

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARVIN R. SHANKEN and)	
SON TRUONG,)	
)	
Plaintiffs,)	
)	
v.)	Civ. Action No. 14-801-GMS
)	
CIGAR AFICIONADO,)	
)	
Defendant.)	

MEMORANDUM

The plaintiffs in this case proceed *pro se*. One plaintiff, Marvin R. Shanken (“Shanken”) resides in New York. The other plaintiff, Son Truong (“Truong”), is an inmate at SCI-Benner in Bellefonte, Pennsylvania. The filing fee has not been paid and neither plaintiff submitted an application to proceed *in forma pauperis*. The lawsuit was filed pursuant to 42 U.S.C. § 1983 and seeks punitive damages. (D.I. 1.)

Pursuant to Fed. R. Civ. P. Rule 20, the plaintiffs may file a joint action if: (1) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) any question of law or fact common to all plaintiffs will arise in the action. Fed. R. Civ. P. 20(a). At this juncture, it is unclear if Rule 20 joinder is appropriate. Regardless, pursuant to *Hagan v. Rogers*, 570 F.3d 146 (3d Cir. 2009) where the entire filing fee has not been prepaid, the full filing fee must be assessed against each *in forma pauperis* prisoner co-plaintiff permitted to join under Fed. R. Civ. P. 20, as though each such prisoner were proceeding individually. *Hagan*, 570 F.3d at 150.

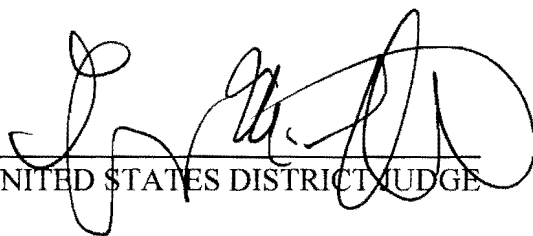
Here, the plaintiffs allege that they were burnt by the defendant Cigar Aficionado, that Truong is innocent of all charges, that smoking kills most Americans, and that cigars are unconstitutional. The allegations in the complaint are clearly fantastical or delusional and are insufficient to withstand the court's evaluation for frivolity dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and 28 U.S.C. § 1915A(b)(1). *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Therefore, the court will dismiss the complaint.

In addition, neither plaintiff paid the filing fee or submitted requests to proceed *in forma pauperis* (Applications to Proceed in District Court without Prepaying Fees or Costs, AO Form 239 for Shanken and AO Form 240 for Truong). Nor did Truong submit a certified copy of his prison trust fund account statement as is required by 28 U.S.C. § 1915(a)(1) and (2).

For the above reasons, the court will dismiss the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and 28 U.S.C. § 1915A(b)(1). The court will consider an amendment of the complaint upon the filing of an appropriate motion with an attached proposed amendment. In addition, the plaintiffs will be ordered to submit the applications and documentation required to proceed *in forma pauperis*.

An appropriate order will be entered.

July 8, 2014
Wilmington, Delaware


UNITED STATES DISTRICT JUDGE