

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

ALISHA S. GUPTA, by
ATUL GUPTA, her Legal Guardian and
Father and Next Friend,

Plaintiff,

Case No. 6:19-CV-00015

v.

COMMONWEALTH OF VIRGINIA,

RALPH NORTHAM, Governor of Virginia,

DANIEL CAREY, M.D., Secretary of Health
and Human Resources,

S. HUGHES MELTON, M.D., Commissioner of
Department of Behavioral Health and
Developmental Services,

DICK ROBERTS, Director of Central Virginia
Training Center,

Defendants.

AMENDED COMPLAINT

Comes now Alisha Gupta, by counsel, pursuant to her Motion for Leave to File an Amended Complaint, pursuant to Rules 3 and 15 of the Federal Rules of Civil Procedure, and respectfully submits this her Amended Complaint, and in support of her various claims states the following:

PARTIES

1. Alisha Gupta (Alisha) was born on August 9, 2000, in Lynchburg, Virginia, with a permanent and severely disabling disability involving her brain. Since 2003, and continuing to

date, Alisha has been a resident and patient at the Central Virginia Training Center (CVTC), located in Madison Heights, Virginia, an institution owned and operated by the Commonwealth of Virginia for the care of severely disabled persons such as Alisha.

2. The Commonwealth of Virginia is a State and a proper party defendant pursuant to the provisions of Religious Land Use and Institutionalize Persons Act, 42 U.S.C. § 1983, Va. Code § 57-2.02, and the Settlement Agreement described hereinafter. The remaining Defendants are all elected public officials, officers, agents or employees of the Commonwealth of Virginia acting under color of the law of the Commonwealth of Virginia.

3. Ralph Northam is the Governor of Virginia, and in that capacity is the chief executive official with authority and responsibility for all executive and administrative agencies of the Commonwealth of Virginia, including the Virginia Department of Human Services. Due to the remedies sought by this Amended Complaint and his authority over the conduct of the executive branch officials, Governor Northam is a necessary party in his individual and official capacities.

4. Daniel Carey, M.D., is the Secretary of Health and Human Resources (HHR), a cabinet-level position in the Executive Branch of the government of the Commonwealth of Virginia. Dr. Carey has oversight authority over the Department of Behavioral Health & Developmental Services (DBHDS). Due to the remedies sought by this Amended Complaint and his authority over the conduct of the executive officials responsible for diet, transfer planning, and execution of the transfer plans, described in greater detail below, Dr. Carey is a necessary party in his individual and official capacities. See, Exhibit 1 to initial pro se Complaint.

5. S. Hughes Melton, M.D., is the Commissioner of DBHDS. In his capacity as Commissioner, Dr. Melton believed to have authority over the operation of CVTC. Due to the

remedies sought by this Amended Complaint and his authority over the conduct of the executive officials responsible for diet, transfer planning, and execution of the transfer plans, described in greater detail below, Dr. Melton is a necessary party in his individual and official capacities. See, Exhibit 1 to initial pro se Complaint.

6. Dick Roberts is the director of the CVTC and has direct responsibility for Alisha's care, including all dietary matters and the process of changing the diet. Due to the remedies sought by this Amended Complaint, Mr. Roberts is a necessary party in his individual and official capacities.

JURISDICTION and VENUE

7. This Amended Complaint alleges causes of action arising under federal law, and specifically federal law providing for the protection of civil rights. Therefore, jurisdiction lies in the federal courts pursuant to the provisions of 28 U.S.C. §§ 1331 and 1343. Jurisdiction over the claims seeking declaratory relief exists under 28 U.S.C. §§ 2201-2202.

8. This Court has supplemental jurisdiction over the state law claims made in this Complaint pursuant to the provisions of 28 U.S.C. § 1367.

9. The facts underlying the claims made in this Amended Complaint occurred and arose within the geographical area of the Western District of Virginia, and within the Lynchburg Division. Therefore, venue lies in the Court pursuant to the provisions of 28 U.S.C. § 1391.

FACTS

10. Alisha was born with a congenital defect which severely affects her brain. As a result of the progression of the consequences of this defect, Alisha is unable to speak, to swallow, to ambulate, or otherwise to care for herself. Alisha also has significant difficulties with body

temperature regulation, which causes her to be highly sensitive to environmental temperature conditions.

11. Shashi Lata is the mother and co-guardian of Alisha. Atul Gupta, D.B.A., is the father of Alisha, and is her co-guardian, along with Alisha's mother. See, Exhibit 2, to the initial Complaint, which is incorporated herein by reference as Exhibit 2.

12. In due course of her development, Alisha was admitted to CVTC. At CVTC, she is cared for in a portion of the facility that permits around-the-clock nursing care. Alisha's condition requires close monitoring by nursing staff at CVTC, and frequent consultation with the physicians charged with her medical care.

13. The nurses at CVTC prepare the food, administer the food, bathe Alisha, and monitor and regulate her body temperature as it is affected by environmental conditions, both in the CVTC facility and when Alisha is transported outside of CVTC.

14. Alisha was born to Atul Gupta and Shashi Lata. Dr. Gupta and Mrs. Lata are natives of the Republic of India, although they are now citizens of the United States of America. Dr. Gupta and Mrs. Lata were born into, raised in, and Mrs. Lata continue to adhere to the religious and cultural traditions of Jain Hindu. Alisha has also at all times in her life been raised by and, through the actions of her parents, adhered to the religious and cultural traditions of Jain Hindu.

15. Alisha has always adhered to the religious and cultural traditions of Jain Hindu during her seventeen (17) years at CVTC. At the time of her admission, Alisha's parents insisted upon adherence to these traditions with respect to Alisha's diet, bathing frequency, and personal modesty. At the time of her admission, and at all times prior to the immediate past, CVTC has agreed to and has followed the Jain Hindu traditions described herein.

16. The traditions of Jain Hindu, as followed by the Gupta family, include, but are not limited to:

- a. belief that food is a gift from God and a representation of divinity;
- b. maintenance of a strict lacto-vegetarian diet, consisting of natural milk, natural plain yogurt, and natural vegetables, fruits, grains, and legumes;
- c. a prohibition on certain foods, such as meat, eggs, ginger, garlic, and onion;
- d. food must be consumed by hand, not by machine, as the fingers of the hand are a demonstration of elements defined in the religion;
- e. bathing with soap and water daily, at the beginning of the day; and,
- f. standards of modesty, so that no male, other than husband, father, or a brother [although she has none,] may touch Alisha's body, and the mouth should be covered in public or in the house if the temperature is high; and,
- g. study of music, dance, fine arts, and languages throughout life is required to achieve the four goals of human life.

17. As noted above, CVTC has for many years agreed to adhere to the foregoing standards. With respect to diet, CVTC prohibits the Gupta family from bringing in religious-specific foods, such as the natural yogurt Mrs. Lata prepares daily. Instead, CVTC has purchased commercially prepared foods that can be obtained in the grocery stores in the Lynchburg area. For example, Alisha is fed yogurt, Gerber baby food, and organic fruit, all of which are specifically labeled as "organic," "natural," or free from genetically modified organisms.

18. All of these foods are prepared in the room by hand, and then fed by hand through a funnel-feeding tube device. No mechanical food pump is used by CVTC; the Gupta family has

not agreed to the use of a mechanical device to deliver the food, other than the necessary concession to a feeding tube necessitated by Alisha's inability to swallow.

19. At the specific request of CVTC, the Gupta family has made one concession to CVTC's convenience regarding diet: Carnation Instant Breakfast. The Carnation product has additional milk-based protein and vitamins added. The protein and vitamins are needed for Alisha's health, on a medical basis, as she cannot eat large amounts at any one time and has no other means of obtaining these necessary nutrients.

20. Dr. Gupta and Mrs. Lata visit Alisha at least one time per day, often twice during each and every day. Mrs. Lata launders Alisha's clothing in keeping with her traditions in her own home, and returns the clean clothes to CVTC. The Gupta family has provided equipment, water, clothing, and many other need that Alisha has. They assist with Alisha's care, in an appropriate manner and with the consent and cooperation of the CVTC staff. The Gupta family is not, however, allowed to be present in the room when CVTC staff actually feed Alisha.

21. CVTC is subject to closure as a result of a Settlement Agreement, dated August 23, 2012, reached between the United States government and the Commonwealth of Virginia in the case of *United States of America v. Commonwealth of Virginia, et als*, in the Eastern District of Virginia, Case No. 3:12cv059-JAG. A copy of that Settlement Agreement is attached hereto as Exhibit 3.

22. The said Settlement Agreement imposes on the Commonwealth of Virginia certain duties and obligations relating to the continued placement and treatment of persons who are residents of the institutions affected by the Agreement. CVTC is one such institution, and Alisha was a resident at the time of the Court's approval of the Settlement Agreement. Therefore, the Commonwealth of Virginia is bound by the application of the Agreement, and especially by the

provisions of section III.D.6. (at page 14), section III.E. (at pages 14-15, and section IV.B. (at pages 15-19), as well as other provisions.

23. In early 2019, the Gupta family learned of the plan by DBHDS to transfer Alisha to Hiram Davis Medical Center (HDMC), in Petersburg, Virginia. The Gupta family further learned that personnel at CVTC had, without informing Dr. Gupta or Mrs. Lata, obtained a consultation from a health care provider other than Alisha's regular gastroenterologist, Dr. Robert Richards, of Lynchburg, Virginia, regarding Alisha's diet. The purpose of the consultation was to obtain documentation of a pretextual medical excuse to abandon the religious-based, long-standing diet currently administered to Alisha.

24. Upon information and belief, the Gupta family believes that DBHDS and HDMC intend to abandon the present diet, and to substitute a synthetic diet to be administered by a feeding machine. A plan containing any of these elements violates Alisha's religious beliefs and the beliefs of the Gupta family. See, Exhibit 1 to the initial Complaint, which is incorporated herein by reference as Exhibit 1.

25. The email from Dr. Carey characterizing the choice of HDMC as the Gupta's "request" is not accurate. The Gupta family cannot manage Alisha at home, and DBHDS, faced with the planned closure of CVTC, offered HDMC as the institution to which Alisha would be transferred.

26. Alisha's fragile medical condition prohibit, as a practical medical matter, discharging her to any facility that is unable to provide the skilled nursing care Alisha now requires at CVTC.

27. Alisha is entitled to receive the skilled nursing and medical care she now receives at CVTC, and in keeping with her religious beliefs and those of the Gupta family.

28. DBHDS and HDMC have not obtained from the Gupta family consent to vary the existing diet or the present hand method of food delivery. DBHDS and HDMC have a duty under the aforescribed Settlement Agreement to construct a “person centered” plan for Alisha, and Alisha is entitled to have included in that plan all of her religious beliefs, and those that have been consistently maintained by the Gupta family with Alisha for the last 17 years at CVTC. Dr. Gupta and Mrs. Lata are entitled to make an “informed choice” regarding all aspects of Alisha’s medical and diet needs as she is discharged from CVTC and transferred elsewhere.

29. Alisha’s medical condition is quite fragile, as is typical of persons in her condition. On information and belief, Alisha may not thrive on any new diet, and there exists no medical indication of any need to alter her present diet. Any alteration is solely for the convenience of HDMC and DBHDS.

30. The applicable standard of care for the diet of persons like Alisha generally incorporates many varied methods of food preparation, and the diet and preparation methods presently used with Alisha fall squarely within that standard of care. Moreover, the applicable standard of care does not generally permit alteration of a long-proven diet for reasons other than ones based on medical necessity.

31. Since filing the initial Complaint, Dr. Gupta has not been allowed to visit his daughter except in the company of a CVTC security officer. Dr. Gupta is, for the first time, required to present himself at the security entrance at CVTC, and be escorted from that point. There has been no incident of confrontation between Dr. Gupta and any employee of CVTC that would justify this action. Such restrictions have not been imposed on Mrs. Lata.

32. Because the issues raised by the claims made in this Amended Complaint have no adequate remedy at law, involve matters of adherence to religious belief, involve future proposed

conduct by governmental entities in violation of Alisha's legal rights, Alisha is entitled to injunctive relief. Injunctive relief is required to assure that Alisha's legal rights and religious practices are fully recognized and properly followed by officials and employees of the Commonwealth of Virginia, including specifically those named as parties to this action.

COUNT I

42 U.S.C. §§ 2000cc-1 & 2000cc-2 – Religious Land Use and Institutionalize Persons Act

33. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

34. Defendants, CVTC, and HDMC, which are under the authority and control of the Defendants, are institutions within the meaning of 42 U.S.C. § 1997.

35. The activities of DBHDS, including those carried out at CVTC and HDMC and in which Alisha participated, receive federal funding for purposes of 42 U.S.C. § 2000cc-1(b)(1).

36. Alisha is presently a resident of an institution and upon her anticipated transfer to HDMC would be a resident of an institution for purposes of 42 U.S.C. § 2000cc-1(a).

37. Alisha's beliefs regarding the composition of food that she may ingest and restrictions on her diet are based upon her Jain Hindu religious beliefs.

38. Alisha's religious beliefs regarding the composition of food that she may ingest and restrictions on her diet are sincerely held.

39. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC will impose a substantial burden on Alisha's religious exercise because the composition of the food proposed by the Defendants does not conform to Alisha's Jain Hindu beliefs.

40. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC does not and will not serve or

further a compelling government interest, and instead will be contrary to the religious beliefs of Alisha and contrary to the health, welfare and best interests of Alisha.

41. To the extent there is any governmental interest supporting the Defendants' proposed decision to change the composition of food provided or administered to Alisha, the proposed change is not the least restrictive means of furthering that interest and would not minimize the burden imposed on Alisha's religious exercise.

42. The Defendants' proposed decision to change the composition of food provided or administered to Alisha would violate the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000c-1(a).

43. Under 42 U.S.C. § 2000c-2(a), Alisha is entitled to a declaration that the Defendants' proposed action violates RLUIPA and an order enjoining the Defendants from taking the proposed or other actions that substantially burden the religious exercise by Alisha in violation of RLUIPA.

COUNT II

U.S. Const. amend. I, Free Exercise Clause -- 42 U.S.C. § 1983

44. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

45. Alisha's beliefs regarding the composition of food that she may ingest and restrictions on her diet are based upon her Jain Hindu religious beliefs.

46. Alisha's religious beliefs regarding the composition of food that she may ingest and restrictions on her diet are sincerely held.

47. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC will impose a substantial burden on Alisha's religious exercise because the composition of the food proposed by the Defendants does not conform to Alisha's Jain Hindu beliefs.

48. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC will deprive Alisha of her right to free exercise of religion guaranteed by the First Amendment to the United States Constitution.

49. In all respects set forth herein, the Defendants have and will act under color of the law of the Defendants of the Commonwealth of Virginia.

50. For the threatened deprivation of her First Amendment rights, Alisha is entitled to relief under 42 U.S.C. § 1983, including a declaration that the Defendants' proposed action violates the First Amendment's Free Exercise Clause and an order enjoining the Defendants from taking the proposed or other actions that substantially burden the religious exercise by Alisha in violation of the First Amendment's Free Exercise Clause.

COUNT III

Virginia Religious Freedom Act – Va. Code § 57-2.02

51. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

52. The Defendants are governmental entities within the meaning of Va. Code § 57-2.02(A).

53. Alisha's beliefs regarding the composition of food that she may ingest and restrictions on her diet are based upon her Jain Hindu religious beliefs.

54. Alisha's religious beliefs regarding the composition of food that she may ingest and restrictions on her diet are sincerely held.

55. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC will impose a substantial burden on Alisha's religious exercise because the composition of the food proposed by the Defendants does not conform to Alisha's Jain Hindu beliefs.

56. The Defendants' proposed decision to change the composition of food provided or administered to Alisha while she is a resident of CVTC or HDMC does not and will not serve or further a compelling government interest, and instead will be contrary to the religious beliefs of Alisha and contrary to the health, welfare and best interests of Alisha.

57. To the extent there is any governmental interest supporting the Defendants' proposed decision to change the composition of food provided or administered to Alisha, the proposed change is not the least restrictive means of furthering that interest and would not minimize the burden imposed on Alisha's religious exercise.

58. The Defendants' proposed decision to change the composition of food provided or administered to Alisha would violate Va. Code § 57-2.02(B).

59. Under Va. Code § 57-2.02(D), Alisha is entitled to a declaration that the Defendants' proposed action violates Va. Code § 57-2.02(B) and an order enjoining the Defendants from taking the proposed or other actions that substantially burden the religious exercise by Alisha in violation of Va. Code § 57-2.02(B).

COUNT IV

Enforcement of Settlement Agreement

60. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

61. Alisha is a person intended to be encompassed by the provisions of the Settlement Agreement outlined in Exhibit 3 to this Amended Complaint.

62. The proposal made by the Commonwealth of Virginia, DBHDS, CVTC, and HDMC regarding Alisha's transfer, diet, and method of feeding violate her religious beliefs, and those of the Gupta family, are not medically indicated or necessary, risk an unjustified adverse result, and fail to conform to the standards set forth in the said Settlement Agreement.

63. Alisha is entitled to the benefit of adherence by the Commonwealth of Virginia, the officials made parties defendant in this action, and the employees under their supervision and control.

64. A justiciable controversy regarding the application of the Settlement Agreement to Alisha and her transfer exists.

65. Alisha seeks a judicial determination that her religious practices, including specifically her diet and method of feeding, and entitled to and must be honored in the application of the Settlement Agreement to her transfer out of CVTC.

66. Alisha seeks an injunction directed at each and all of the named Defendants, and those employees of the Commonwealth of Virginia under their supervision and control, requiring conduct that conforms to Alisha's religious beliefs and traditions, and of the of the Gupta family, in the performance of the Settlement Agreement with respect to Alisha.

REMEDIES AND PRAYER FOR RELIEF

67. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

68. The Plaintiff, by counsel, respectfully prays the Court for the entry of an order determining Alisha's rights under Counts I through IV, inclusive, of this Amended Complaint.

69. The Plaintiff, by counsel, respectfully prays the Court for the entry of an order enforcing Alisha's rights, as determined by the Court, including but not limited to an injunction prohibiting violation of Alisha's religious beliefs and traditions by alteration of her diet and/or method of feeding.

70. The Plaintiff, by counsel, respectfully prays the Court for an award of her attorney's fees, and costs and expenses incurred, as provided by law.

71. The Plaintiff, by counsel, respectfully prays the Court for the entry of any other and additional remedies as the Court may determine to be just and right.

ALISHA GUPTA,

By _____/S/_____
Of Counsel

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CERTIFICATE

I hereby certify that the foregoing pleading was served on all counsel of record by means of the Court's ECF electronic document filing system, this 22th day of May, 2019.

_____/S/_____
Bevin R. Alexander, Jr., Esq.
Counsel for Alisha Gupta