TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/23/2016 08:20:27 AM

To: Objections pt 1
Inmate Work Assignment: CCS AM

* UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

OSCAR STILLEY 10579-062 PLAINTIFF

V. CASE NO. 2:15-CV-00163 BSM/BD

UNITED STATES, et al DEFENDANTS

OBJECTIONS TO REPORT AND RECOMMENDATIONS [DOCKET # 35]

Comes not the Plaintiff and for his objections to the Report and Recommendations in Docket #35 and states:

Plaintiff has persistently and diligently attempted to regain access to his Trulincs for the purposes of writing a pleading that he can edit. Some 7 weeks after having lost the "privilege" of Trulincs, on the most specious allegations, Plaintiff is at once told that he is time-barred from any appeal, and that his disciplinary incident report ("shot") is still under investigation.

This Inmate Request to Staff function allows typing for 30 minutes, whereupon it must either be submitted or permanently lost. No edits can be made later. The "copy and paste" functions have been disabled, so as to prevent any inmate from copying from an old request, pasting into a new request, and thus gaining the ability to produce a DE FACTO edited document. This is devastating to the ability of the Plaintiff to draft a creditable legal pleading.

Clearly the government does not believe its own story. Plaintiff filed a motion for an order commanding the Department of Justice-Federal Bureau of Prisons (DOJ-FBOP) to cease interference with Plaintiff's access to resources necessary for litigation [Docket 37]. The government has not responded and there is to the knowledge of Plaintiff no order with respect to the motion. The primary purpose of the motion was to prevent the pretextual interference with use of Trulincs. However, the DOJ-FBOP uses other tactics such as denial of plain copy paper. Plaintiff hoped to get an order broad enough to prevent all of it. Plaintiff understands the complexity of such motions in light of federal statutes limiting injunctive relief.

Plaintiff has waited as long as he can to try to get resources that allow him to draft a creditable pleading, and hopes that he has not miscalculated the time required for the job. This Court has most graciously extended the time for pleading up through and including 9-2-16. For this the Plaintiff is most grateful.

Partly because of Plaintiff's background and experiences, the loss of editorial capability inflicts a serious blow both practical and psychological. Loss of the ability to write, sleep, edit, and repeat necessarily changes the way that Plaintiff thinks. Plaintiff trusts that the Court will understand and allow for the fact that this pleading necessarily falls below the level Plaintiff could achieve with even the most basic writing resources.

1. LEGAL TEST FOR MOTION TO DISMISS

"Whether a complaint states a cause of action is a question of law" and "review on appeal [is] de novo." Miller v. Redwood Toxicology Lab, Inc., 686 F.3d 928, 936 (8th Cir. 2012). "A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c). For that reason, a court ruling on a motion to dismiss may consider material attached to the complaint.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/23/2016 09:59:15 AM

To: Objections pt 2
Inma › Work Assignment: CCS AM

The following principles are taken from Zayed v. Associated Bank, N.A., 779 F.3d 727, 732, (8th Cir. 2014), with much of the internal citations omitted:

> Federal Rule of Civil Procedure 8(a)(2) requires only a 'short and plain statement of the claim showing that the pleader is entitled to relief," in order to 'give the defendant fair notice of what the claim is and the ground upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 US 544, 555 (2007). .... "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" ... "A claim has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

ZAYED goes on to say that legal conclusions and "threadbare recitals" do not suffice. However, just before page 733, the ZAYED panel says that "... determining whether a *complaint* states a plausible claim for relief will...be the context specific task that requires the reviewing court to draw on its judicial experience and common sense." .... "[A] well pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, {779 F.3d 733] and 'that a recovery is very remote and unlikely." ....

The Magistrate correctly observes that the failure to object relieves the District Court of the duty to independently examine the record. Docket 35, page 1. Plaintiff assumes that the corollary of that rule is that the District Court will in fact review pertinent parts of the record, to the extent necessary to gain a fair understanding of the issues raised by the motion to dismiss and responses and replies thereto. Plaintiff assumed as much when he prepared those documents and exhibits thereto. Plaintiff prepared and included certain aids such as a table of contents for the admittedly voluminous exhibits, hoping to lighten the burden on the Court, to the extent reasonably practicable.

Plaintiff is proceeding primarily under a theory of negligence. Document 7, pg. 28 (page 4 of attachment to Tort Claim, top of the page). The test for negligence, under Arkansas law, is set forth in THE SHAW GROUP, INC. V. MARCUM, 516 F. 3d 1061, 1067 (8th Cir. 2008) which states as follows:

> Under Arkansas law, "[n]egligence is defined to mean the failure to do something which a reasonably careful person would not do, or doing something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence...." Wallace. v. Broyles, 331 Ark. 58, 961 S.W.2d 712, 715 (Ark. 1998). As essential elements, it requires a showing that a duty was owed and that the duty was breached. [cite omitted] Negligence also requires a showing that "a reasonably careful person would foresee such an appreciable risk of harm to others as to cause him not to do the act, or to do it in a more careful manner." [cite omitted.] It is not necessary that "the actor foresee the particular injury which occurred. Id.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/23/2016 01:14:43 PM

To: Objections pt 3
Inmate Work Assignment: CCS AM

The Magistrate says that Plaintiff has no Prison Rape Elimination Act (PREA) or retaliation claim. Plaintiff concedes that he has no PREA claim per se, but reserves the right to argue that violations of the act, or acts contrary to the plain intentions of PREA, are some evidence of negligence.

Concerning retaliation Plaintiff does not object to the Magistrate's finding that she is aware of no Arkansas authority to support a count on the basis of retaliation. Plaintiff has no access to the Arkansas reports but does have access to selected federal district, circuit, and Supreme Court decisions. Plaintiff cannot dispute the Magistrate's conclusion that Plaintiff cannot proceed on a stand-alone theory of retaliation. However, Plaintiff once again reserves the right to argue that acts retaliatory in nature might well constitute some evidence of negligence, as that term is defined in Arkansas statutes and decisions.

The Magistrate recommends dismissal of selected counts "with prejudice." However, the Magistrate has dismissed on the basis of FRCivP 12(b)(6). She did not convert the defense motion into a motion for summary judgment. Moody v. Vozel, 771 F.3d 1093, 1095 (8th Cir. 2014) sets forth the rule of decision:

> Moody challenges the district court's denial of his motion to amend after the Rule 12(b)(6) dismissal of his non-discrimination and official capacity claims. "This court generally reviews a district court's denial of leave to amend a complaint for abuse of discretion, though the underlying legal conclusions for a denial based on the futility of the proposed amendments are reviewed de novo." Reuter v. Jax Ltd., 711 F.3d 918, 921 (8th Cir. 2013). "Denial of a motion for leave to amend on the basis of futility 'means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6)." [citations omitted]

ORGANIZATION OF CLAIMS AND CHALLENGES

The Magistrate recommends dismissal of Count 1 for timeliness, and to trim Count with respect to Count 2, by striking allegations concerning an incident on or about 9-10-12. The Magistrate also recommends dismissal of all counts 5-15 inclusive. Plaintiff believes that it is productive to devote some space to a summary of the claims.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/23/2016 02:26:04 PM

To: Objections pt 4
Inmate Work Assignment: CCS AM

* TORT CLAIMS # Description	FOIA CLAIM # Description	DECLARATORY JUDGMENT CLAIMS # Description
5 - Allergies	11 - Request documents	
6 - Eyeglasses		12 - Eyeglasses
7 - Education		13 - Seize/destroy Trulincs documents
8 - Bedding/spinal health		14 - Good faith in taking donations
9 - Showers		15 - Education
10 - Clothes dryers		

Viewed graphically, it becomes clear that certain associations can be made. The allergy claim goes along with the negligence claims regarding showers and clothes dryers, which makes a logical association or relationship between Counts 5, 9, and 10. Count 5 is logically related to Count 8, since competent bedding should protect spinal health at the same time that it mitigates suffering from allergies. All these Counts are related to Count 14, since Plaintiff and other inmates in the prison could and would have prevented the problems complained of therein if they had been allowed to receive donations from "the street" for their use and benefit.

Counts 6 and 12 are clearly related since both relate to the denial of eyeglasses for nearly 6 years. Counts 7 and 15 are related because they both address the same topic, only from a different angle and on differing legal theories. It should be clear that the goal of the litigation is to provide some reasonable path for federal prisoners to obtain ACCESS to reasonable educational resources.

Counts 11 and 13 likewise buttress each other. Plaintiff asked for certain records. Plaintiff seeks declaratory judgment to the effect that the government can't lawfully charge money for a pathetic substitute for a word processor, and then deprive the inmate of access to and use of those files.

Plaintiff has seen considerable language suggesting that Plaintiff is claiming that he should be given or provided certain things, at public expense. This is a false premise. Plaintiff didn't want DOJ-FBOP eyeglasses - he wanted permission to receive his own eyeglasses from home. Plaintiff wanted to buy sturdy shower curtains capable of economical long term use, and GIVE THEM to the DOJ-FBOP. Of course Plaintiff is in no position to reject proper supplies provided by the government. But it is inaccurate and unfair to characterize Plaintiff's claims as an attempt to get something for nothing, or to force the DOJ-FBOP to supply inmates with goods and supplies out of public funds. Plaintiff does however expect some reasonable approximation of good faith and fair dealing, with money had and received from the taxpayers or from inmates, in trust for the benefit of said inmates.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/24/2016 08:31:15 AM

To: Objections pt 5
Inmate Work Assignment: CCS AM

* COUNT 1 - THE CLAIM IS NOT TIME BARRED

The Magistrate correctly observes that the statute of limitations is 2 years from date of accrual. However, the general rule does not apply where, as here, there is an extension of sentence to be served. The incident arose when Lt. Sieja told Plaintiff that he had come "within about 2 seconds" of "getting your teeth shelled out back there" whereupon Plaintiff protested that Lt. Sieja had no right to shell the teeth out of any handcuffed inmate. This did not sit well with Lt. Sieja, who immediately slammed Plaintiff to the floor.

Plaintiff was written a 200 series shot. A 100 series shot is the most serious, a 400 series shot the least serious. Being in the class next to the most serious, Plaintiff lost 27 days of good time. This is one of the reasons that Plaintiff's "Good Conduct" release date is now in September, whereas it was originally in May of 2023.

If Plaintiff wins this battery claim, it necessarily invalidates the lost good time, and puts the Plaintiff out the door 27 days earlier than otherwise would be the case. Heck v. Humphrey 517 US 477 (1994) bars a collateral attack of this nature.

Plaintiff couldn't find a case on "all fours" in the 8th Circuit as of the time of writing, but did find Erlin v. US, 364 F.3d 1127 (9th Cir. 2012). At page 1132 of that case the court said:

> ... Though the underlying cause of action might otherwise have accrued earlier under state law, where the litigation would potentially force release of a prisoner, HECK imposes an additional requirement. .... Just as the Supreme Court read 1983 as containing a restriction on when a litigant can bring a suit that impugns the validity of a conviction or imprisonment, we read the FTCA as containing the very same restriction. And we do so for the same reasons.

Of course one might say that if this is the case, the battery claim still has not accrued. To this the Plaintiff would respond as follows. First, the government at docket #30 page 2 says that exhaustion is not required. They are both wrong on this (general principle for FTCA claims, which only require the tort claim plus 6 months wait) and wrong, where HECK is implicated. PLRA exhaustion is indeed unnecessary. However, exhaustion and if necessary successful court litigation is required where HECK is implicated.

Second, as was explained in detail in Plaintiff's briefings on the motion to dismiss, the DOJ-FBOP acted corruptly by waiting until long after the expiration of the 2 year period to issue a denial of the National appeal. This was deceitful, in that they deliberately muddied the waters by refusing to issue a timely decision. This has been the uniform practice of the DOJ-FBOP with respect to the Plaintiff. Dishonesty and sharp dealing is a way of life for the DOJ-FBOP.

Third, if the Court is inclined to forgive their chicanery, then dismiss without prejudice on the ground that exhaustion is not concluded. Plaintiff is not asking for this option. Rather, Plaintiff is asking that the Court deny the motion to dismiss because the ground offered by the government is not legally valid, AND the government would have had unclean hands if they had requested dismissal for the failure to surmount the HECK bar. Plaintiff has already cited the US Supreme Court case saying that a prisoner, for PLRA purposes, only has to exhaust AVAILABLE remedies. * Ross v Blake 15-339 (US 2016)

Keep in mind, the Court can deny the government's motion AT THE PRESENT TIME, for reasons it deems just. That does not prohibit the government from filing another dispositive motion at a later time. The government clearly does not want to engage in discovery on the issues raised in this case. However, discovery and further proceedings would go a long way toward clearing up issues and enabling the Court to enter a correct and sound decision.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/24/2016 10:29:16 AM

To: Objections pt 6
Inmate Work Assignment: CCS AM

* COUNT 2 - LIMITATIONS TRIM JOB

The Magistrate recommends trimming the battery claimed for 9-10-12, on grounds that the Tort Claim was mailed exactly two years later and that it could not possibly have been delivered the same day.

Actually, that's not quite correct. Plaintiff put the mail in a receptacle to which the US Postal Service has no access at all. An employee of the DOJ-FBOP emptied the box and took it to where ever they take the mail. It might be the post office or it might be a drop box. But the mail necessary goes into the hands of an employee of the DOJ-FBOP when an inmate "mails" a letter or parcel. Therefore, the agency did in fact RECEIVE the document within 2 years of the incident.

The Magistrate says that "the agency could not have received the claim on the day it was mailed." Docket 35, pg. 6. Actually that might be quite plausible, but it is not a certainty. The DOJ-FBOP has fax and email capabilities, and on information and belief an internal document transmission system as well, called BOPNet or something like that. With respect to some documents received by personnel with direct contact with inmates, personnel have a duty or at least the possibility of transmitting documents immediately. Therefore the fact that a document came into the hands of a DOJ-FBOP employee on a date certain does NOT conclusively prove that that it was NOT in the hands of any other DOJ-FBOP employee on the same day. Program Statement (PS) 1330.15 (7.) Commutation of Sentence, use of BOPnet suggested.

The Magistrate concedes that the other incident falls within limitations, thus Count 2 is a live count at the present time. The only question is whether or not the Court will do a "trim job" on Count 2 at the present time. The consequences of declining the invitation AT THE PRESENT TIME are not momentous. That would just mean that the parties would proceed with discovery and development of this count. Plaintiff or Defendant might be persuaded of the merits of one or more arguments of the opposing party. The parties might settle. The government might decide to attempt to strike again, on the same or similar issue, before the expiration of the dispositive motion deadline. Then again, they might not.

For all these reasons and more, Plaintiff objects to any trimming of Count 2 at the present time.

THE ENTANGLED COUNTS 5, 8, 9, 10, AND 14

Plaintiff hasn't hit much of a lick on this page but still has over 11 minutes to write. Therefore Plaintiff will attempt to start the dialogue on the counts generally related to quality of living. Other counts might qualify under that heading, but in a more circumscribed definition of the word, the numbered counts will be called quality of living.

The Magistrate has already conceded that overriding a clinician is some evidence of negligence, and more importantly that proof of such defeats the "discretionary function exception." Therefore we must consider that Plaintiff had prescription Claritin (later declassified from requiring prescription), Flonase, Breathe-Rite strips, and a silk allergy mask. Plaintiff took allergy shots for about 5 years. Clearly the deprivation of all these things constitutes the override of the recommendations and prescriptions of clinicians.

However, Plaintiff is willing to get along and go along, in a prison environment, so long as his substantial rights are not violated. This lawsuit came about as a result of prison authorities "cornering" Plaintiff by denying him ANY REASONABLE WORKAROUND MEANS of controlling his allergies.

Plaintiff also has had serious back problems. In the medical records which have not yet been provided there will be records of crutches and a cane being issued to Plaintiff. Plaintiff could barely walk because of the pain. Within the past year Plaintiff has had his back hurting so much that he could barely walk, only at a slow pace, and was at risk of falling if he walked too fast. The government likes to claim that subsequent developments don't matter unless they benefit the government. Plaintiff is not convinced of the legal merits of that theory. Plaintiff submits that the rational approach on these issues is to allow Plaintiff to get his medical record, and provide a reasonably well documented picture of facts bearing on whether his claims are abrogated by the discretionary function exception. 6

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/24/2016 12:14:26 PM

To: Objections pt 7
Inmate Work Assignment: CCS AM

Consider what a rational approach would entail.

	Item	Cost
1)	Simmons or equivalent quality mattress	$99
2)	Pillow, mid grade	$40
3)	Allergy covers for pillow and mattress	$50
4)	Foundation and allergy cover	$140

The cost amounts to about $200 with mattress alone, or about $350 for a mattress and foundation. The Oklahoma City Transfer Center has either a mattress and foundation, or a good quality mat with separate pillow. Plaintiff slept on one option during one trip through the Center, and on the other option during the other trip. Both were comfortable and satisfactory sleeping solutions.

The mattress, with or without foundation, makes a lot more sense for this reason. The mattress will easily last 10 years and provide good service. The cost per unit of use is less for the mattress alone or the mattress plus foundation. Mats without embedded pillow work when they are regularly replaced. Mats can be turned around and turned over on a regular basis to equalize wear. Encapsulated pillows force the user to constantly use the mat from one end. The middle soon breaks down. The inmates are forced to either use a mat that hurts their back until the DOJ-FBOP decides to replace it. The damage and pain progressively gets worse as the mat deteriorates.

How much do they deteriorate? Plaintiff has put extra stuffing into a mat through the threadbare holes. The mat was so worn that you could put your hand through the threads at numerous places. The mat smelled bad, and was a perfect hiding place for dust mites, to which Plaintiff is allergic. It was impossible to control the dust mites, since the permeable inside material was thoroughly exposed to the sleeper.

The last time Plaintiff got out of SHU, after being locked up in Special Housing Unit (SHU, or jail for the prison) for worshipping Yahweh on Sabbath, he was given a mat so worn and wretched that his knee would catch on the angle iron at the edge of the "rack" upon which the mats are placed. The angle iron is about 1.5" tall. The padding was so worn that it could not hold Plaintiff's knees up above the top of this iron lip. Plaintiff's torso compressed the thin mat even further because it is heavier, both in absolute terms and on a pounds per square inch basis.

The defense accepted by the Magistrate seems to be that the DOJ-FBOP is trying hard and has to have flexibility about the way that it provides for inmates. This begs the question. How does it come to be that the Oklahoma City Transfer Center can do its job in a competent, non-negligent manner, but Oakdale-1 and Forrest City can't? There are two questions to answer. First is the decision the product of discretion, and second is it the kind of discretion that Congress intended to protect?

The decision cannot possibly have been made for the purpose of saving money. Plaintiff and a great number of other inmates would gladly buy these items if they were allowed to be sold. Plaintiff bought allergy proof covers from National Allergy Supply while he was on the street and would gladly do so again if permission was granted. Mattresses in single size, suitable for prison, are routinely advertised for $99. This would eliminate the need for several mats. None of the mats last 10 years, or come close. One year is a more reasonable estimation of the time that a mat might last. The government claims that a mat costs $107 and change. I know because I was falsely accused of modifying a mat, and this was the alleged cost of the mat. It mattered not to them that the mat had already been modified when I got it. Plaintiff has been forced to sleep on a mat only 5 feet long, extremely thin, for extended periods of time.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/24/2016 06:59:09 PM

To: Objections pt 8
Inmate Work Assignment: CCS AM

Forrest City in particular ran a racket whereby inmates were "written up" for modifying a mat, even if the modification was plainly an improvement. The inmate generally would lose 27 days of good time, along with various privileges. At published average costs of incarceration that is over $2,000 direct cost to the taxpayers. Loss of productivity almost certainly amounted to an like amount or greater, on average. The taxpayers could have bought 40 Simmons or Sealy mattresses for the self inflicted wounds arising out of one modification of a mattress. And one mattress could support multiple accusations, thus increasing the damage by multiples of the $4,000 basic damages.

The behavior engaged in suggested a desire to get the mats destroyed. They last an abysmally short period of time anyway. Certain politically well connected individuals sell the government junk at inflated prices. Quality merchandise from private enterprise would interfere with the "hustle." Why not use any means possible to sell more mats?

If they let the inmates buy a decent mattress, everyone who could afford one would buy. Families would buy them if they could donate with assurances that their family member would get the use of it. The amortized cost per use is probably between 5 cents and 15 cents per night, for the basics. A $350 setup amounts to 35,000 cents, which can be amortized over 10 years, for a cost of 10 cents per day.

Neither the government nor the Magistrate have cited to any binding authority declaring Plaintiff's claims barred pursuant to the discretionary function exception. The Magistrate cited considerable authority, mostly from other jurisdictions, and much of that from district courts. Furthermore, the authorities relied upon are not on "all fours" with the Plaintiff's case. This can be observed from the decisions, and also from the synopses provided in the report and recommendation. In short, there is no legal impediment to finding that Plaintiff's claims are not barred by the discretionary function exception.

The Program Statements contain numerous requirements to provide adequate bedding. For example, PS 5720.10 (12.), concerning conditions in SHU, says:

> Your living conditions in the SHU will meet or exceed standards for healthy and humane treatment, including, but not limited to, the following specific conditions:
>
> (d) Bedding. You will receive a mattress, blankets, a pillow, and linens for sleeping. You will receive necessary opportunities to exchange linens.

Plaintiff admits that the notes thereto contain a reservation of right to issue a "combination mattress with a pillow incorporated." However, it is plain that a mat or mattress that causes back injury or pain, or fails to protect against allergens, is irreconcilable with the written policy.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/25/2016 07:39:19 AM

To: Objections pt 9
Inmate Work Assignment: CCS AM

This is just one of many places in the Program Statements requiring a mattress sufficient to respect the humanity of inmates and protect their health. As a matter of official policy all inmates are entitled to a reasonable mattress sufficient to protect against health threats of all kinds. Would the government claim entitlement to dispense tattered and incomplete mattresses riddled with scabies and bedbugs, on grounds that the "discretionary function exception" deprives the court of subject matter jurisdiction altogether? Perhaps they would, but a reasonable reading of the law does not support such a strained theory. Congress never intended such a result.

The Magistrate's recommendation says the "exception applies where government officials must exercise their discretion in choosing how to act because their is no statute or regulation that requires a specific course of action, and that discretion is guided by competing policy considerations."

Part A of the test is not satisfied because the decision has already been made at the highest levels of the DOJ-FBOP. Both the American Correctional Association's Standards for Adult Correctional Institutions, 4th Edition, (Standards, 4th Ed.) and the Program Statements require a competent mattress for an inmate to sleep upon. This ACA resource was financed in large part by the DOJ-FBOP, so we could reasonably conclude that the DOJ-FBOP agrees with it even if their own policy statements were silent on the subject.

Why did they set forth the rule? Because correctional authorities otherwise can be counted on to deprive inmates of such things. That is why Standards and Expected Practices are set forth in the Standards, 4th Ed. If there was no chance that any correctional authority would fail to meet the "standard" there would be no reason to waste paper and ink to write it down.

What are the competing policy considerations? The government has not identified one single competing policy consideration in support of denying inmates ACCESS to a reasonable mattress that protects against allergies as well as damage to the spine. The facts showing the outrageous economic folly of denying inmates reasonable mattresses is set forth in the complaint. Docket 7, pg. 15.

Oklahoma City Transfer Center provided adequate mattresses and foundations for inmates in some cases, good quality mats in others. The government has not explained how the Transfer Center can do the job competently and efficiently, at exceedingly low cost, but Forrest City can't. Furthermore, they have not explained how the policy considerations at one facility are different from policy considerations at another.

Keep in mind that the complaint was drafted on the "Request to Staff" function, just as this pleading is drafted on that function. Plaintiff could not draft, sleep, edit, repeat. Plaintiff proceeded on the assumption that he needed only a "short, plain statement" and that the crippling effects of not having editorial capability would not be prejudicial. The complaint falls short of Plaintiff's writing capabilities and the facts that Plaintiff can set forth under penalty of perjury.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/25/2016 09:21:46 AM

To: Objections pt 10
Inmate Work Assignment: CCS AM

Part B of the test is conspicuous by its absence. What COMPETING policy considerations are identified by the government? None at all.

It is easy to understand why Congress did not authorize prison inmates to sue on the theory that prison assignments and security designations resulted in their injury. The COMPETING policy considerations are obvious. If an inmate is left in a USP he may be seriously injured by other inmates with a high security designation. Yet if the inmate is transferred to a "Low" he may severely injure an inmate in that lower security institution. The threat comes from two directions. The inmate may be injured, yet the same inmate may injure some other inmate. Therefore, DOJ-FBOP personnel must evaluate the probabilities and make prison assignment decisions on the basis of that evaluation. ANY DECISION CARRIES WITHIN ITSELF AN INHERENT RISK.

Suppose the DOJ-FBOP decided to allow inmates to buy the $350 setup identified earlier in this pleading. Who is hurt? The DOJ-FBOP most certainly is not hurt. The government gets free goods to take the place of things that the government has a duty to buy and supply. Even if the government began to buy quality bedding and supply it, their cost does not go up. Their cost goes down, and drastically. The cost per use of quality bedding is drastically lower than the cost per use of Unicor junk.

There is in fact an economic incentive, but it is altogether illegitimate. The $107 paid for a cheap piece of trash made by Unicor ALL GOES SOMEWHERE. The beneficiaries of this cash flow have an incentive to get as much money as possible, which means they have incentive to SELL AS MANY MATS AS POSSIBLE. They are in essence bilking the American taxpayer while inflicting injury and suffering on inmates. But they do have economic reasons to do it. They just aren't LEGITIMATE or RATIONAL reasons when viewed by the taxpayers, or when viewed through the lens of the law.

The Magistrate also identifies "social... and political policy." Docket 35, pg. 10. Yet this too is perverse, in the case at bar. What social policy is being protected? The 40-70% recidivism rates? The devastation to people of color, to the lower social classes, to the politically weak? The enormous run-up in total incarceration rates, along with the total taxpayer costs of corrections? None of these have any rational basis. Yet the government identifies no rational social policy whatever.

Is there a political policy? If graft and corruption are sufficient support for political policy, the answer is yes. But Congress has already answered this in the negative, with the False Claims Act (FCA). The FCA is not an effective vehicle against this particular form of graft and corruption, because a suit against Unicor is construed as a suit against the government itself and thus barred. The "profits" are distributed mainly by way of lavish salaries or contracts with politically well connected persons. But is this really the "political policy" that Congress intended to benefit by the language of the FTCA? Surely not.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/25/2016 01:24:52 PM

To: Objections pt 11
Inmate Work Assignment: CCS AM

The government's theories prove too much. If the "discretionary function exception" puts every facet of decision making concerning bedding, spinal health, and allergy control off limits to litigation regardless of the health consequences, the DOJ-FBOP can issue scabies and bedbug laden, threadbare mats to inmates, without any legal consequences. More ominously, they don't have to take corrective action when proof of consequences arise. In other words, if a scabies pandemic breaks out, they can ignore it. They can say they have simply exercised their "discretion" to conclude that the inmates can live with the infestation.

Bedbugs, scabies, lice, and dust mites are all living creatures. Admittedly the consequences of the first three cause more pervasive and serious harm than the last one. However, it is a matter of degree and not kind. Reasonable control of all such pests is required for reasonable human health. If the government is immune for a plainly incompetent and negligent response to dust mites, causing serious harm, why are they not also immune for ignoring an outbreak of the other?

Even if the government has discretion as to what resources to acquire in the first instance, this does not immunize them for medical conditions that arise as a result. They have a duty to provide a reasonable medical response. "Scabbing over" a serious problem with painkillers, refusing to acknowledge the problem, or simply telling the inmates to "toughen up" doesn't qualify as a reasonable medical response.

Persons are sent to prison AS punishment, not FOR punishment. Battle v. Anderson 564 F.2d 388, 395 (10th Cir 1977) The deprivation of liberty for 15 years or more is sufficient punishment for the Plaintiff. The fact that his children will grow up DE FACTO fatherless is part of that punishment, because it is inherent in incarceration. The gratuitous infliction of pain under shield of a legal theory which does have merit when applied properly IS NOT part of the punishment. Plaintiff's judgment and commitment order says nothing about such additional punishment.

We should keep in mind that the government has not responded to any of the Plaintiff's allegations under penalty of perjury. The complaint was submitted under penalty of perjury. The response to material facts, and statement of additional material facts, to the motion to dismiss did not trigger any response or denials from the government.

Yet the Magistrate did not convert the motion to dismiss to a motion for summary judgment. Thus all the facts alleged in all these submissions under oath are presumed true for purposes of this motion. Yet the Magistrate recommends dismissal with prejudice. This implies that each and every allegation by the Plaintiff under oath, assumed to be true, would not save any of the counts 5-15.

Plaintiff is not trying to make a hard job out from an easy one. If the Court finds that a claim is untenable even assuming the truth of all Plaintiff's allegations, then Plaintiff assumes that dismissal with prejudice is appropriate. Plaintiff trusts and hopes that the Court's decision will inform the Plaintiff as to true status of his claims as of the Court's rulings. Plaintiff has no desire to waste his own time or the Court's time on a lost cause.

If the Court finds that a count is not suitable as a standalone claim, but the allegations are useful for some other count, Plaintiff respectfully requests that the claim but not the factual allegations be dismissed. In other words, Plaintiff wants the facts to buttress any related claim that has survived.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/25/2016 06:53:46 PM

To: Objections pt 12
Inmate Work Assignment: CCS AM

* COUNTS 6 AND 12 - EYEGLASSES

Plaintiff does not have terrible vision. In fact he can see quite well at a range of 5 feet. But he needs correction at long distances to see adequately, for example to watch television at the normal distance from which he is able to watch television in prison. He also needs up-close correction, although he can function under many circumstances without it. For this reason Plaintiff uses eyeglasses some of the time, and at other times does not.

Plaintiff took a double action approach to the obstruction of his vision by claiming under the FTCA as well as the Administrative Procedures Act (APA). Surely Plaintiff had some right to an opportunity to see. After all, the eyeglasses were prescribed by a clinician. The ACA's Standards, 4th Ed., prohibit the overriding of the decisions of clinicians.

Plaintiff still doesn't have his medical records. Plaintiff believes that he got the eye test at Forrest City. The Standards, 4th Ed., require screenings of incoming and transfer inmates, so it is no defense if they didn't know. But Plaintiff believes that there is an official record showing that Plaintiff's vision was tested.

Since coming to Oakdale-1 Plaintiff was placed on "call-out" to Medical for an eye exam. The clinician used the customary optical tools to determine the errors in Plaintiff's vision and correct them with glasses. She made the same observation that Plaintiff's free-world eye doctor did - you (Stilley) have a start of cataracts." Plaintiff asked the clinician if she would be kind enough to prescribe auto-tint. She replied that if I was not in DOJ-FBOP custody it would be an easy case, she would certainly prescribe autotint. She said that Plaintiff's eyes weren't bad enough to qualify for auto-tint.

Such is that Catch-22 for a federal prison inmate. Until the eyes get bad the inmate isn't even allowed to protect against further damage. After the damage occurs, the inmate might as well budget $400 as the DE FACTO "co-pay" to get cataract surgery. This is breathtaking economic folly - why spend for a surgery when the logical approach is to prevent the damage in the first place? Yet the DOJ-FBOP gets away with this by hiding behind the "discretionary function exception."

Plaintiff's eyeglasses are worthless, sitting at his mother's house. Nobody else needs these glasses, or at least Plaintiff knows of no way to find someone else who can use them. Yet the DOJ-FBOP uses the power of incarceration to make sure Plaintiff cannot get this property.

The Standards, 4th Ed., say that inmates should get such things as eyeglasses. Docket 27, pg. 134, EP 4-4375

The Magistrate concedes that if Plaintiff can prove an override of the clinicians by denial of prescribed Nystatin, he at least has some evidence of negligence. The Magistrate credits Plaintiff's citation to the Standards, 4th Ed. Docket 27, pg 136, EP4-4381 Why then is not the override of the prescription of the eye doctor likewise some evidence of negligence? What is the principled difference between overriding the prescription of Plaintiff's eye doctor and overriding the prescription for Nystatin?

The autotint was PRESCRIBED. In prison Plaintiff has NO ACCESS to any goods that would satisfy this prescription. The DOJ -FBOP simply overrides the clinicians' decisions WHOLESALE. This is classic negligence, as that term is defined in the law of the state of Arkansas. This Court should not grant dismissal of either count 6 or count 12.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/25/2016 07:51:20 PM

To: Objections pt 13
Inmate Work Assignment: CCS AM

* COUNTS 11 AND 13 - FOIA REQUESTS, DECLARATORY REQUEST REGARDING TRULINCS

Plaintiff made an FOIA request together with his tort claim. The OFFICIAL Tort Claim form asks for medical records relevant to the claim. Since the form is aimed mainly at the "free world" it is not surprising that the form assumes that the medical records will not be in the hands of the agency to which the claim is presented. However, Plaintiff's medical records are presumably private and protected by federal law.

Plaintiff has helped other inmates with over 40 tort claims. Many of those have been sent to the Director of the DOJ-FBOP under cover letter. The cover letter generally asks for permission to help the DOJ-FBOP reduce medical costs and losses that fall upon the shoulders of the American taxpayer. The Director ignores these letters.

The government says that no FOIA request was made. Clearly FOIA requests were made. The Magistrate says that Plaintiff did not do an adequate job of submitting the FOIA requests, which is a tacit admission that SOME REQUEST was actually made. The Magistrate seems to think that Plaintiff didn't adequately inform the Director that the package contained an FOIA request.

The DOJ-FBOP relies on the releases to let their lawyers access the medical records of Plaintiff and of other inmates making tort claims - unless we operate on the theory that DOJ-FBOP lawyers have the right to examine the records without permission. This seems to Plaintiff to be a rather extravagant assumption, and one the the DOJ-FBOP has not made.

This was an improvised form. The warnings on the form (civil and criminal) are on the page that includes the "MEDICAL RECORD RELEASE AUTHORIZATION, AND FREEDOM OF INFORMATION ACT (FOIA) REQUEST." That page informs the reader that additional information is requested on attached pages.

South Central Regional Office (SCRO) Counsel Jason Sickler routinely deals with tort claims. He knows what the form requires. He knows that one requirement is the provision of medical records. He will naturally and probably look for that information. He can't see the means for that information without reading the information TAKEN FROM THE OFFICIAL FORM, which also includes the proviso that Mr. Sickler's access to the information is contingent on Plaintiff getting access to the same information. It is not an unconditional release of medical records.

The other information was properly requested of prison personnel. The rules require these personnel to inform inmates if there is a need for greater formality with the request. This was not done.

Plaintiff made his allegations in the complaint under oath. Plaintiff promptly asked for his Trulincs files after getting locked up in SHU. The government has not contested this testimony, thus it must stand.

On Count 11 Plaintiff has used a two pronged approach. If the DOJ-FBOP wants to let Plaintiff have his files and the means to edit and transmit them, that's great. If not they have no right to the money they charged for the time spent creating the files. The information should still be maintained, and is maintained unless we are to believe that the DOJ-FBOP lets the files get permanently deleted after 60 days. Plaintiff can't ascertain the true facts on this issue without discovery.

The government made a clearly baseless claim - that no FOIA requests were made. The Magistrate knows that is not true, but has pulled the government's chestnuts out of the fire by saying that Plaintiff did such a bad job of submitting the FOIA request that it should not be forced.

Plaintiff was hoping to let the government make their arguments, then make his own arguments, then let the Magistrate rule on which argument should prevail. The Magistrate has recommended denial of Plaintiff's FOIA claim on a theory that was never raised or argued by the government. Plaintiff respectfully submits that the Court should grant Plaintiff summary judgment on both count 11 and count 13.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/26/2016 07:40:25 AM

To: Objections pt 14
Inmate Work Assignment: CCS AM

* COUNTS 7 AND 15 - EDUCATION

Plaintiff once again used FTCA and the declaratory judgment act in pursuit of a single goal. Far and away the biggest prize in this pursuit is the opportunity to pursue educational endeavors IN THE FUTURE. Even if the Court awarded the full amount claimed by the Plaintiff, for educational deprivation alone, it would be a petty sum compared to the future benefits that would accrue if the DOJ-FBOP ceased or at least relented somewhat in its war on education, learning, and self improvement.

Plaintiff has shown that there are two sides in the battle. Someone gave the directions to get computers for Forrest City and Oakdale-1, for the use of the inmates for education, video phone calls with family, etc. Why would any authorities direct the purchase of educational computers EXPRESSLY FOR INMATES if the forces arrayed in opposition to education constituted 100% of the DOJ-FBOP workforce? Plaintiff has extracted this information from prison personnel, heard it with his own ears, and stated same under oath. WHOEVER IS IN FAVOR OF EDUCATIONAL OPPORTUNITY, NEEDS A LITTLE HELP.

The President of the United States has his initiative, which is supported by many influential private businesses. The idea that crushing educational opportunity is fairly and properly protected by the "discretionary function exception" runs counter to common sense and basic human decency. The consequences of declaring that the Court lacks subject matter jurisdiction - under the FTCA or the declaratory judgment statute - will be devastating to those inmates who need education most.

The government speculated in its brief about the source of the attacks on education. The government KNOWS FULL WELL that the proper way to present FACTS to a court is to make affidavit, or put forth some other evidence cognizable on motion for summary judgment. This the government did not do.

The Magistrate did not convert the motion to dismiss into a motion for summary judgment. This means that the Magistrate didn't consider affidavits or other matters outside the complaint, from either side. Therefore, the assumed facts are properly derived only from one source - the Plaintiff's complaint.

Yet the Magistrate virtually copied the "facts" set forth in the government's brief. The government openly speculated about much of these facts, for example saying that "Stilley's APA claims fail because the decisions he challenges are decisions made at the institutional level, likely made by correctional officers." The Magistrate simply paints with the same broad brush, as if speculation is sufficient to disregard Plaintiff's proper submissions in support of the facts relevant to his claims. If these claims are factual, wouldn't it be easy to get an affidavit in support of such facts?

The Magistrate does the same thing on damages, opining that some of the claims fail to properly allege cognizable injury. If the complaint is deficient in this regard Plaintiff would like to know at least which counts the Magistrate finds deficient.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/26/2016 09:33:55 AM

To: Objections pt 15
Inmate Work Assignment: CCS AM

* COUNT 14 - GOOD FAITH IN ACCEPTING DONATIONS

The government maintains a strange silence concerning the receipt of donations. Although there is a specific statute providing for the receipt of donations, 18 USC 4044 if memory serves, the government pretends that it has no duty of good faith and fair dealing in accepting donations. However, the case law says that private citizens have a right to presume the good faith of public officials and public employees. The public does not have a duty, in the United States, to scrutinize every governmental act with suspicion and distrust. The courts provide remedies when that trust is breached, at least as a general rule.

Plaintiff has repeatedly offered office equipment, from a $20,000 plus heavy duty printer/copier to computers, office supplies, etc. The excuse for not allowing inmates access to such things is economic. But there can't possibly be an economic reason when the space is available (and it clearly is) and where the equipment would provide massive benefits to those segments of society that need it the most.

Plaintiff has set forth the facts about Larry Bechel, stating that he is now on dialysis (according to reports received from friends). Bechel was not timely informed, and when he was informed he was denied the wherewithal for a basic kidney cleanse. Docket 26, pg. 26. Medical knew he needed it, and certainly many of the medical personnel would support giving him a chance to protect his health at nominal cost to the taxpayers. Yet he has now lost his kidneys.

Plaintiff submits herewith an opinion piece from Dr. Jeffrey Veale, discussing some of the issues involved with kidney donations, kidney health, and a voucher program (essentially insurance for the remaining kidney) for donors. He says that 700,000 Americans have end stage renal disease costing $30 billion annually. That works out to an average of $43,000, not the $100,000 suggested by Plaintiff. Of course an average doesn't mean that a cost of $100,000 is impossible, but Plaintiff certainly didn't mean to overstate his claim.

Plaintiff is calling upon his friends on the street to forward this document, with reference to relevant pages, to Dr. Veale. Plaintiff by his signature below makes a firm promise to donate one of his kidneys under the terms of the program described in the opinion piece, with the additional provisos:

1) Plaintiff and his fellow inmates are given the opportunity to do a kidney cleanse as described in the aforesaid page 26, at reasonable intervals, and to help other inmates do the same kidney cleanses;
2) Inmates get reasonable incentives, at least some of which are set forth in writing, to protect their own health through kidney cleanses and other health improvement practices;
3) The DOJ-FBOP pays for security for the trip to the hospital to take out the kidney.

Why does the Plaintiff make such an offer in a pleading? Because this litigation is about good faith in the acceptance of donations. Recently when Oakdale-1 decided that it would allow Plaintiff to get an examination of his teeth with a dental plan to follow, Plaintiff was told that he could donate a kidney, but only if he or the donor paid all the costs of security for the trip to the hospital. Plaintiff AT THE SAME TIME was told that he could not get a trip to the dentist office for dental evaluation or reasonable dental care that the DOJ-FBOP would not supply, AT ANY PRICE OR UNDER ANY CIRCUMSTANCES!

The argument arose because Plaintiff broke a tooth. An inmate oral surgeon at Oakdale-1 looked at Plaintiff's mouth and said that a bridge for this gap and also for a pre-existing gap would be a sensible solution, one that would likely would be prescribed by a competent practicing dentist. When Plaintiff mentioned this the Medical Director and the dentist discussing the matter said that such care simply was not within the realm of possibilities. They would not admit however that such a denial would ipso facto constitute an override of ordinary and sound medical/dental wisdom. Their means of preventing any other clinician from making a rational evaluation and prescription is to simply physically keep me out of any free world dental office, and prevent me from supplying any outside dental office with diagnostic imagery and/or high quality photos, which in and of itself is diagnostic imagery.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/26/2016 10:31:18 AM

To: Objections pt 16
Inmate Work Assignment: CCS AM

There is another perhaps bigger justification for putting this information into a pleading. The government has bombed Plaintiff's writing capabilities back to the 8th grade, by destroying his ability to edit electronic draft files. The factual and legal basis for the "shot" and punishment amount to a pure unadulterated fraud. Yet the DOJ-FBOP has strung the Plaintiff along, continually holding out hope to him that his Trulincs might be restored, completely in bad faith. Plaintiff is at once told that his appeal is late, while he is told (by Captain Bermingham, no less) that the investigation is not over. So Plaintiff is at once told that his appeal is too early and that it is too late.

Plaintiff sought an order prohibiting this interference. The government maintains silence, not answering the allegations of the pleading, while it maintains its perfidy. What is the Plaintiff supposed to do? Apologize that the pleading falls far below Plaintiff's native capabilities? Plaintiff waited until he was forced to commence writing the pleading without the editorial capabilities that he so desperately needs to effectively vindicate his legal rights.

Why the conditions? Because GOOD FAITH does not permit the government to squander kidneys from many inmates while receiving a donation from another one. Of course the government will say Plaintiff's offer is unsolicited. However, if the numbers cited in the attachment extrapolate fairly to the DOJ-FBOP, about 400 federal prison inmates are in on dialysis, and nearly 20,000 (10% of the inmate population) have chronic kidney disease and are at risk of joining the 100,000 individuals on the kidney waiting list.

Why should Plaintiff donate one of his kidneys while the DOJ-FBOP continues with cruel and utterly irrational policies that will destroy literally hundreds of other kidneys? Who would knowingly pour water into a leaky bucket, when the owner of the bucket threatens and abuses anyone who tries to patch the leaks? Does the DOJ-FBOP not have even the slightest duty to mitigate the damage and injury arising out of America's health crisis? Do they have the right to completely prevent inmates from getting access to materials for a kidney cleanse that could save the taxpayers an average of $43,000 annually? Does the lost productivity, hedonic damages, damage to the fabric of human society, amount to nothing?

The DOJ-FBOP lambastes Plaintiff for not paying $25 per quarter in phony "restitution." Yet Plaintiff is easily capable of "paying" his alleged restitution many times over if only the DOJ-FBOP would CEASE ITS INVIDIOUS INTERFERENCE with the receipt of in kind donations to or for the benefit of the American taxpayer.

Congress has passed the law, on the basis of rational policy considerations, and the reasonable expectations of the American taxpayers. The DOJ-FBOP has made a complete mockery of Congressional expectations, taxpayer expectations, common sense, and basic human decency.

TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/26/2016 12:06:39 PM

To: Objections pt 17
Inmate Work Assignment: CCS AM

Plaintiff's offer of a kidney is good through the last day of March, 2017. If there is a good reason for extension Plaintiff will gladly extend the time. A fixed deadline is included primarily because the intent of this litigation, and specifically this count of the complaint, is to gain some semblance of good faith in the receipt of donations. Perpetual stalling for time does not constitute good faith, under any reasonable definition of the term. Furthermore, the taxpayers are on the hook for a vast proportion of the damages and expense occasioned by kidney disease. Every day of delay involves more damage and cost.

Nor has the Plaintiff been negligent in offering his assistance through the normal channels. Consider the following efforts since Plaintiff has been in federal prison.

1) Approximately 40 tort claims, one of the key reasons for which is to GIVE THE AGENCY information and foresight about problems so that the underlying problem can be addressed, thus saving both injury and loss, and tort claim payouts;

2) Approximately 25-30 cover letters to the Director or the Regional Director or both, sometimes copied to medical personnel, asking for an opportunity to assist in improving health outcomes, cutting health care costs and losses, etc;

3) Various discussions with key medical decision makers at both Forrest City and Oakdale-1, often indicating support from medical personnel, but resignation that Corrections officials will obstruct any meaningful reform;

4) Eight separate videos of nasogastric force feeding during hunger strikes which have totaled approximately 270 days. Plaintiff believes that all eight of these videos will show that he offered to provide reasonable and effective cost saving assistance to any conscientious correctional authorities willing to accept his help, although he needs to refresh his recollection from the videos. On information and belief medical authorities at Regional offices had to review these videos, and thus knew about these offers over a long period of time.

.TRULINCS 10579062 - STILLEY, OSCAR AMOS - Unit: OAK-E-B

FROM: 10579062
TO: DAP
SUBJECT: ***Request to Staff*** STILLEY, OSCAR, Reg# 10579062, OAK-E-B
DATE: 08/28/2016 12:21:45 PM

To: Objections pt 18
Inmate Work Assignment: CCS AM

Effective correctional programs exist. Some correctional programs achieve recidivism rates in single digits or low double digits. The common thread of these programs is that they treat inmates as human beings, worthy of certain basic rights and humane treatment, capable of self improvement, and capable of understanding and responding to incentives. Administrators take responsibility -- not for individual failures, to be sure -- but rather for overall outcomes and percentages of success. Administrators recognize a duty of competence to the taxpayers who pay their salaries, a duty of continual learning and improvement, and a duty to recognize and address the underlying reasons for correctional failure. In short, they subscribe to and internalize the salutary goals of the Standards for Adult Correctional Institutions, 4th Ed., published by the American Correctional Association.

If there is one single correctional program that has achieved documented long term success through harshness, cruelty, brute force, draconian penalties for small infractions, etc., Plaintiff is not aware of it.

CONCLUSION

The government has not shown entitlement to dismissal of any count of the complaint. Much of the factual basis for the recommendation of dismissal of counts is founded not upon the allegations of the complaint, but rather upon "facts" derived solely from statements in the government's briefs. Such is not consistent with a pure 12(b)(6) dismissal. Nor would such "facts" suffice as evidence if the motion was converted to a Rule 56 summary judgment motion. For all the reasons set forth herein, Plaintiff objects to dismissal or "trimming" of any count of the complaint at the present time, save and except for the theories of retaliation or PREA. Furthermore, Plaintiff objects to the recommendation to deny Plaintiff summary judgment as to counts 11 and 13, for the reasons explained herein.

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)

By: Oscar Stilley

8-29-16
Date

Oscar Stilley
FCI Oakdale-1
PO Box 5000
Oakdale, LA 71463-5000

CERTIFICATE OF SERVICE (PRISON MAILBOX RULE)

Plaintiff by his signature above under penalty of perjury pursuant to 28 USC 1746 states that on the date stated he placed a copy of this pleading in the prison outgoing mail receptacle, with sufficient 1st Class US Postage attached, addressed to the clerk of the court for filing and service on all persons entitled, via CM/ECF.

WSJ 8-4-16 Page A-11 Plaintiff's Exhibit "1"

Give a Kidney, Get a Kidney

By Jeffrey Veale

The numbers are staggering. Because of a lack of donor kidneys, an average of 13 people die every day while waiting for a transplant. There are more than 100,000 names on the kidney waiting list in the U.S. and another 30 million people with chronic kidney disease who are at risk of joining them. More than 85% of those on the waiting list in 2015 are still waiting.

The good news is that there were 17,878 kidney transplants in the U.S. last year, the most in a single year, according to the United Network for Organ Sharing. And the numbers may keep growing thanks to an innovative voucher program that started in 2014 at Ronald Reagan UCLA Medical Center and is spreading across the country.

Here's how it works: If you donate a kidney now, you will receive a voucher that a loved one could use to secure a kidney in the future. The Advanced Donation program is coordinated through the National Kidney Registry, which uses a national database to quickly and efficiently match donors and recipients.

The idea was approved by the Ethics Committee of the American Society of Transplant Surgeons in June, and has been sent to that group's executive committee for formal approval. Ten hospitals across the country have so far joined UCLA to honor the voucher program. Donors currently need to go to one of these hospitals to receive a voucher but many other centers are expected to join.

The voucher idea is the brainchild of retired judge Howard Broadman. His grandson Quinn was born with a single kidney that wasn't fully functioning. The retiree knew that eventually the boy would need a lifesaving transplant. Yet Mr. Broadman, who was 60 years old when Quinn was born, knew that by the time the boy needed a kidney transplant, his grandfather would be too old to donate.

An innovative voucher program started in 2014 at UCLA is spreading across the country.

Mr. Broadman approached Ronald Reagan UCLA Medical Center and proposed a simple but brilliant idea. He offered to donate a kidney immediately to a stranger on the waiting list, if in return he could secure a kidney for his grandson when the time comes. Quinn would be prioritized for a kidney when he needed a transplant.

Nothing like this had ever been done, but the UCLA Living Donor Committee and the National Kidney Registry Medical Board agreed to do it. In December 2014, Mr. Broadman donated a kidney, and 4-year-old Quinn now has a voucher to redeem when he needs it, perhaps avoiding dialysis.

If only one-half of 1% of adults in the U.S. agreed to become living donors, we could rapidly clear the waiting list for kidneys. As dramatic as this sounds, it is important that potential donors be fully informed of the risks of donating a kidney. There is a 3 in 10,000 death rate and approximately a 5 in 1,000 chance that donors will develop end-stage renal disease.

Living-donor kidneys are ideal because they generally function twice as long as kidneys from deceased donors—indirectly reducing the wait list. Nearly 700,000 people are now on kidney dialysis in the U.S. Treating end-stage renal disease costs more than $30 billion each year—and takes an enormous physical and emotional toll on patients and their families. Imagine if doctors could address kidney disease long before that was even an issue.

With more kidneys to choose from, doctors could also more easily manage donor chains. Many people volunteer to donate a kidney to a friend or loved one in need, only to find out that they are not a compatible match. With this program, they could still donate, and the National Kidney Registry computer software would find a matching donor. One donor in the voucher program could be used to trigger a chain of transplants, creating the added benefit of freeing people from dialysis now, and their loved ones from dialysis in the future.

Potential donors often state that they are interested in donating a kidney but are hesitant because a spouse or a child could need one in the future. With the voucher program, that issue is no longer a concern.

As a transplant surgeon, I'm invigorated by the prospect of what this voucher program could mean. This could be our only realistic shot at eliminating the waiting list for kidney transplants.

Dr. Veale, a transplant surgeon at Ronald Reagan UCLA Medical Center, is director of the UCLA Kidney Transplantation Exchange Program.

Notable & Quotable: Olympics

NBC sportscaster Bob Costas, speaking Tuesday in Beverly Hills, Calif., at a Television Critics Association panel on the Olympics, as quoted by Entertainment Weekly:

One thing for certain [is that] every bit of competition that takes place on open water—marathon swimming, sailing—you've got to talk about the condition of the water. These athletes are dealing with it, and in some cases, the best they've been told is, "Try to keep your mouth closed." That's rather difficult when you are swimming even in your backyard pool, let alone in open water, or, "Don't put your head under the water." So I guess some new techniques will be required. I'm not trying to be facetious here, but it's going to be impossible in some cases not to address some of the issues that have come up before the Olympics, because they will directly intersect with the competition.