EXHIBIT B.2

RECEIVED
JAN 10 2017
State Claims Commission
Arkansas

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Do Not Write in These Spaces
Claim No. 17-0470-CC
Date Filed January 10, 2017 (Month) (Day) (Year)
Amount of Claim $ 10,000.00
Fund ADP
Failure to Follow Procedure

☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Matt Barnett, #135607 **Claimant**

vs.

State of Arkansas, Respondent

AR Parole Board

COMPLAINT

Matt Barnett, #135607 (Name) Grimes Unit, the above named Claimant, of 300 Correction Dr., Newport AR 72112 (Street or R.F.D. & No.) (City)

Newport AR 72112 (State) (Zip Code) (Daytime Phone No.) County of _____ represented by Matthew W. Barnett, pro se (Legal Counsel, if any, for Claim)

of Newport AR 72112 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.), says:

State agency involved: Arkansas Board of Parole **Amount sought:** $10,000 ~

Month, day, year and place of incident or service: December 01 2014 Continuing, and October 31 2016 Continuing

Explanation: Arkansas Code Annotated (A.C.A.) §16-93-615 is the applicable law which applies to my Complaint And all my offenses from 2005 upto date make A.C.A. §16-93-615 relevant. On 11-23-2014 I had a parole hearing. The parole Boards decision was a denial of transfer (denied Parole) for two (2) years. In otherwords not to be brought back up for two (2) years I did not receive with that denial a set of a prescribed Course of action to be undertaken to rectify the Parole Boards concerns. No rehabilitative Programs were prescribed, and in fact my request to participate in their Re-Entry Program, a federal funded Program was denied me. I then, sat at Grimes with no Course of action to take. Under A.C.A. §16-93-615(5)(6)(i)(5) My offenses do not fit with the type of offense which allows a two (2) year denial. Furthermore A.C.A. § 16-93-615 (2)(A)(ii) demands I be given a Course of action to be undertaken to rectify the Parole Board's Concerns.

After those 2 years, I did receive another hearing and the results are the same with one modification, the Parole Board gave me a one (1) year denial, with no Course of action to be undertaken to rectify the Parole Board's Concerns.

In both matters I did the only available Course of action to exhaust this matter, which is a Motion For Reconsideration. Both Motions have been denied.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? Yes (Yes or No); when? See Statement above (Month) (Day) (Year); to whom? The Arkansas Board of Parole (Department); and that the following action was taken thereon: See Exhibits "A", "B" and "C", attached

and that $ None was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address N/A (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: N/A ; and was acquired on _____, in the following manner: _____

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Matthew W. Barnett
(Print Claimant/Representative Name)

Matthew W. Barnett
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Newport (City) Arkansas (State)

(SEAL)

on this 5th (Date) day of Jan (Month), 2017 (Year)

Kay Cantrell
(Notary Public)

SF1-R7/99

My Commission Expires: March 5, 2022 (Month) (Day) (Year)

COMPLAINT

In addition to the uncontested facts hereinabove, page One (1), I'm Contending the Arkansas Board of Parole has failed to give their written Statement of reasons for denial of my parole THAT simply stating "Previous ~~Poor~~ Release History," "New Time," and "Multiple Counts" is an insufficient, statement and overly broad for an understanding of their Concerns. The same w/o a Course of action.

In resolving the question of whether a Statement of reasons for denial of parole is within the process that is due an inmate, we should start from the generally accepted premise that due process is a flexible concept which may vary in different Contexts, depending upon a Complexity of factors, including 'the nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding,' Hannah V. Larche, 363 U.S 420 at 442, 80 S.Ct. 1502, 1515 4 L.Ed.2d 1307 (1960), See Cafeteria & Restaurant Workers Union V. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961). 'The extent to which he may be 'Condemned to suffer grievous loss,' Joint Anti-Fassist Refugee Committee V. McGrath, 341 U.S. 123, 168, 71 S.Ct 624, 647 95 L.Ed. 817 (1951) (Frankfurter, J. concurring), and depends upon whether the recipient's in avoiding the loss outweights the governmental interest in summary adjudication' Goldberg V. Kelly, 397 U.S. 254 at 262, 90 S.Ct 1011 at 1017, 25 L.Ed.2d 287 (1970), See Escalera V. New York City Housing Authority, 425 F.2d 853, 861 (2d Cir), Cert. denied, 400 U.S. 853, 91 S.Ct. 54 27 L.Ed.2d 91 (1970).

COMPLAINT

Turning first to the nature of the parole release proceeding and the risk of harm to the inmate (Your ~~Client~~ Claimant) under consideration for parole, his interest is enormous. For him the Board's decision represents the difference between incarceration and conditional liberty. It is equally clear that the Board is an extraordinarily powerful administrative body, possessing vast discretionary authority. It not only decides whether and when a prisoner will be released on parole, it also decides in most cases when he will become eligible for parole and, if parole is granted, the conditions of that parole. In making these crucial decisions Arkansas Parole Board is guided by statutory standards that under A.C.A. § 16-93-615 use mandatory language. The controlling statute is A.C.A. § 16-93-615, (2)(A)(B) thru (ii). And, (5)(b)(i)(5). The Arkansas Board of Parole Concentrate on the inmate's (Your Claimant's) past crime rather than on this present condition and/or plans for the future, His request for the Re-Entry Program, the Work/Study Release Program and services, benefits and activities available which receive federal financial Assistance. No one who works with Claimant in prison is heard by the board. Rehab programs are denied Claimant.

Besides safeguarding against purely arbitrary denials of parole, a reasons requirement can serve the important function of promoting rehabilitation by relieving Claimant's frustrations and letting him know how he might, by improving his prison behavior or taking steps with respect to some other factor in doubt (e.g.,

Acceptance into their Re-Entry Program, transferred to one of the Work/Study Release Programs which receive federal assistance to opperate), to better Claimant's chance for release. To the Claimant the Parole Board's decisions are a form of arcana imperii. His liberty appears to depend entirely on the whim, hunch or caprice of panel members. He is left to speculate as to why he was denied parole. Besides breeding needless frustration, hatred, cynicism and disrespect for government institutions, the Board's failure to give reasons often induces feelings of hopelessness or despondency which lead inmates (claimant) no longer to care about making any effort to improve himself.

The Claims Commission will understand the hopelessness that Claimant feels when he is told simply that parole is denied, without being told why. He wonders whether some facts might be brought to the Board's attention that would make a difference, but he cannot know what facts these might be. He wonders whether there may be some damaging information in the Board's files that is legitimately subject to question or refutation, but he cannot know whether this is so. He wonders whether there is some way in which his prison behavior should be changed, so as favorably to impress the Board; but he does not know in what way. He wonders, in short, whether there is anything he can do or say that will make the Board take a different view of this case; but he cannot know or learn the answer. QUESTION 1: Why was Claimant given a two (2)

year denial when Arkansas law does not authorize a two (2) year denial. QUESTION. 2: Why has the Arkansas Board of Parole refused to follow Arkansas law and give Claimant a prescribed Course of action to rectify their Concerns. QUESTION. 3: Why has the Arkansas Parole Authorities denied Claimants many request to take part in their Re-Entry Program which receives federal funding and is to assist repect offenders such as Claimant; and QUESTION. 4: Why has Claimant been denied or excluded from the Work/Study Release Program which is federd funded to assist repeat offenders such as Claimant.

One answer is that in 2010 Claimant had a Civil Suit against the Parole Board and members for Violating his Constitutional Right by not providing him a proper parole revocation hearing. They now show acts of retaliation.

I Furthere allege adding the One (1) more year to the denial of parole back in November 2014 which clearly is in Violation of state law and my rights was done in retaliation for my having filed a §1983 against Respondents in 2010. Respondents have opened the door for another §1983 Complaint. Inmate's claim of retaliation because of exercise of his First Amendment rights in bringing and assisting in civil rights litigation was sufficient to state a claim. Rizzo V. Dawson, 778 F.2d 527 at 532. Furthermore, Respondents actions of retaliation did not advance legitimate goals of the

COMPLAINT

Respondents or was not tailored narrowly enough to achieve Such goals.

REQUEST FOR RELIEF

As of the time of the presentation of this claim, Claimant asserts damages as follows:

1. As a direct and proximate result of Respondents extending Claimant's parole hearing for One (1) year ~~beyond~~ beyond the maximum amount allowed based upon Claimants offenses, he did suffer a total of one (1) year of mental and emotional pain as stated on pages-three (3), page two (2), page four (4), pages One (1), and two (2). Claimant seeks $ 10,000.00 from each Respondent.

2. Claimant seeks an Order Compelling Respondents to provide a statement of reasons why he was given a two (2) year denial; why no prescribed course of action was ever given to rectify their Concerns.

3. Claimant seeks an order stating why he has been denied entry into their Re-Entry Program, or issued to go to a Work/study Release Program.

4. Claimant claims General damages as a direct and proximate result of Respondents actions, including damages,

including damages for mental, emotional, and physical pain and suffering, emotional distress, hardship, suffering, shock, worry, anxiety, sleeplessness, illness, skills, employment, rehebilitation, trauma damages and injuries as stated hereinabove, pages three (3) through Five (5)

5 Such other relief and further relief as this Commission deems just and proper

6. Claimant reserves the right to amend and plead furthere the issues now presented

THE UNDERSIGNED state on oath that he is familiar with the matters and things set forth in the above Complaint, and that he verily believes that they are true.

By: Matt Bass
Claimant

SWORN To and subscribed before me at Newport city, Arkansas State on this 5th day of Jan, 2017

By: Kay Cantrell
NOTARY PUBLIC

MY COMMISSION EXPIRES:
March 5, 2022

PCAR515

Parole Board
Record of Release Consideration

Date: 12/01/2014
Time: 03:43 PM

ADC: 135607F **NAME:** Barnett, Matthew W
UNIT: Grimes Unit
HEARING DATE: 11/23/2014 **HEARING TYPE:** Reconsideration Screening

The action of the board and the most significant reasons for that action are recorded below. For a more complete explanation, contact the Institutional Parole Officer. After due deliberation, the Board ordered the following action:

ACTION:
Denied 2 Years
Prior(Hearing)Action Stands

Reconsideration denied. The Post Prison Transfer Board reviewed you request concerning its previous decision on your conditional release. After due deliberation, the Board concluded that its prior decision was appropriate and correct. The prior action stands.

REASONS FOR ACTION:
Multiple Counts
New Time
Previous Release History

PRE RELEASE CONDITIONS:
None

CONDITIONS OF RELEASE:
None

BOARD IMPOSED DATE:

COMMENTS:
None

All releases are subject to approval of suitable plan.
Recorded for the Arkansas Parole Board.

(EXHIBIT "A")

INMATE COPY
STATE COPY
INSTITUTIONAL PAROLE SERVICES COPY

PCAR515 **Parole Board** **Date:** 10/31/2016
Record of Release Consideration **Time:** 12:05 PM

ADC: 135607F **NAME:** Barnett, Matthew W
UNIT: Grimes Unit
HEARING DATE: 10/18/2016 **HEARING TYPE:** TE Violator N/T Hearing

The action of the board and the most significant reasons for that action are recorded below. For a more complete explanation, contact the Institutional Parole Officer. After due deliberation, the Board ordered the following action:

ACTION:
Denied 1 Year

REASONS FOR ACTION:
Previous Release History
New Time - End 12-__-17

PRE RELEASE CONDITIONS:
None

CONDITIONS OF RELEASE:
None

BOARD IMPOSED DATE:

COMMENTS:
None

(EXHIBIT "B")

All releases are subject to approval of suitable plan.
Recorded for the Arkansas Parole Board.

INMATE COPY
STATE COPY
INSTITUTIONAL PAROLE SERVICES COPY

ARKANSAS DEPARTMENT OF CORRECTION
TIME COMPUTATION CARD

PROCESSED: 07/27/2015 02:17 PM
REQUESTOR: Beverly A McCall

INMATE NAME: Barnett, Matthew W **ADC #:** 135607F

LOCATION: Grimes Unit **HOUSING:** BK09-0014 **CLASS:** I-C **OF:** 07/24/2015

You have been committed to the ADC to serve the following sentences. The release dates listed below are only a projection and include all good time which can be earned based on your current class. If all projected good time is not earned, these release dates will change.

CMT.	OFFENSE	FEL CLS	DOCKET NUMBER	COUNTY NAME	TOTAL SENTENCE YY/MM/DD		PE/TE	JAIL TIME
AB-001	Theft By Receiving Probation Revocation	C	CR-2005-651 1	Sebastian	0y 60m 0d	IN	1/3*	1
AB-002	Aggravated Assault Probation Revocation	D	CR-2007-226 2	Sebastian	0y 60m 0d	CC	1/3*	1
AC-001	Criminal Attempt Commercial Burglary	D	CR-2009-89	Sebastian	0y 60m 0d	CC	1/3*	15
AC-002	Breaking And Entering	D	CR-2009-89 3	Sebastian	0y 60m 0d	CC	1/3*	15
AD-001	Commercial Burglary	C	CR-2012-2578 4	Pulaski	0y 72m 0d	CC	1/3*	56
AD-002	Theft of Property >= $1,000 < $5,000	D	CR-2012-2674 5	Pulaski	0y 60m 0d	CC	1/3*	56
AE-001	Commercial Burglary Habitual Offender	C	CR-2013-1848 6	Pulaski	0y 36m 0d	CC	1/3*	63
AE-002	Theft of Property >= $1,000 < $5,000 Habitual Offender	D	CR-2013-1848	Pulaski	0y 36m 0d	CC	1/3*	63
AF-001	Commercial Burglary Habitual Offender	C	CR-2013-2448 7	Pulaski	0y 36m 0d	CC	1/3*	43
AG-001	Commercial Burglary Probation Revocation	C	CR-2013-1848 6	Pulaski	0y 36m 0d	CC	1/3*	88
AG-002	Theft of Property >= $1,000 < $5,000 Probation Revocation	D	CR-2013-1848	Pulaski	0y 36m 0d	CC	1/3*	88
AG-003	Breaking And Entering Probation Revocation	D	CR-2013-3988 8	Pulaski	0y 36m 0d	CC	1/3*	88
AG-004	Commercial Burglary Habitual Offender	C	CR-2014-719 9	Pulaski	0y 36m 0d	CC	1/3*	88

TOTAL SENTENCE LENGTH 6y 0m 0d

RELEASE DATES: **TRANSFER ELIGIBILITY DATE:** 09/16/2014

DISCHARGE DATE: 10/11/2018 (EXHIBIT "C")

Arkansas
State Claims Commission
FEB 0 7 2017
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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATT BARNETT — CLAIMANT

VS. — CASE NO. 17-0470-CC

ARKANSAS PAROLE BOARD — RESPONDENT

MOTION TO DISMISS AND BRIEF IN SUPPORT

Comes now the Respondent, Arkansas Parole Board ("APB"), by its attorneys, Attorney General Leslie Rutledge and Assistant Attorney General Robert T. James, and for its Motion to Dismiss and Brief in Support, states:

1. The claimant is serving a sentence in the Arkansas Department of Correction Grimes Unit for commercial burglary–probation revocation, theft of property–probation revocation, breaking and entering–probation revocation, and commercial burglary–habitual offender.

2. On January 10, 2017, the claimant filed a complaint alleging that the APB denied him due process by failing to grant him parole. More specifically, the claimant alleged that on December 1, 2014, continuing until October 31, 2016, the APB denied him the entry program; denied that the offense did not fit with the type of offenses under A.C.A. §16-93-615; denied to begin a course of action to be undertaken to notify the Parole Board concern; and, denied parole without telling the claimant why he was denied. Among other requests for relief, the claimant is claiming $10,000 from each respondent.

3. The claimant does not have a right to parole. The U.S. Supreme Court has held that an inmate does not have a protected, federal due process right to parole. *Jenner v. Nikolas*, 828 F.3d 713 713,716 (8th Cir. 2016) (*citing Greenholt v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979), quoting "There is no constitutional or inherent right of a

convicted person to be conditionally released before the expiration of a valid sentence.") And, the States are under no duty to offer parole to their prisoners. *Swarthout v. Cooke*, 562 U.S.216, 219 (2011). The Arkansas Supreme Court has emphasized the broad discretionary authority granted under the state's parole statutes. *Rhodes v. Kelley*, 2016 WL 2865374 5:15CV-00225 (April 22, 2006 E.D. Arkansas 2016) (*citing Michalek v. Lockhart*, 292 Ark. 301 (1987)) The federal courts have repeatedly held that the Arkansas Statutes create only a possibility of parole and, thus, do not establish any rights to release on parole which would invoke due process protection. *Pittman v. Gaines*, 905 F.2d 199 (8th Cir.1990); *Parker v. Corrothers*, 750 F.2d 653, 665-57 (8th Cir. (1964); *Hamilton v. Brownlee*, 237 Fed.Appx. 114, 115 (8th Cir. 2007)

4. It is clear that Arkansas does not give the claimant a right to parole. The Arkansas Supreme Court has held that the "determination of parole eligibility is solely within the province of the ADC, as fixed by statute." *Robinson v. Kelly*, 2015 WL 9311923 5:15-CV-00083 (E.D. Arkansas, Pine Bluff Division 2015) (quoting *Mitchem v. Hobbs*, No. CV-131098, 2014 Ark. 233, at 4 (May15, 2014) In *Crossno v. Felts*, No. CV-14-125, 2014 Ark. 262 (May 29, 2014) and, *Michalek* at 292 Ark. 301 (1987), the Court held that a prisoner who appeals the APB's denial of parole under the APA does not state a valid due process claim because there is "no constitutional right or entitlement to parole that would invoke due-process protection. *Id.* at 2 (citing *Cridge v. Hobbs*, No. CV-18-829, 2014 Ark. 153, atl (April 3, 2014)) These cases make it clear that Arkansas law does not give a prisoner a right to parole. *Robinson v. Felts*

4. Arkansas Rule of Civil Procedure 12(b) states that: "Every defense, in law or in fact, to a claim for relief in any pleading where a claim...shall be asserted in the responsive pleading thereto if one is required except that the following defenses may, at the option of the

pleader, be made by motion....*(b)(6) failure to state facts upon which relief can be granted...*". (emphasis added)

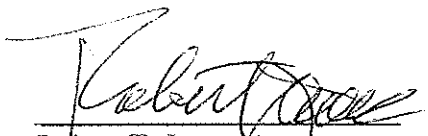
5. Where a complaint failed to make a statement in ordinary and concise language of facts showing that the pleader was entitled to relief because it neither contained a factual allegation of any act, the complaint was correctly dismissed under subdivision (b)(6) of this rule [Ark.R.Civ.P.12] for failure to state facts upon which relief could be granted. *Ratliff v. Moses*, 284 Ark. 16 (1984)

6. Even if the claimant was denied parole, the claimant has still failed to state facts showing that he has a right to parole. Even if all the stated facts in claimant's complaint are deemed true, the complaint should still be dismissed based on the federal and state law cited herein. Therefore, the claimant has not stated facts upon which relief can be granted and should be dismissed.

WHEREFORE, the Respondent prays that its Motion to Dismiss be granted and that the Claimant's Claim be dismissed.

Respectfully submitted,

Leslie Rutledge
Attorney General

By: 

Robert T. James
Arkansas Bar No. 91008
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3658
Fax: (501) 682.2591
robert.james@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Robert T. James, Assistant Attorney General, do hereby certify that on February 7, 2017, I mailed this document by United States Postal Service to the following:.

Matt Barnett
ADC #135607
ADC Grimes Unit
300 Correction Dr.
Newport, AR 72112

Robert T. James

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATT BARNETT CLAIMANT

Arkansas Claims Commission
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-V- CASE NO. 17-0470-CC

ARKANSAS PAROLE BOARD RESPONDENT

CLAIMANT'S RESPONSE AND BRIEF IN SUPPORT TO RESPONDENTS MOTION TO DISMISS AND BRIEF IN SUPPORT

COMES now the Claimant, Matt Barnett, acting pro se, and for his Response with Brief in Support, states:

It is clear from the face of Claimant's Complaint that he is not grieving the fact he was denied parole in 2014 and again in 2016. He is not claiming any form whatsoever a right to parole. Liberally Construing his Complaint under Haines V. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) the Commission will conclude that Respondents have not followed their own policy under Arkansas Statuts... A.C.A. §16-93-615. In otherwords under A.C.A. §16-93-615(a)(A) it states:

When one (1) or more of the Circumstances in subdivision (a)(1) of this section are present, the Parole Board SHALL Conduct a hearing to determine the appropriateness of the inmate for

transfer. (2)(B) The Parole Board has two (2) options: (i) To transfer the individual to the Department of Community Correction accompained by notice of Conditions of the transfer, including without limitation: (a) Supervision levels; (b) Economic fee Sanction; (c) Treatment program; (d) Programming requirements; and (e) Facility placement when appropriate; or as in Claimants Situation as his transfer was denied, Respondents only other legal option number two (2)... (ii) To deny tranfer based on a set of established criteria and to accompany the denial with "A PRESCRIBED COURSE OF ACTION TO BE UNDERTAKEN BY THE INMATE TO RECTIFY THE PAROLE BOARD'S CONCERNS." It is the part of the Respondents legal duties owed Claimant that he brings his Complaint. It is a legal fact that Respondents failed to prescride a Course of action for Claimant to undertake to rectify their Conerns. Respondents have committed this unlawful act twice, once in 2014 and again in 2016. Claimant Contends this action taken against him is in retaliation for his exercising his First Amendment rights in 2010 when he Filed a Federal Suit against Respondents for Violating his Constitutional rights to a Morrissey V. Brewer, 408 U.S 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) parole revocation hearing.

Furthermore, Claimants pending Complaint is based on the material fact Respondents, again in retaliation for his 2010 Federal Suit against Respondents as just stated above, Violated his Federal and state rights and laws by not following A.C.A. §

16-93-615(3)(A)(5) which states: "After the Parole Board has fully considered and denied the transfer of an offender sentenced for committing an offense listed in subdivision (b)(i) of this section, the Parole Board may delay any reconsideration of the transfer for a maximum period of two (2) years." The material fact here is, is that Claimants offenses do not fall within any of the offenses listed in subdivision (b)(1) of this section. However, in 2014 Respondents gave Claimant a TWO (2) YEAR delay for reconsideration of the transfer. It is for this factual legal matter Claimant has filed his Complaint. See Exhibit "A" attached to his original Complaint

Respondents Contend in para 3 The U.S. Supreme Court has held that an inmate does not have a protected, federal due process right to parole. Your Claimant agrees with that and again informs the Commission he is not grieving the fact he was denied parole. However, Claimant does have a Constitutional right under Morrissey to a proper parole revocation hearing and to file a petition to the Government for a redress of grievances. See Turner v. Safley, 482 U.S. 78, 84, 107 S.Ct. 2254, 2259, 96 L.Ed.2d 64 (1987)(Citing Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969). In this regard... "officials may not retaliate against prisoners for filing grievances that are "truthful [] and not otherwise offensive" to such interests. Toolasprashad v. Bureau of Prisons, 286

F.3d 576, 585 (D.C. Cir. 2002).

The material facts as pled in Claimants Complaint is that Respondents have shown a clear act of retaliation for his exercise of his First Amendment rights and for that reason Claimant seeks $10,000.00 in Compensation as well as action against Respondents to punish them for their unlawful and unConstitutional actions. The material fact is by delaying Claimant a Two (2) year delay for reConsideration, he was then denied his state created interest to be Considered again. And the Commission should make note Claimant is not one of the offenders who can be given a two (2) year delay.

So in otherwords, the two (2) year delay caused Claimant to spend one (1) entire year of Confinement beyond what is legal before being reConsidered his transfer.

Again Claimant is not claiming a right to make parole, and Respondents have made it clear that if he files a Complaint against them, their going to retaliate and Keep him in prison. So at this junction, Claimant can only expect to flaten his time, he does not expect transfer to ArKansas Community Corrections, but he does demand a prescribed Course of action to be undertaken to rectify Respondents Concerns for him. He also expects Compensation for the extended One (1) year delay for reConsideration, Compensation for their retaliation

against him for exercising his First Amendment rights. The two (2) year delay and not giving Claimant a prescribed course of action to be undertaken to rectify Respondents concerns is the motivation for Claimant filing his Federal Complaint in 2016 against them. A prima facie case of retaliatory discipline requires a showing that: (1) the prisoner exercised a constitutionally protected right; (2) prison officials disciplined the prisoner; and (3) exercising the right was the motivation for the discipline. Id; Orebaugh v. Caspari, 910 F.2d 526, 528 (8th Cir. 1990). Claimant has met that burden.

Furtheremore, Respondents not prescribing a course of action to rectify their concern is a violation of his right to rehabilitation. In otherwords Respondents failure to follow Arkansas policy deprives him his rights, privileges and immunities secured to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States, including (a) the right not to be imprisoned without meaningful rehabilitative opportunities, (b) the right to be free from cruel and unusual punishment, (c) the right to be free from arbitrary and capricious denials of the Americans with a Disability, (d) the right to be free from arbitrary and capricious denial of rehabilitation opportunities, (e) the right to Minimal due process safeguards in decisions determing fundamental liberties.

WHEREFORE, the Claimant prays that Respondents Motion to Dismiss be denied and Claimant be granted all relief requested in his Complaint

Respectfully submitted

By: Matt Barnett

Matthew W. Barnett

300 Correction Drive

Newport, AR 72112

CERTIFICATE of SERVICE

I, Matt Barnett, the Claimant hereby state that on this 10 day of February, 2017, I caused a copy of the forgoing to be served upon Respondents thru their attorney Robert I. James Assistant Attorney General 323 Center Street, suite 200 Little Rock, AR 72201 by first class mail postage prepaid by placing it in the prison mail box.

Respectfully,

By: Matt Barnett

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATT BARNETT (ADC 135607) **CLAIMANT**

VS **CLAIM NO. 17-0470-CC**

ARKANSAS BOARD OF PAROLE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion to dismiss filed by the Arkansas Board of Parole (the "Respondent") against Matt Barnett (the "Claimant"). The motion has been submitted to the Claims Commission for ruling without a hearing. Based upon a review of the Respondent's motion, the Claimant's response, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).

2. Claimant has failed to state a claim upon which relief can be granted.

3. Respondent's Motion to Dismiss is granted pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure. As such, Claimant's claim is denied and dismissed.

IT IS SO ORDERED.

ARKANSAS STATE CLAIMS COMMISSION

Henry Kinslow
Bill Lancaster
Jimmy Simpson, Co-Chair
Sylvester Smith
Mica Strother, Co-Chair

DATE: March 16, 2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATTHEW W. BARNETT (ADC 135607) CLAIMANT

VS CLAIM NO. 17-0470-CC

ARKANSAS BOARD OF PAROLE RESPONDENT

Arkansas
State Claims Commission
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MOTION FOR RECONSIDERATION

COMES NOW the Claimant, Matthew W. Barnett and pursuant to Ark. Code Ann. § 19-10-211 (2) gives notice of his intent for Reconsideration.

That on this 24TH Day of March 2017 Claimant received his Copy of Arkansas State Claims Commissions Order Dated March 16, 2017 which their advise under A.C.A. § 19-10-211(d) was Dated March 22, 2017.

Claimant now request any and all forms necessary to proceed with his Motion which is mentioned in A.C.A. § 19-10-211(b). In other words a form designed by the Commission for filing (1) Motion for Reconsideration and (2) his Notice of Appeal which follows.

Respectfully requested,

By: Matthew W. Barnett

Matthew W. Barnett
300 Correction Drive
Newport, AR 72112

CERTIFICATE OF SERVICE

I, Matthew W. Barnett, the Claimant hereby state that on this 27TH day of March 2012 I caused a copy of the forgoing to be served upon Respondent, Attorney Robert T. James Assistant Attorney General 323 Center Street, Suite 200 Little Rock, AR 72201 by hand the same to a Grimes Corrections officer. The Mailroom at Grimes provides postage.

By: Matthew W. Barnett

Arkansas
State Claims Commission
APR 0 6 2017

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATT BARNETT **CLAIMANT**

VS. **CASE NO. 17-0470-CC**

ARKANSAS PAROLE BOARD **RESPONDENT**

RESPONSE TO MOTION FOR RECONSIDERATION

Comes now the Respondent, Arkansas Parole Board ("APB"), by its attorneys, Attorney General Leslie Rutledge and Assistant Attorney General Robert T. James, and for its Response to Motion for Reconsideration, states:

1. On May 16, 2017, the Claims Commission entered an Order granting the respondent's motion to dismiss for failure to state a claim upon which relief can be granted. Ark. R.Civ.Pro. 12(b)(6).

2. On or about March 27, 2017, the Claimant filed a motion for reconsideration requesting any and all forms necessary to proceed with his motion pursuant to Ark. Code Ann. § 19-16-211(d). He requested a form designed by the commission for filing a motion for reconsideration and a notice of appeal.

3. The respondent objects to the motion for reconsideration.

4. The Arkansas Supreme Court has emphasized the broad discretionary authority granted under the state's parole statutes. *Rhodes v. Kelley*, 2016 WL 2865374 5:15CV-00225 (April 22, 2006 E.D. Arkansas 2016) (*citing Michalek v. Lockhart*, 292 Ark. 301 (1987)). It is clear that Arkansas does not give the claimant a right to parole. The Arkansas Supreme Court has held that the "determination of parole eligibility is solely within the province of the ADC, as fixed by statute." *Robinson v. Kelly*, 2015 WL 9311923 5:15-CV-00083 (E.D. Arkansas, Pine

Bluff Division 2015) (quoting *Mitchem v. Hobbs*, No. CV-131098, 2014 Ark. 233, at 4 (May15, 2014).

5. A prisoner who appeals the APB's denial of parole does not state a valid due process claim because there is "no constitutional right or entitlement to parole that would invoke due-process protection". *Crossno v. Felts*, No. CV-14-125, 2014 Ark. 262 (May 29, 2014) and, *Michalek* at 292 Ark. 301 (1987) (citing *Cridge v. Hobbs*, No. CV-18-829, 2014 Ark. 153, at1 (April 3, 2014))

6. Even if the claimant was denied parole, he has failed to state facts showing that he has a right to parole. Even if all the stated facts in claimant's complaint are deemed true, the complaint should still be dismissed based on the federal and state law cited herein. The claimant has not stated facts upon which relief can be granted and the complaint should be dismissed; therefore, the respondent objects to the claimant's motion for reconsideration.

WHEREFORE, the Respondent prays that the Claimant's Motion for Reconsideration be denied and that the Claim be dismissed.

Respectfully submitted,

Leslie Rutledge
Attorney General

By: _____

Robert T. James
Arkansas Bar No. 91008
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3658
Fax: (501) 682.2591
robert.james@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Robert T. James, Assistant Attorney General, do hereby certify that on April 6, 2017, I mailed this document by United States Postal Service to the following:

Matt Barnett
ADC #135607
ADC Grimes Unit
300 Correction Dr.
Newport, AR 72112

Robert T. James

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Arkansas Claims Commission
APR 13 2017
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MATTHEW W. BARNETT CLAIMANT

-Vs- CASE No. 17-0470-CC

ARKANSAS PAROLE BOARD RESPONDENT

REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR RECONSIDERATION

COMES NOW the Claimant, Matthew W. Barnett, and for his Reply to Respondents' Response to Motion for Reconsideration, states:

1. Respondents have used the strategy of defense by claiming---"denial of parole does not state a valid due process claim because there is 'no constitutional right or entitlement to parole that would invoke due-process protection'"

2. Respondents defense simply attempts to avoid Claimant's Complaint. The legal facts of Claimant's complaint is, is that Respondents have failed to follow clearly established state law and policy and do as it is written. Those policies are as follows:

I. A.C.A. § 16-93-615(a)(1)(A)

An inmate under sentence for any felony, except

those listed in subsection (b) of this section "SHALL" be transferred from the Department of Correction to the Department of Community Correction under this section, §16-93-614, §16-93-616 and §16-93-617 subject to rules promulgated by the Board of Corrections and Conditions set by the Parole Board.

(2)(A)

1

When one (1) or more of the Circumstances in subdivision (a)(1) of this section are present, the Parole Board "SHALL" Conduct a hearing to determine the appropricteness of the inmate for transfer.

(B)

The Parole Board has two (2) options:
(i) To transfer the individual to the Department of Community Correction accompanied by notice of Conditions of the transfer, or
(ii) To deny transfer based on a set of established Criteria and to accompany the denial with a prescribed course of action to be undertaken by the inmate to rectify the Parole Board's Concerns.

(c)

Upon completion of the Course of action determined by the Parole Board and after final review of the inmate's file to ensure successful completion, the Parole Board "SHALL" authorize the inmate's transfer to the Department of Community Correction under this section, §16-93-614, §16-93-616 and §16-93-617.

The material facts undisputed in this pending matter is that the Respondents have failed to follow clearly established statutory laws and policies. In other words, when Claimants transfer to Acc was denied twice, once in November 2014 and again in November 2016 Respondents failed to then accompany the denials with a prescribed Course of action to be undertaken to rectify their Concerns. Had they followed such policy Claimant would have successfully Competed it and then Respondent are required to authorize his transfer to Acc.

THEREFORE, it is not that Claimant is Complaining about not being granted parole, he is claiming an immediate or speedier release from his current imprisonment which he is entitled when Respondents Follow the laws and policies that deal with his offense which is not those of discretionary crimes. In other words had Respondents followed Clearly established

laws and policies and given him a prescribed course of action to take in November 2014 he would have already completed it and would have already been released to Acc. The same is true had they done the same in November 2016. Respondents actions and/or inactions create a continued detention beyond Claimants expected and anticipated transfer to Acc which is a deprivation of his liberty interest protected by the Due Process Clause.

3. Respondent are defending against an issue Claimant is not addressing. Again they treat this Complaint as if Claimant is aggrieved over being denied parole. There is a difference in being denied parole and being denied a prescribed course of action to complete so that one can then be transfered to Acc. And in this situation Claimant has a Constitutional right to invoke the due-process protection. States may under certain circumstances create liberty interest which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. In Claimants situation freedom from restraint comes in when Respondents fail to follow laws and their own policy, Again had they given Claiment a prescribed

Course of action to undertake he would have done so and successfully completed it and by now Respondents under their own laws and policy would have authorized his release to ACC.

WHEREFORE Claimant has a clear right to the relief he seeks, $10,000.00 in damages for every day he has been denied a Course of action leading to his statutory release. This Constitutional Violation started in November 2014 and Continues as an atypical and significant hardship in relation to the ordinary incidents of prison life. See Kennedy v. Blankenship, 100 F.3d 640, 642 (8th Cir. 1996). Claimant prays his Claim be granted with all releif requested.

Respectfully requested,

By: Matthew W. Barnett

Matthew W. Barnett
300 Correction Drive
Newport, AR 72112

CERTIFICATE OF SERVICE

I, Matthew W. Barnett, Claimant, do hereby certify that on April 10, 2017, I followed Grimes legal mailing policy and handed the Original and 5 Copies to prison officials to mail Respondents their Copy, the Original and 4 Copies to the Claims Commission. This one to Respondents is addressed to Robert T. James, Assistant Attorney General at 323 Center Street, Suite 200 Little Rock, AR 72201 proper postage was requested upon Grimes officials and mailing is requested upon Grimes.

Date ready for Copies 4/08/17 By: Matthew W. Barnett

Date received back 04/10/2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATTHEW W. BARNETT (ADC 135607) CLAIMANT

-VS- CLAIM NO. 17-0470-CC

ARKANSAS BOARD OF PAROLE RESPONDENT

Arkansas Claims Commission
APR 18 2017
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CLAIMANT'S MOTION FOR RECONSIDERATION

COMES NOW Matthew W. Barnett, hereinafter the "CLAIMANT," files Motion For Reconsideration of the Arkansas State Claims Commission (the "Claims Commission") Order dated March 16, 2017 dismissing his claim.

Essentially, the Parole Board has deprived Claimant of his liberty interest in Violation of the Due Process Clause of the Fourteenth Amendment by failing to follow their own policy as it is written under Arkansas Code Annotated ("A.C.A.") §16-93-615. The relevant part of their own policy in this pending matter states:

An inmate under sentence for any felony, except those listed in Subsection (b) of this Section, "SHALL" be transferred from the Department of Correction to the Department of Community Correction under this Section, §16-93-614, §16-93-616, and §16-93-617 subject to rules promulgated

by the Board of Corrections and Conditions set by the Parole Board, see §16-93-615(a)(1)(A)

When one (1) or more of the circumstances in subdivision (a)(1) of this section are present, the Parole Board "SHALL" conduct a hearing to determine the appropriateness of the inmate for transfer. See §16-93-615(2)(A).

The Parole Board has two (2) options: See §16-93-615 (B).

To transfer the individual to the Department of Community Correction accompanied by notice of Conditions of the transfer, ---, See §16-93-615(B)(i) or

To deny transfer base on a set of established criteria and to accompany the denial with a prescribed course of action to be undertaken by the inmate to rectify the Parole Board's Concerns. See §16-93-615(B)(ii)

Upon completion of the course of action determined by the Parole Board and after final review of the inmate's file to ensure successful completion, the Parole Board "SHALL" authorize the inmate's transfer to the Department of Community Correction under this section, ~~§16-93-614~~ §16-93-614, §16-93-616, and §16-93-617, in accordance with administrative

policies and procedures governing the transfer and subject to Conditions attached to the transfer. See §16-93-615(C)

UNDISPUTED FACTS

On November 23, 2014 the Respondents Conducted a hearing to determine the appropricteness of Claimant's transfer to the Department of Community Correction ("ACC"). The Respondents simply denied Claimants transfer with their only decision is to hold another transfer hearing two (2) years from November 23, 2014. It is now worth noting Respondents did not follow policy and then accompany their denial with a prescribed Course of action to be undertaken by Claimant to rectify their Concerns. Claimant filed his Reconsideration to Respondents based on their Clear Violations of §16-93-615 as cited morefully hereinabove pages One (1) and Two (2).

On December 1, 2014 Respondents answered Claimants allegations and simply denied his Reconsideration.

On October 18, 2016 the Respondents Conducted a hearing to determine the appropricteness of claimants transfer to Acc. The Respondents Simply denied claimants transfer with their only decision to hold another transfer hearing One (1) year from October 18, 2016. It is now worth noting Respondents did not follow policy and then accompany their denial with

a prescribed Course of action to be undertaken by Claimant to rectify their Concerns. Claimant filed his Reconsideration to Respondents based on their Clear Violations of §16-93-615 as cited mereFully hereinabove, pages One (1) thru three (3). This latest Violation along with the facts stating November 18, 2014 is where this Motion for Reconsideration proceeds.

ARGUMENT

In the matter of James V. Pulaski County Circuit Court Fifth Division, 2014 Ark. 305, the Supreme Court of Arkansas puts it this way... The Court will Construe a statute just as it reads, giving the words their Ordinary and usually accepted meaning in Common language, and if the language of the statute is plain and unambiguous, and Conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation. See Walden v. State, 2014 Ark. 193 at 7-8, 433 S.W.3d 864, 870.

A.C.A. §16-93-615(13)(ii) is very clear as it sets forth the Arkansas Parole Boards official policy, regulations, and criteria for transferring inmates to Acc including Claimant. It is also very clear Respondents have never followed that policy in Claimants transfer decisions and has resulted in the Violation of his transfer to Acc beginning November 18, 2014 and Continues today.

A.C.A. §16-93-615(C) is Very clear as it sets forth Claimant "SHALL" be transfered to ACC upon Completion of the prescribed Course of action Respondents are required to accompany with their denial. Claimant Contends "But For" Respondents Failure to Follow clearly estcblish policy he would have already completed any and all Course of action Respondents would have given. The fact is Claimant would have been transfered to Acc months ago had Respondants not deprived him of these clearly established rights. It is based on Claimants nondiscretionary Statutory Claim that Respondants be instructed to bring him back up for a transfer hearing to Acc and that they now authorize his immediate transfer to Acc the halfway house which has already accepted him.

I. DUE PROCESS

Due process allegations are predicated on a liberty interest which Claimant Contends is created by A.C.A. § 16-93-615. Prison regulations may create a Constitutory protected liberty interest. See Albers v. Ralston, 665 F.2d 812, 816 (8th Cir. 1981). The regulations in Claimants case does just that. A two part test for determining whether a liberty interest has been created. First, "does a statute, regulation, or official policy pronouncement contain particularized substantive standards or criteria that significantly guide the decisionmakers," (in Claimants Case that answer is YES), Second, "does the statute, regulation,

or official policy pronouncement use mandatory language requiring the decisionmakers to act in a certain way." (in Claimants Case that answer is YES).

Claimant contends Respondents have intentionally ignored A.C.A. §16-93-615 in retaliation for his previous § 1983 Claim he had filed against them. A jury will find "overwhelming" evidence that but for the Respondents improper motive, Claimant would have not been treated with such unconstitutional acts. Claimant would have already been transfered to Acc.

WHEREFORE, Claimant asks that parties agree and that he now be transfered to Acc, the halfway house which has already accepted him. Furthermore, if parties agree and complete this request Claimant will dismiss any and all action he has now against Respondents and those claims he may have not yet brought up

Respectfully requested,
By: Matthew W. Barnett
Matthew W. Barnett
300 Correction Drive
Newport, AR 72112

CERTIFICATE OF SERVICE

I Matthew W. Barnett, the Claimant hereby State that on this 13th day of April, 2017, I caused a Copy of the Forgoing to be served upon Robert T. James attorney for Respondents 323 Center street, Suite 200 Little Rock, AR 72201 by giving the same to a Grimes Correction officer per-Grimes policy.

Respectfully requested,

Date: April 4, 2017

By: Matthew W. Barnett

Arkansas
State Claims Commission
APR 25 2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION RECEIVED

MATT BARNETT **CLAIMANT**

VS. **CASE NO. 17-0470-CC**

ARKANSAS PAROLE BOARD **RESPONDENT**

RESPONSE TO SECOND MOTION FOR RECONSIDERATION

Comes now the Respondent, Arkansas Parole Board ("APB"), by its attorneys, Attorney General Leslie Rutledge and Assistant Attorney General Robert T. James, and for its Response to Second Motion for Reconsideration, states:

1. On May 16, 2017, the Claims Commission entered an Order granting the respondent's motion to dismiss for failure to state a claim upon which relief can be granted. Ark. R.Civ.Pro. 12(b)(6).

2. On or about March 27, 2017, the Claimant filed a motion for reconsideration requesting any and all forms necessary to proceed with his motion pursuant to Ark. Code Ann. § 19-16-211(d).

3. The respondent objects to the second motion for reconsideration.

4. The Commission's Rules and Regulations, Rule 7.1 provides that "Petitions for re-hearing and/or Motions for Reconsideration will only be entertained if they set forth new or additional evidence which was not available to the moving party at the time of the scheduled hearing."

5. Claimant's complaint herein was filed on January 10, 2017. The cause of action accrued on November 23, 2014 and October 23, 2016. Any new or additional evidence was in existence when the claimant filed his complaint and when he responded to respondent's motion to dismiss. Furthermore, the claimant is arguing his motion for reconsideration based on the

same facts and conclusions as his complaint and response to motion to dismiss. Therefore, claimant's motion for reconsideration should be denied pursuant to Rule 7.1 because it "..can only be entertained if they set forth *new* or *additional* evidence which was not available to the moving party." (emphasis added)

WHEREFORE, the Respondent objects to Claimant's Motion to Dismiss and prays that it be denied and that the Claim be dismissed.

Respectfully submitted,

Leslie Rutledge
Attorney General

By: _____

Robert T. James
Arkansas Bar No. 91008
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3658
Fax: (501) 682.2591
robert.james@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Robert T. James, Assistant Attorney General, do hereby certify that on April 24, 2017, I mailed this document by United States Postal Service to the following:

Matt Barnett
ADC #135607
ADC Grimes Unit
300 Correction Dr.
Newport, AR 72112

_____
Robert T. James

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATT BARNETT

CLAIMANT

VS

CLAIM NO. 17-0470-CC

ARKANSAS BOARD OF PAROLE ORIGINAL RESPONDENT

AMENDED ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion to dismiss filed by the Arkansas Board of Parole (the "Respondent") against Matt Barnett (the "Claimant"). The motion has been submitted to the Claims Commission for ruling without a hearing. Based upon a review of the Respondent's motion, the Claimant's response, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Given the constitutional and due process questions at issue in this claim, the Claims Commission does not have jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(b)(2)(A).

2. The Claims Commission dismisses this claim pursuant to Rule 12(b)(1) of the Arkansas Rules of Civil Procedure for lack of jurisdiction over the subject matter.

3. The pending motions for reconsideration are hereby rendered moot.

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: April 24, 2017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MATTHEW W. BARNETT, CLAIMANT

Vs CLAIM NO. 17-0470-CC

ARKANSAS BOARD OF PAROLE RESPONDENT

Arkansas Claims Commission
MAY 08 2017
RECEIVED

NOTICE OF APPEAL

The Claimant, Matthew W. Barnett ADC #135607 hereby gives NOTICE OF HIS APPEAL to the Claims Commission denial of his Complaint.

Respectfully Submitted,

By: Matthew W. Barnett

Matthew W. Barnett
300 Correctional Drive
Newport, AR 72112

CERTIFICATE OF SERVICE

I, Matthew W. Barnett, Claimant, hereby certify that on May 5TH, 2017, I mailed this document by Grimes legal Mail rules to Robert T. James 323 Center Street, Suite 200 Little Rock, AR 72201

By: Matthew W. Barnett