.

2. I submit this certification in support of the defendants' motion to dismiss the Second Amended Complaint.

3. The Second Amended Complaint is attached as Exhibit-A.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
Attorneys for Defendants,
Jackson Township, Jackson
Township Town Council And
Robert A. Nixon

By: /s/ Howard B. Mankoff
HOWARD B. MANKOFF, ESQ.

Dated: June 5, 2018

THE LAW OFFICES OF MICHAEL BOTTON, LLC
Michael Botton, ESQ (MB8412)
1314 Main Street
Belmar, NJ 07719
Phone: (732) 894-3686
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ISAAC TAWIL

Plaintiff

v.

JACKSON TOWNSHIP; JACKSON
TOWNSHIP TOWN COUNCIL; ROBERT A.
NIXON individually and as Member of the
Jackson Township Town Council; and ABC
Corporations (#1-#10), JOHN DOES (#1-#10)
and JANE DOES (#1-#10)

Defendant(s)

Civil Action No.: 3:18-CV-00706 (PGS)
(DEA)

SECOND AMENDED COMPLAINT

Plaintiff, Isaac Tawil, residing at 41 Pitney Rd, Jackson, NJ, by way of Amended
Complaint against the Defendants says:

PARTIES

1. Plaintiff Isaac Tawil is a citizen of the State of New Jersey.
2. Defendant Jackson Township is a township incorporated within Ocean County, State of New Jersey with a mailing address of 95 W. Veterans Highway, Jackson, NJ 08527.
3. Defendant Jackson Township Town Council is a governing body for the Township of Jackson and is located at 95 W. Veterans Highway, Jackson, NJ 08527.

4. Defendant Robert A. Nixon (hereafter "Nixon") at all times during the events herein set forth, was an elected member of the Jackson Twp. Town Council and acted in his capacity as an agent, servant and/or employee of the city and/or individually.
5. Defendant John Does (#1-10), Jane Does (#1-10) and ABC Corporations (#1-10), inclusive, represent other individuals and/or entities unknown to the Plaintiff at this time, who participated in the causes of Plaintiff's damages and who will be specifically identified through discovery.

SUBJECT MATTER JURISDICTION

This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question) in that the claims herein arise under U.S. Const. Amend. I; 42 U.S.C. § 1983 & 42 U.S.C.A. § 2000CC as more fully set forth below.

VENUE

Venue is appropriate in the United States District Court, District of New Jersey, pursuant to 28 U.S.C. § 1391(b) as all the parties to this action are located in the State of New Jersey as stated above.

SUBSTANTIVE ALLEGATIONS

1. Plaintiff, Isaac Tawil, (hereafter "Mr. Tawil) is a resident of Jackson Township and lives at 41 Pitney Lane, Jackson, NJ 08527.
2. Mr. Tawil is an Orthodox Jew.
3. As part of his observance of the Jewish Faith, Mr. Tawil is required to pray three times a day and, if at all possible, it should be done with a quorum of at least 10 men. An

additional requirement of the Jewish Faith is the observance of the Sabbath every week from sundown Friday evenings until sundown on Saturday night.

4. As part of observance of the Sabbath, members of the Orthodox Jewish community are unable to operate any machinery or turn on/off electricity. As a result, when getting together to pray during the Sabbath, Orthodox Jews must walk to their synagogue or place of worship. Because Mr. Tawil does not live within walking distance of a synagogue, he invites other Orthodox Jews that live within walking distance of his house to pray with him during the Sabbath; a prayer on Friday nights starting just before sundown that lasts approximately one hour, again Saturday morning for 2 ½ hours, and again Saturday evening shortly before sundown and ending about 15 to 20 min after sundown on Saturday night.
5. In an attempt to prevent Mr. Tawil from observing the Jewish faith under the guise of enforcing a zoning ordinance, Defendant Nixon, in his position as a member of the Town Council, directed Jackson Township zoning officers to stake out his home on Friday nights. On several occasions a zoning officer was parked outside 41 Pitney Lane in Jackson supervising Mr. Tawil and his guests coming to his house to practice the Jewish Faith. The repeated presence of these officers had a chilling effect, was intimidating, became a form of harassment, and discouraged people from visiting Mr. Tawil during this time. Mr. Tawil was being denied his right to pray at his home by the actions of the Jackson Township Code Enforcement.
6. On or about March 6, 2016, an email was sent by Kenneth Pieslak to a citizen of Jackson Township regarding 41 Pitney Lane. The email states that Jackson Township has been

monitoring the home for months, that neighbors had been interviewed and none had reported any complaints.

7. On or about June 10, 2016 and June 11, 2016, a code compliance officer was sent to monitor Mr. Tawil's home.
8. On June 13, 2016, Kenneth Pieslak, Code Compliance Supervisor had informed Robert Nixon that nothing disruptive was reported and that a neighbor was interviewed stating they do not have any complaints.
9. Upon information and belief, on June 24, 2016 and June 25, 2016, a code compliance officer was again sent by Defendants to monitor Mr. Tawil's home on Friday and Saturday evening.
10. On June 27, 2016, Kenneth Pieslak informed Robert Nixon that the officer observed no activity in or around the residence besides for cars parked in the driveway. Pieslak also stated they would continue to monitor observations.
11. That same day, Helene Schlegel, Jackson Township Business Administrator, sent an email to Robert Nixon stating that after finding nothing significant for two weeks, there is no need for further overtime on the matter, that any further overtime must be pre-approved by administration, and they already expended too many tax dollars on the property to find there are no issues.
12. In response, Defendant Nixon requested a meeting to address his concerns with the Property.
13. Upon information and belief, in July 2016, Defendant Nixon again requested an officer be sent to monitor Mr. Tawil's home.

14. Upon information and belief, on July 20, 2016, Helene Schlegel informed Defendant Nixon and Mayor Michael Reina that code enforcement had been making pass-throughs by Plaintiff's home at least once a day for a week and observed no activity.
15. On or about August 23, 2016, Defendant Nixon requested another meeting with Helene Schlegel to discuss what, if any, actions were going to be taken regarding Mr. Tawil's home.
16. On or about September 19, 2016, Helene Schlegel sent an email to Defendant Nixon and Mayor Reina advising that valuable time and money was being wasted sending officers to Mr. Tawil's home.
17. Even after a zoning officer's multiple reports to the Township and Mr. Nixon that there was no unlawful activity at 41 Pitney Lane, Mr. Nixon continued to direct Township personnel to intimidate and harass Mr. Tawil and his guests. This behavior started on or about June of 2016 and continued until January of 2017.

COUNT 1

(Violation of Equal Protection Clause of the Fourteenth Amendment)

18. Plaintiff hereby repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 17 of the Complaint as if fully set forth herein.
19. The Fourteenth Amendment of the Constitution states that "All persons born or naturalized in the US and subject to the jurisdiction thereof, are citizens of the US and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US; 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.

20. The Equal Protection Clause requires states treat an individual in the same manner as others in similar conditions and circumstances.
21. As a Jewish man residing in Jackson Township, Mr. Tawil was the focal point of monitoring and investigations for months by the Jackson Township, Town Council, and Robert Nixon.
22. Defendants sent government officials on multiple occasions to stake out Mr. Tawil's home in the hopes of finding a violation of a town ordinance so that Defendants could prevent Mr. Tawil from inviting friends to pray in his home on Fridays and Saturdays.
23. Even when Defendants were made aware that no violations had been committed, Defendants continued to monitor Mr. Tawil's home, thereby causing fear, harassment, and intimidation to him and his family to practice their religion in their own home.
24. These acts by the Defendants have deprived the Plaintiff of his life and liberty protected under the Equal Protection Clause of the Fourteenth Amendment.
25. The Defendant Nixon and Officers John and Jane Doe (#1-10), as Jackson Township employees, in their capacity as Jackson Township employees, deprived Tawil of his federal constitutional and statutory rights.
26. This is a violation of 42 U.S.C. § 1983.
27. As a proximate result of Defendants' actions, Mr. Tawil was injured and suffered physical, mental, emotional and economic injury.
28. **WHEREFORE**, Plaintiff demands against the Defendants a Judgment as follows:
- (a) That Defendants pay full costs of this action to the Plaintiffs;
 - (b) For compensatory damages;
 - (c) For punitive damages;

- (d) For interest, attorney's fees and costs of suit; and
- (e) For such further relief as the Court shall deem just and proper.

COUNT II

(First Amendment Free Exercise of Religion)

29. Plaintiff hereby repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 28 of the Complaint as if fully set forth herein.
30. The Free Exercise Clause of the First Amendment reserves the right of American citizens to accept any religious belief and engage in religious rituals. This Clause protects religious beliefs and actions made on behalf of those beliefs.
31. The Defendant Nixon, and officers John and Jane Doe (#1-#10), as Jackson Township employees, in their capacity as Jackson Township employees used their position(s) to intimidate and harass Mr. Tawil to deprive him of his right to practice his religion under the color of a zoning law with the intent to inhibit Mr. Tawil's free exercise of his first amendment right to freedom of religion.
32. As a proximate result of Defendants' actions, Mr. Tawil was injured and suffered physical, mental, emotional and economic injury.

WHEREFORE, Plaintiff demands against the Defendants a Judgment as follows:

- (a) That Defendants pay full costs of this action to the Plaintiffs;
- (b) For compensatory damages;
- (c) For punitive damages;
- (d) For interest, attorney's fees and costs of suit; and
- (e) For such further relief as the Court shall deem just and proper.

COUNT III

(42 U.S.C.A. § 2000CC)

33. Plaintiff hereby repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 32 of the Complaint above as if fully set forth herein.

34.

35. Defendant Nixon in his capacity as an employee of Jackson Township and the Defendant Jackson Township itself violated 42 U.S.C.A. § 2000CC when attempting to use a zoning statute to restrict Isaac Tawil's right to practice his religion.

36. As a proximate result of Defendants' actions, Mr. Tawil was injured and suffered physical, mental, emotional and economic injury.

WHEREFORE, Plaintiff demands against the Defendants a Judgment as follows:

- (a) That Defendants pay full costs of this action to the Plaintiffs;
- (b) For compensatory damages;
- (c) For punitive damages;
- (d) For interest, attorney's fees and costs of suit; and
- (e) For such further relief as the Court shall deem just and proper.

COUNT IV

(State Law – N.J.S.A. Const. Art. 1, § 3)

37. Plaintiff hereby repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 36 of the Complaint above as if fully set forth herein.

38. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment.

39. As a Jewish man residing in Jackson Township, Mr. Tawil was the focal point of monitoring and investigations for months by the Jackson Township, Town Council, and Robert Nixon.

40. Defendants sent government officials on multiple occasions to stake out Mr. Tawil's home in the hopes of finding a violation of a town ordinance so that Defendants could prevent Mr. Tawil from inviting friends to pray in his home on Fridays and Saturdays.

41. Even when Defendants were made aware that no violations had been committed, Defendants continued to monitor Mr. Tawil's home, thereby causing fear, harassment, and intimidation to him and his family to practice their religion in their own home.

42. The Defendant Nixon and Officers John and Jane Doe (#1-10), as Jackson Township employees, in their capacity as Jackson Township employees, deprived Tawil of his State constitutional and statutory rights.

43. As a proximate result of Defendants' actions, Mr. Tawil was injured and suffered physical, mental, emotional and economic injury.

WHEREFORE, Plaintiff demands against the Defendants a Judgment as follows:

- (a) That Defendants pay full costs of this action to the Plaintiffs;
- (b) For compensatory damages;
- (c) For punitive damages;
- (d) For interest, attorney's fees and costs of suit; and
- (e) For such further relief as the Court shall deem just and proper.

COUNT V

(Civil Conspiracy)

44. Plaintiff hereby repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 43 of the Complaint above as if fully set forth herein.
45. Civil Conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, a principal element of which is to inflict a wrong against or injury upon another, and an overt act that results in damage.
46. The individual Defendants conspired as set forth above to subject Mr. Tawil with harassments and intimidation to prevent him from exercising his right to practice the Jewish Faith in violation of his U.S Constitutional and New Jersey Constitutional right in the free exercise clause of both.
47. The actions of the individual Defendants were taken in their capacities as elected officials, appointed officers, or employees of the Defendants Nixon, officers John and Jane Doe (#1-10) of Jackson Township and Jackson Township Council are therefore attributable to Jackson Township.
48. As a proximate result of Defendants' actions, Mr. Tawil was injured and suffered physical, mental, emotional and economic injury.

WHEREFORE, Plaintiff demands against the Defendants a Judgment as follows:

- (a) That Defendants pay full costs of this action to the Plaintiffs;
- (b) For compensatory damages;
- (c) For punitive damages;

(d) For interest, attorney's fees and costs of suit; and

(e) For such further relief as the Court shall deem just and proper.

Dated: May 16, 2018

Michael Botton, Esq. /s/

Michael Botton (MB) MB8412
The Law Offices of Michael Botton, LLC
1314 Main Street
Belmar, NJ 07719
Phone: (732) 894-3686
Attorney for the Plaintiff

JURY DEMAND

PLEASE TAKE NOTICE that Plaintiff demands a trial by jury on all issues.

Dated: May 16, 2018

Michael Botton, Esq. /s/

Michael Botton, Esq. MB8412
Law Office of Michael Botton, LLC
Attorneys for Plaintiffs

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that MICHAEL BOTTON, ESQ., is hereby designated as Trial Counsel.

Dated: May 16, 2018

Michael Botton, Esq. /s/

Michael Botton, Esq. MB8412
Law Office of Michael Botton, LLC
Attorneys for Plaintiffs