IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GARRY A. BORZYCH,

ORDER

Plaintiff,

06-C-475-C

v.

MATTHEW J. FRANK, STEVEN B. CASPERSON, RICK RAEMISCH, PHILLIP KINGSTON, STEVEN SCHUELER, MIKE THURMER, JAMYI WITCH and SGT. McCARTHY,

Defendants.

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In this civil action for declaratory, injunctive and monetary relief under 42 U.S.C. § 1983, plaintiff Garry A. Borzych, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, contends that defendants deprived him of his rights under the First, Fourth, Eighth and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by taking away his Thor's Hammer emblem, an item of religious significance to plaintiff. Jurisdiction is present under 28 U.S.C. § 1331.

Plaintiff has paid the $350 filing fee. Nevertheless, because he is a prisoner, I must screen his complaint to determine whether it is legally frivolous, malicious, fails to state a

claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss plaintiff's case on its own motion for lack of administrative exhaustion, but if defendants believe that plaintiff has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. Of Corrections, 182 F.3d 532 (7th Cir. 1999).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Plaintiff Garry A. Borzych is an inmate at the Waupun Correctional Institution in Waupun, Wisconsin.

Defendant Matthew J. Frank is Secretary of the Wisconsin Department of Corrections. Defendant Steven Casperson is Administrator of the Wisconsin Department of Adult Institutions.

He implements policies for the Wisconsin Department of Corrections.

Defendant Rick Raemisch is Deputy Secretary of the Wisconsin Department of Corrections. Defendant Mike Thurmer is the deputy warden at the Waupun Correctional Institution. They affirm or reject recommendations of corrections complaint examiners concerning inmate complaints.

Defendant Phillip Kingston is the warden at the Waupun Correctional Institution.

Defendant Steven Schueler is a captain employed by the Wisconsin Department of Corrections. He deals with enforcement of policies related to prison security.

Defendant Reverend Jamyi Witch is a chaplain employed by the Wisconsin Department of Corrections. She oversees pagan and Muslim inmates.

Defendant Sergeant McCarthy is property sergeant at the Waupun Correctional Institution. He controls the issuance of inmate property.

B. Denial of Religious Emblem

Plaintiff follows Odinism, a Germanic pagan religion. He believes the god Thor is the protector of the universe. As an Odinist, plaintiff must wear a Thor's Hammer emblem around his neck. It is central to his practice of Odinism and the only means by which he can obtain spiritual protection and a meaningful life.

In April 2002, while incarcerated at the Green Bay Correctional Institution and with authorization from the chaplain and prison property staff there, plaintiff purchased a

necklace with a Thor's Hammer pendant. On May 8, 2002, prison property staff at Green Bay Correctional Institution delivered plaintiff the Thor's Hammer pendant he had purchased.

On October 29, 2003, defendants Casperson, Kingston and Frank instituted a policy forbidding Thor's Hammer emblems in Wisconsin Department of Corrections facilities because of the emblems' association with disruptive groups. Plaintiff, who had been transferred to the Wisconsin Secure Program Facility, was allowed to keep his emblem. On December 29, 2004, plaintiff was transferred to the Waupun Correctional Institution in Waupun, Wisconsin. The following day, defendant McCarthy searched plaintiff's property and found plaintiff's Thor's Hammer emblem necklace. Defendant McCarthy told plaintiff he could not keep the necklace, even though plaintiff explained that it was a religious emblem that he had been allowed to keep at the Green Bay Correctional Institution. Defendant McCarthy sent the necklace to defendant Witch for a determination. When plaintiff wrote to defendant Witch, she informed him that Thor's Hammer emblems were not allowed in Wisconsin prisons.

On January 27, 2005, plaintiff met with defendant Witch regarding his Thor's Hammer emblem. He explained that he had been allowed to keep the emblem while at the Green Bay Correctional Institution. Defendant Witch called defendant Schueler and explained this to him. However, both defendants Schueler and Witch maintained that

plaintiff could not keep his emblem because it violated the Wisconsin Department of Corrections' policy.

The Wisconsin Department of Corrections has identified the Thor's Hammer emblem as a symbol used by unsanctioned and disruptive groups, and, therefore, it has prohibited Thor's Hammer emblems from its facilities. However, members of other religions are still allowed to wear emblems of their faith. Plaintiff is not affiliated with any disruptive group, and his religious emblem is not a symbol of any such group. His emblem did not cause any security problems while he possessed it.

Plaintiff filed an inmate complaint with the Institution Complaint Examiner's Office the day that he was told he could not keep his emblem. He complained that other religious groups were permitted to possess their religious objects but he was not. On January 31, 2005, acting on behalf of defendant Kingston, defendant Thurmer dismissed the complaint, relying on the Wisconsin Department of Corrections' policy prohibiting Thor's Hammer emblems from its facilities. Plaintiff appealed to the Corrections Complaint Examiner's Office, but defendant Raemisch, acting on behalf of defendant Frank, dismissed plaintiff's complaint.

Plaintiff believes that the denial of his emblem is a form of "psychological torture" and a hindrance to his rehabilitative efforts.

OPINION

A. Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1(a)(1)-(2), prohibits the government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest" and does so by "the least restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 709 (2005). RLUIPA is designed to "protect[] institutionalized persons who are unable freely to attend to their religious needs and are therefore dependent on the government's permission and accommodation for exercise of their religion." Id. at 721.

> The protections afforded by RLUIPA apply where:
>
> (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
> (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

42 U.S.C. § 2000cc-1(b). Because the Wisconsin Department of Corrections receives and uses federal grant money for substance abuse treatment programs in its state prison facilities, the requirements of the Act apply to it. Perez v. Frank, 433 F. Supp. 2d 955, 963 (W.D. Wis. 2006).

To show that RLUIPA was violated, a plaintiff must first establish that defendants

placed a substantial burden on the exercise of his religious beliefs. 42 U.S.C. § 2000cc-2(b). Although RLUIPA does not define the term "substantial burden," the Court of Appeals for the Seventh Circuit has held that a substantial burden is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003). A "religious exercise" is broadly defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

Once a plaintiff establishes that a policy substantially burdened his religious practice, a defendant may avoid liability by proving that the challenged policy furthers a compelling interest by the least restrictive means. 42 U.S.C. § 2000cc-2(c). In other words, if an inmate's "request[] for religious accommodations become[s] excessive, impose[s] unjustified burdens on other institutionalized persons, or jeopardize[s] the effective functioning of an institution, the prison [is] free to resist the imposition." Cutter, 544 U.S. at 726.

Plaintiff alleges that defendants substantially burdened his exercise of the Odinist faith by forbidding him from keeping his Thor's Hammer emblem. Plaintiff alleges further that the emblem is central to his Odinist beliefs and necessary for his spiritual protection. Thus, plaintiff suggests that the denial of his Thor's Hammer has rendered his practice of Odinism "effectively impracticable." Because it is too early to tell whether prohibiting the

emblem was the least restrictive means to enforce the policy, I will grant plaintiff leave to proceed on his RLUIPA claim.

B. First Amendment

1. Free exercise of religion

The free exercise clause of the First Amendment guarantees every individual the right to freely exercise his or her religion and "requires government respect for, and noninterference with, [] religious beliefs and practices." Cutter, 544 U.S. at 719. The protections offered by the free exercise clause are more limited than those extended under RLUIPA. Although RLUIPA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. § 2000cc-5(7), the United States Supreme Court has held that First Amendment protects only "the observation of a central religious belief or practice." Hernandez v. Commissioner of Internal Revenue, 490 U.S. 680, 699 (1989). Thus, to prevail on a free exercise claim, a plaintiff must meet two requirements. First, a plaintiff must show that the government has placed a substantial burden on a central religious practice. Id.; Kaufman v. McCaughtry, 419 F.3d 678, 683 (7th Cir. 2005). Second, a plaintiff must demonstrate that the government has intentionally targeted a particular religion or religious practice. Sasnett v. Sullivan, 91 F.3d 1018, 1020 (7th Cir. 1996), vacated on other grounds, 521 U.S. 1114 (1997). In other

words, "if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid." Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993) (citation omitted).

In the prison setting, an inmate's ability to practice his or her religion may be circumscribed by restrictions that are reasonably related to legitimate penological interests. Conyers v. Abitz, 416 F.3d 580, 585 (7th Cir. 2005); Tarpley v. Allen County, Indiana, 312 F.3d 895, 898 (7th Cir. 2002). In determining whether government conduct is reasonably related to a legitimate penological interest, the court considers four factors: (1) whether a valid, rational connection exists between the regulation and a legitimate government interest behind the rule; (2) whether there are alternative means of exercising the right in question that remain available to prisoners; (3) whether accommodation of the asserted constitutional right would have a negative impact on guards, other inmates and the allocation of prison resources; and (4) whether obvious, easy alternatives exist as evidence that the regulation is not reasonable. Tarpley, 312 F.3d at 898 (citing Turner v. Safely, 482 U.S. 78, 89-91 (1987)).

Plaintiff alleges that wearing a Thor's Hammer emblem is central to his Odinist faith because he would be unable to practice Odinism effectively without it, and, accordingly, defendants have substantially burdened his religious practice. Plaintiff alleges further that defendants targeted his faith by allowing inmates of other religions to keep their religious

emblems while denying plaintiff possession of his. This is sufficient to state a claim. Although maintaining prison security is a legitimate interest, Kaufman, 419 F.3d at 683, it is too early to tell whether defendants' interest is reasonably related to the restriction on plaintiff's emblem. Therefore, I will allow plaintiff to proceed with his claim that defendants violated his First Amendment right under the free exercise clause.

2. Establishment clause

The establishment clause of the First Amendment "commands a separation of church and state," Cutter, 544 U.S. at 710, by preventing the government from promoting any religious doctrine or organization or affiliating itself with one. County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 590 (1989). A governmental policy violates the establishment clause if "(1) it has no secular purpose, (2) its primary effect advances or inhibits religion, or (3) it fosters an excessive entanglement with religion." Kaufman, F.3d at 683 (citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)); Books v. City of Elkhart, 235 F.3d 292, 301 (7th Cir. 2000).

Plaintiff alleges that inmates of other religious faiths are allowed to possess their religious emblems but he is not. I understand plaintiff to contend that the prison's policy favors other religions over the Odinist faith. Therefore, I will grant plaintiff leave to proceed on his claim that defendants violated his right under the establishment clause of the First

Amendment.

3. Freedom of expression

Plaintiff writes in his complaint that defendants violated his "right to communicate his religious beliefs freely, by the fact that [he is] not allowed to possess and don [his] religious emblem." I understand plaintiff to contend that the wearing of his Thor's Hammer emblem is expressive conduct and that prohibiting him from wearing the emblem violates his right to free speech.

Prisoner free speech claims are governed by the same four-part standard that governs free exercise claims. The standard "applies to all circumstances in which the needs of prison administration implicate constitutional rights, even if the right infringed upon is a fundamental one." Russell v. Richards, 384 F.3d 444, 447 (7th Cir. 2004) (citation omitted). However, the Court of Appeals for the Seventh Circuit has held that, although the wearing of a religious emblem "is public and so in a sense expressive, . . . to equate public religious observance to free speech would empty the free-exercise clause of a distinctive meaning." Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999). In disposing of Protestant inmates' claim that a prison policy forbidding them to possess crosses violated their right to free speech, the court reasoned that:

[a]lthough the plaintiffs want to wear their crosses outside their clothing, they

> do not want to do so in order to convert other inmates or otherwise make a public statement, and so we think their free-speech claim fails by analogy to the *Pickering* line of cases that distinguish between speech on matters of public concern and on private matters, albeit the speech itself may be public in both cases." See, e.g., Id., Pickering v. Board of Education, 391 U.S. 563, 571-72 (1968); Connick v. Myers, 461 U.S. 138, 146 (1983); Khuans v. School District 110, 123 F.3d 1010, 1014 (7th Cir.1997).

Id.

In Clark v. Stevenson, No. 06-C-419-C, 2006 WL 2380658, *7 (W.D. Wis. Aug. 15, 2006), I relied on Sasnett in holding that "[i]n the context of an institutional setting, speech is protected only when it relates to matters of public concern."

In his complaint, plaintiff asks to be allowed to wear his emblem under his clothes, except when attending religious meetings, which is the policy governing approved religious emblems. Thus, plaintiff has pleaded himself out of court on this claim because he has conceded that he does not intend to wear the Thor's Hammer emblem in order to make a public statement. In accordance with Sasnett, I must conclude that plaintiff has not stated a claim for a violation of free speech, and I will deny him leave to proceed on that claim.

C. Fourth Amendment: Unreasonable Search and Seizure

Plaintiff contends that his Fourth Amendment rights were violated when defendants confiscated his Thor's Hammer emblem. The Fourth Amendment protects individuals from unreasonable searches and seizures by the state. See, e.g., Boyd v. United States, 116 U.S.

616 (1886); Peckham v. Wisconsin Dept. of Corrections, 141 F.3d 694, 697 (7th Cir. 1998). However, the Fourth Amendment is implicated only when the state intrudes upon an interest in which a person has a "reasonable expectation of privacy." New York v. Class, 475 U.S. 106, 112 (1986) (quoting Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). Although prisoners do not forfeit all of their rights under the Fourth Amendment, their expectation of privacy while in custody is significantly diminished. See Hudson v. Palmer, 468 U.S. 517 (1984) (prisoner has no reasonable expectation of privacy in his prison cell). Specifically, prisoners have no expectation of privacy under the Fourth Amendment with respect to their property. Id. at 530; Sparks v. Stutler, 71 F.3d 259, 260 (7th Cir. 1996). Accordingly, I will deny plaintiff leave to proceed on his Fourth Amendment claim.

D. Eighth Amendment: Cruel and Unusual Punishment

The Eighth Amendment guarantees the right to be free from cruel and unusual punishment.

Although physical injury is not a prerequisite for a claim under the Eighth Amendment, "not every psychological discomfort a prisoner endures amounts to a constitutional violation." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003). Only punishment that is inflicted

unnecessarily and is "so totally without penological justification that it results in the gratuitous infliction of suffering" rises to the level of an Eighth Amendment violation. Id. (citing Gregg v. Georgia, 428 U.S. 153, 183 (1976)). To succeed on a conditions-of-confinement claim, in which the purported injury is purely psychological, "[e]xtreme deprivations are required." Doe v. Welborn, 110 F.3d 520, 524 (7th Cir. 1997) (finding that prisoner who alleged having experienced psychological harm from living in fear of fellow inmates failed to establish Eighth Amendment claim) (citing Hudson v. McMillian, 503 U.S. 1, 9 (1992)). In addition, there is no Eighth Amendment violation unless a prison official knows that an inmate faces a substantial risk of serious harm and disregards that risk by not taking action to stop it. Welborn, 110 F.3d at 523 (citing Farmer v. Brennan, 511 U.S. 825, 828 (1994)).

Plaintiff alleges that defendants caused him "psychological torture" by refusing to allow him to wear his emblem. However, plaintiff seeks to stretch the Eighth Amendment far beyond its intended scope; the denial of a religious emblem cannot be characterized as an "extreme deprivation." Wellborn, 110 F.3d at 524. Whatever unhappiness plaintiff may have experienced by not having his emblem, it does not constitute "serious harm" under the Eighth Amendment. Plaintiff alleges similarly that denying the emblem harmed him by thwarting his rehabilitative efforts. However, there is no right to rehabilitation in prison. Higgason v. Farley, 83 F.3d 807, 809 (7th Cir.1996) (finding that denial of inmate's

rehabilitative activities did not impose "atypical and significant hardship"). Both of these claims will be dismissed as legally frivolous.

E. Fourteenth Amendment

1. Due process

I understand plaintiff to contend that by taking away his Thor's Hammer emblem, defendants violated his constitutional right to due process. The due process clause of the Fourteenth Amendment provides that no state will "deprive any person of life, liberty, or property, without due process of law" and protects individuals from arbitrary governmental action. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 459-60 (1989). To prevail on a due process claim, a plaintiff must demonstrate that the state has interfered with a protected interest and that the procedures attendant upon that deprivation were constitutionally insufficient. Id. However, the interests that constitute liberty and property and implicate a due process violation are not unlimited. Id. In fact, due process requirements in a prison context differ because "[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Hewitt v. Helms, 459 U.S. 460, 472 (1983) (quoting Bell v. Wolfish, 441 U.S. 520, 547 (1979)).

The United States Supreme Court has held that intentional deprivation of an inmate's property does not violate the due process clause if adequate state remedies are available to compensate for the property loss. Hudson v. Palmer, 468 U.S. at 536. The state of Wisconsin provides several post-deprivation procedures for challenging the taking of property. According to the Wisconsin Constitution, "[e]very person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character." Art. I, § 9. Moreover, Wis. Stat. § 810.01 provides a remedy for the retrieval of wrongfully taken or detained property. Chapter 893 of the Wisconsin Statutes contains provisions concerning tort actions to recover damages for wrongfully taken or detained personal property and for the recovery of the property.

Even if I assume that plaintiff has a property interest sufficient to implicate the due process clause, plaintiff has post-deprivation procedures available to him in Wisconsin. Accordingly, plaintiff fails to state a claim upon which relief can be granted. Therefore, I will deny him leave to proceed on his due process claim.

2. Equal protection

A plaintiff asserting a violation under the equal protection clause of the Fourteenth Amendment must establish that a state actor both treated him differently than other similarly situated individuals and did so purposefully. DeWalt v. Carter, 224 F.3d 607, 618

(7th Cir. 2000). In this case, I understand plaintiff to contend that an equal protection violation occurred when defendants forbade him from possessing his religious emblem while allowing inmates of other faiths to possess theirs.

Plaintiff's equal protection claim is simply a repackaging of his free exercise and establishment claims. Accordingly, I will dismiss this claim as duplicative. See Grossbaum v. Indianapolis-Marion County Bldg. Auth.,100 F.3d 1287, 1295-96 (7th Cir. 1996) (citing Vukadinovich v. Bartels, 853 F.2d 1387, 1391-92 (7th Cir. 1988) (finding that plaintiff's equal protection claim, alleging "only that he was treated differently because he exercised his right to free speech," was "a mere rewording of [his] First Amendment-retaliation claim")); cf. Mack v. O'Leary, 80 F.3d 1175, 1181 (7th Cir. 1996), overruled on other grounds, 522 U.S. 801 (1997) (Muslim prisoner's equal protection claim "could equally well be described as a claim under the free-exercise clause").

F. Other Claims

Plaintiff raises two additional "claims" that have no legal basis. First, plaintiff alleges that because he possessed his emblem before the Wisconsin Department of Corrections implemented its policy banning the Thor's Hammer from its prisons, his emblem is "grandfathered in" and should be permitted. Plaintiff may believe that fairness requires this result, but the Constitution does not. Second, plaintiff alleges that defendants denied him

the "pursuit of happiness" by preventing him from possessing his Thor's Hammer emblem. However, the Declaration of Independence is not binding law and cannot be enforced in the context of a § 1983 action. These "claims" will be dismissed as legally frivolous.

G. Proper Parties

Liability under § 1983 arises only through a defendant's personal involvement in a constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). "A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary." Wolf-Lillie, 699 F.2d at 869. However, it is not necessary that a defendant participated directly in the deprivation. Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985). "The requisite causal connection is satisfied if the defendant set in motion a series of events that the defendant knew or should reasonably have known would cause others to deprive the plaintiff of [his] constitutional rights." Conner v. Reinhard, 847 F.2d 384, 396-97 (7th Cir. 1988).

Plaintiff has adequately alleged the personal involvement of each of the defendants. Plaintiff alleges that defendants Frank, Kingston and Casperson are responsible for the policy forbidding Thor's Hammer emblems from Wisconsin prisons. Plaintiff alleges that defendant

McCarthy enforced this policy when he confiscated the emblem and that defendants Schueler and Witch approved this decision. Thus, each of these defendants either directly participated in the alleged violation, approved it or were ultimately responsible as makers of the policy. With respect to defendants Raemisch and Thurmer, plaintiff alleges that they oversaw the recommendations of corrections complaint examiners and took part in the denial of plaintiff's complaints. The Court of Appeals for the Seventh Circuit has held that a prison official may be held liable for a constitutional violation if he or she knows about it and has the ability to intervene, but fails to act. Ruiz v. Heinzl, No. 06-C-478-C, 2006 WL 2882976, *3 (W.D. Wis. Oct. 6, 2006) (citing Fillmore v. Page, 358 F.3d 496, 505-06 (7th Cir. 2004)). At this stage of the proceedings, I will assume that complaint examiners have authority to find in favor of a prisoner if they believe a policy is unconstitutional. Plaintiff will be permitted to proceed against all named defendants on the claims for which I have granted him leave to proceed.

ORDER

IT IS ORDERED that plaintiff Garry A. Borzych's request for leave to proceed is

1. GRANTED with respect to plaintiff's claims that

a) defendants Matthew J. Frank, Steven Casperson, Rick Raemisch, Mike Thurmer, Phillip Kingston, Steven Schueler, Jamyi Witch and Sergeant McCarthy violated

the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, when they substantially burdened his practice of the Odinist faith by depriving him of his Thor's Hammer emblem.

b) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his right under the First Amendment to freely exercise his religion when they substantially burdened his religious practice and targeted the Odinist faith by allowing inmates of other religions to keep their religious emblems while denying plaintiff possession of his;

c) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his right under the establishment clause of the First Amendment when they favored other, non-Odinist religions by allowing inmates of other religions to keep their religious emblems while denying plaintiff possession of his;

2. DENIED with respect to plaintiff's claims that

a) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his freedom of expression under the First Amendment because plaintiff alleges that he was not using his Thor's Hammer emblem to make a public statement;

b) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his Fourth Amendment right to be free from unreasonable

search and seizure by confiscating his Thor's Hammer emblem because plaintiff has no reasonable expectation of privacy in prison with respect to his property;

c) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his Eighth Amendment right to be free from cruel and unusual punishment because he did not experience an "extreme deprivation;"

d) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his right to due process under the Fourteenth Amendment because adequate state remedies exist for deprivation of his property, thereby precluding a due process claim;

e) defendants Frank, Casperson, Raemisch, Thurmer, Kingston, Schueler, Witch and McCarthy violated his right to equal protection under the Fourteenth Amendment because plaintiff's claim is duplicative of his free exercise and establishment clause claims.

FURTHER, IT IS ORDERED that

1. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

2. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

3. Plaintiff is responsible for serving his complaint upon defendants. A memorandum describing the procedure to be followed in serving a complaint on individuals in a federal lawsuit is attached to this order, along with one copy of plaintiff's complaint and necessary forms for obtaining from defendants

a waiver of service of summons.

Entered this 9th day of November, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge