

AUG 03 2023

RECEIVED

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Do Not Write in These Spaces		
Claim No.	_____	
Date Filed	_____	_____
	(Month)	(Day) (Year)
Amount of Claim \$	_____	
Fund	_____	

Mr.
 Mrs.
 Ms.
 Miss
Joshua Stockton (ADC [REDACTED]), Claimant

vs.

State of Arkansas, Respondent

COMPLAINT

Joshua Stockton (ADC [REDACTED]), the above named Claimant, [REDACTED] (Name) [REDACTED] (Street or R.F.D. & No.) [REDACTED] (City)

represented by Pro Se (SELF)
(Legal Counsel, if any, for Claim)

of _____ (Street and No.) _____ (City) _____ (State) _____ (Zip Code) _____ (Phone No.) _____ (Fax No.) says:

State agency involved: Arkansas Division of Corrections Amount sought: 124,995.00 (Two Hundred Forty Nine Thousand Four Hundred Ninety Five and 00/100)

[REDACTED]

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? 12/14/2022 (Month) 05/30/2023 (Day) (Year); to whom? Andrea Wilkley - Central office A.D.C. (Department)

and that the following action was taken thereon: [REDACTED] 22-00294 found with merit to it, [REDACTED] 23-00133 found without merit to it.

and that \$ 10.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

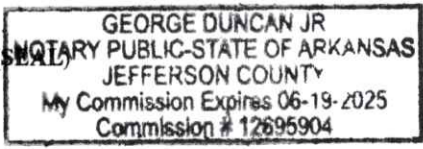
_____ (Name) _____ (Street or R.F.D. & No.) _____ (City) _____ (State) _____ (Zip Code)

and that the nature thereof is as follows: _____; 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.

Joshua Stockton # [REDACTED] (Print Claimant/Representative) [Signature] ABC [REDACTED] (Signature of Claimant/Representative)

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



on this 28th day of July, 2023 (Date) (Month) (Year)

George Duncan Jr (Notary Public)

My Commission Expires: 06/19/2025 (Month) (Day) (Year)

Duty: under states code of Arkansas §12-27-103 Establishment - Powers and duties -

(8)(1), The Department of Corrections (Arkansas Division of Corrections) shall have exclusive Jurisdiction over the Care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary; (6) The Department of Corrections shall employ such ~~officers~~ officers, employees, and Agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the department of corrections. (7) The Department of Corrections shall receive all offenders committed to the Department of Corrections for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to the policies established by the Board of Corrections. The Board of Correction and Community Punishment is vested with the authority to promulgate this Administrative rule by Ark. Code - Ann. §§ 12-27-105, 16-93-1203 and 16-93-1205 (Michie Supp. 1995).

(II) Applicability - This Policy applies to employees and offenders of the Department of Correction (D.O.C) and the Department of Community Punishment (DCP) staff, inmates and residents of community punishment centers.

→ (III) Policy - It is the policy of the Board of Corrections and Community Punishment that offenders are provided an opportunity to submit grievances regarding policy, conditions, incidents, or actions related to incarceration/confinement which directly impact them.

(IV) Guidelines - A) Administrative Directives establishing procedures will be set forth by each Agency.

B) Procedures shall, at minimum provide for the following: offender notice of the grievance process; Timely, effective and impartial processing of grievances; -

2) An appeals process; appropriate documentation of grievance activity;

and speedy disposition of Emergency situations, with security and safety the paramount concern.

C.) USE of The grievance procedure shall occur without restraint, coercion, discrimination, interference or reprisal. violation of this guideline shall result in prompt and decisive action." Current with Amendments received through NOV. 15, 2022.

ARK. Admin. Code 004-03.1-835.

Breach of duty - STATE Employees Dexter Payne and Andrea Colclager are negligent in their duty owed to the Claimant Found in Ark. Code § 12-27-103(B)(1). Both State Employees are exclusively given the jurisdiction over the case that includes medical needs of the Claimant. STATE Employee Dexter Payne did negligently enforce within A.D.C. a blanket contractual decree which did disallow medical to continue to provide for a [REDACTED]

Causation

Breach of duty -

STATE Employee Andrea Colclager on 12-14-2022 and on 5/30/2023 was notified both times of the Claimant's [REDACTED] that she on grievance # [REDACTED]-22-00294 on 12/14/2022 said was with merit to - About [REDACTED] reverses the contractual decree.

3)

STATES Employees are responsible to intervene in the responsibility of claimant inmates care as they are vested by the STATE and the Board of Corrections with the responsibility of care for inmates found in ARK Code - § 12-27-103 (B)(1)(7).

Andrea Wilkey failed to reverse the contraband restriction for claimant in a corrective manner and allowed the violation conduct of the injury of contraband decree to continue unchecked after her decision with merit on 12-04-2022. By not correcting the violation of policy regarding medical interference which is established STATE Law, she became responsible for her own negligent conduct in not acting as a state employee notified of a violation of inmates care under her authority.

A reasonable state employee would have contacted the inmates Administration Levels and told them of her [REDACTED]

[REDACTED] as a Deputy Director of A.D.C. Control [REDACTED]

Relief sought for Negligence claim is for the length of period of time and pain and suffering as result of delay that continues to [REDACTED], which resulted in [REDACTED] to claimant as result of defendant's negligent conduct by [REDACTED].

Respectfully submitted,



[REDACTED] 07-26-2023

Negligence standard Authority:

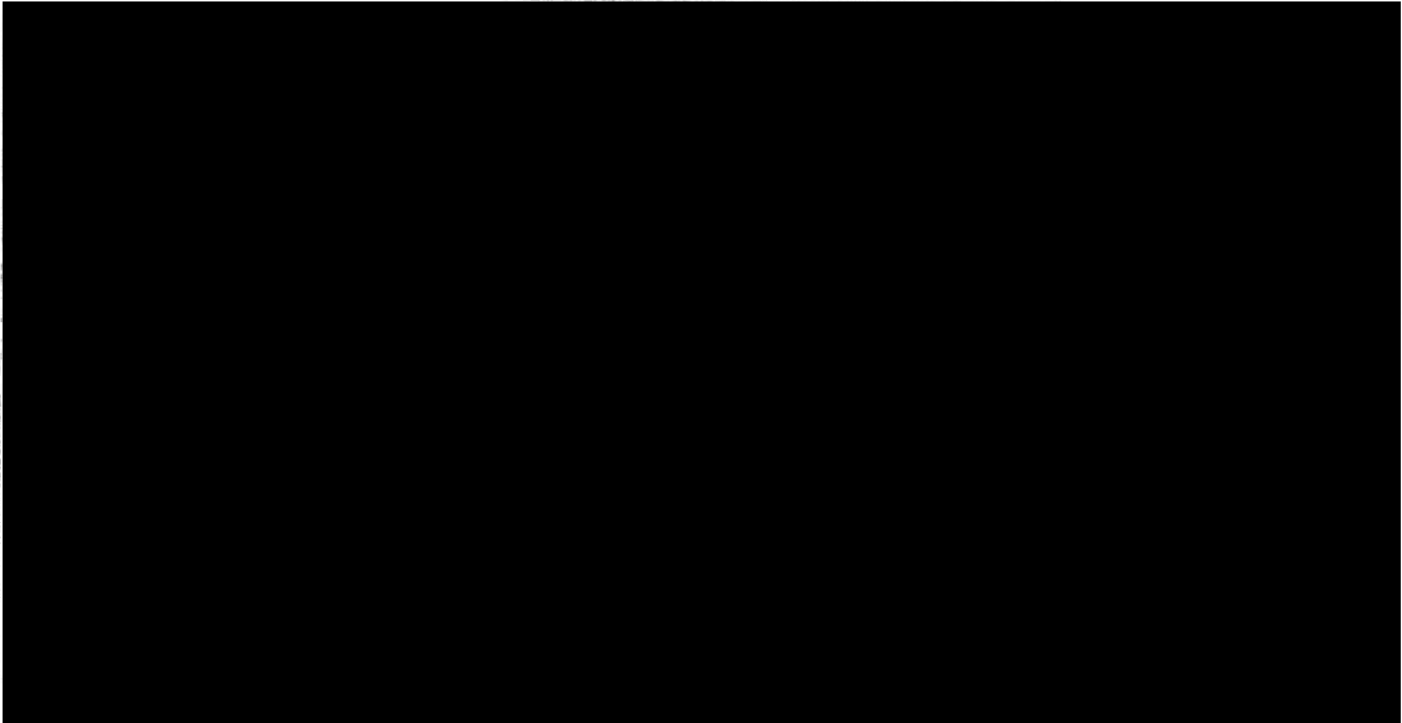
In the Eastern District of Arkansas, Case: Gary v. Langley - 2:17-cv-00117-LPR (E.D. ARK. SEP. 13, 2021) it states, "To prevail on a claim of negligence" in Arkansas, "The plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant Breached that duty, and that the Breach was the proximate cause of the plaintiff's injuries".
(1. Duty, 2. Breach of duty 3. Causation).

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE# [REDACTED] 22-00294

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION



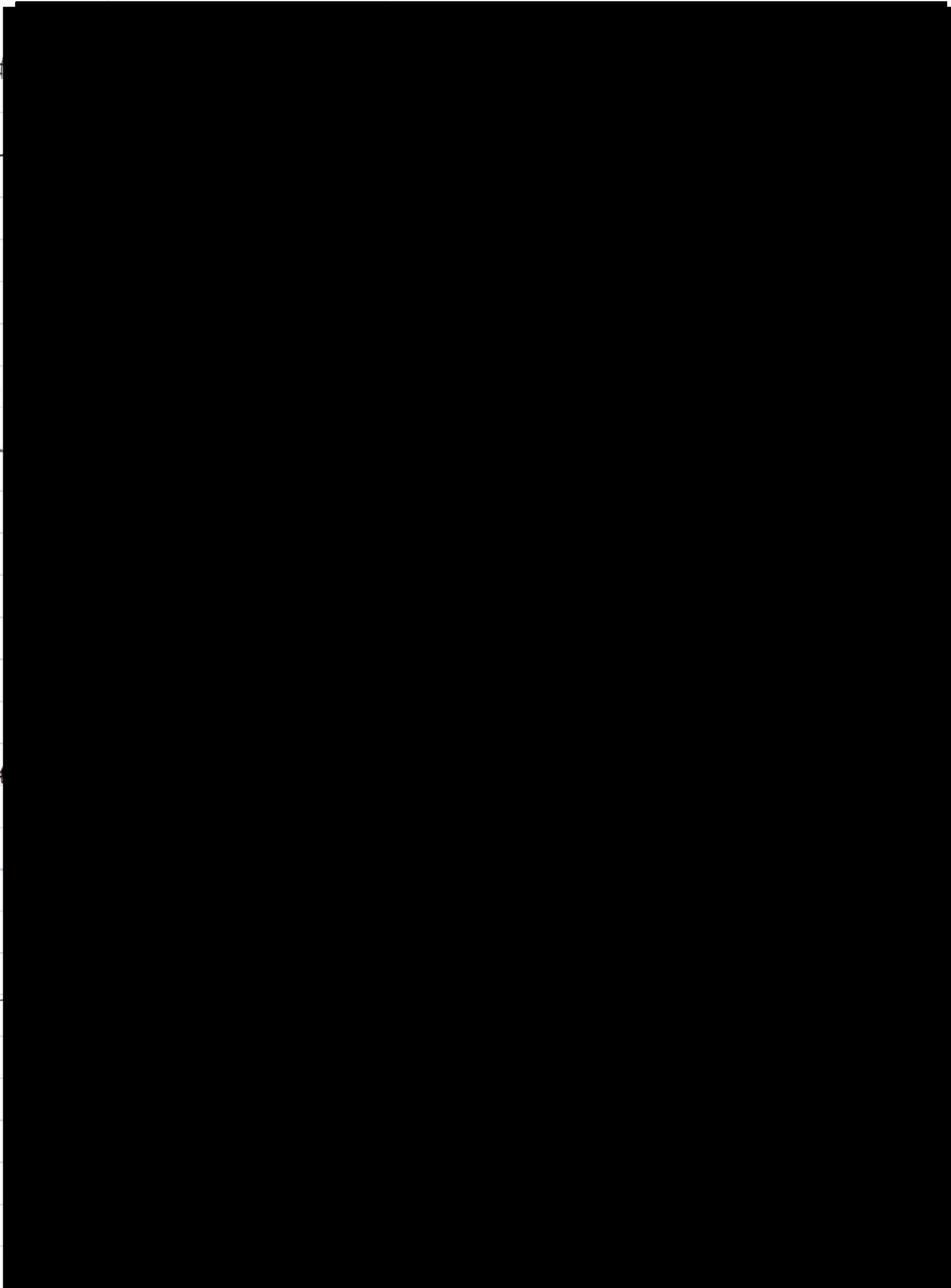
Aundrea Cufclager
Director

12/14/2022
Date

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

Evidence

t



#6)

#7)

#8)

the

“

Signed

L. H. K. K.

Jul

D

Please Send me another Claim form to:

Joshua Stackton # [REDACTED]

Arkansas
State Claims Commission

AUG 03 2023

RECEIVED



From: [ASCC New Claims](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Kathryn Irby](#); [Mika Tucker](#); [Bilenda Harris-Ritter](#)
Subject: CLAIM: Joshua Stockton v. ADC, Claim No. 240163
Date: Friday, August 18, 2023 11:34:00 AM
Attachments: [Joshua Stockton ADC agency ltr 240163.pdf](#)
[Joshua Stockton Claim 240163.pdf](#)

Please see attached. Contact Kathryn Irby with any questions.

Thank you,
Caitlin

Caitlin McDaniel

Administrative Specialist II

Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410

Little Rock, Arkansas 72201

(501) 682-1619

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

August 18, 2023

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602

(via email)

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240163

Dear Mr. Burns,

Enclosed please find a copy of the above-styled claim filed against the Arkansas Division of Correction. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Mika Tucker

ES: cmcdaniel

cc: Joshua Stockton (ADC [REDACTED]), *Claimant* (w/ encl.)
Bilenda Harris-Ritter, *counsel for Ark. Dept. of Corrections* (w/encl.) (via email)

Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.

From: [Thomas Burns \(DOC\)](#)
To: [ASCC Pleadings](#)
Subject: Joshua Stockton v ADC 230163
Date: Monday, August 21, 2023 10:50:05 AM
Attachments: [0535_001.pdf](#)
[image001.png](#)

Answer

Thank you,
-TB



Confidentiality Notice: This e-mail message and any attachments is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It is for the intended recipient only. If an addressing or transmission error has misdirected this e-mail, please notify the author by replying to it. If you are not the intended recipient you may not use, disclose, distribute, copy, print or rely on this email.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON ([REDACTED]

CLAIMANT

v.

NO. 240163

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

ANSWER TO COMPLAINT

COMES NOW the Respondent, Arkansas Department of Corrections, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.

2. The applicable account information required by the Commission is:

- | | |
|---------------------------|--------------------------|
| a. Agency number: 0480 | b. Cost Center: HCA 0100 |
| c. Internal Order: 340301 | d. Fund Center: 509 |

WHEREFORE, for the reasons cited above, the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing or, in the alternative, that the matter be held in abeyance until completion of the investigation by Internal Affairs.

Respectfully submitted,

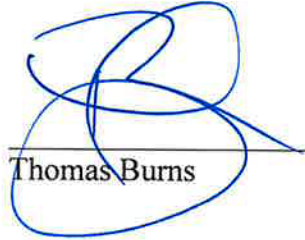


Thomas Burns (02006)
Legal Support Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602-9411
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 21st day of August 2023 on the Claimant by placing a copy of the same in the U. S. Mail, regular postage, to:

Joshua Stockton [REDACTED]
[REDACTED]



Thomas Burns

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [ASCC Pleadings](#); [Mika Tucker](#)
Subject: CORR: Joshua Stockton v. ADC, Claim No. 240163
Date: Wednesday, September 6, 2023 2:42:00 PM
Attachments: [Joshua Stockton v. ADC163.pdf](#)

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]
[REDACTED]

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240163

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)

Mika Tucker

From: Thomas Burns (DOC)
Sent: Tuesday, September 26, 2023 1:19 PM
To: ASCC Pleadings
Subject: Joshua Stockton v ADC 240163
Attachments: 0950_001.pdf

MTD

Thank you,
-TB



THOMAS BURNS
DEPUTY WARDEN, INSTITUTIONAL SERVICES
Arkansas Department of Corrections
844 Prisonside Pkwy
Pine Bluff, Arkansas 71601
Phone: (501) 267-0000 | Fax: (501) 267-0000
Email: tburns@adoc.state.ar.us
Home: 870-444-1000

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

v

NO. 240163

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

Comes Now the Respondent, Arkansas Department of Corrections (ADC), for its Motion to Dismiss, states:

1. The inmate's claim should be dismissed pursuant to the Arkansas Rules of Civil Procedure (ARCP) 12(b)(6) as it fails to state facts upon which relief can be granted.

2. On a motion to dismiss pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v Morgan, 2011 Ark. 94*. "However, [Arkansas's] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.*

3. An "important mechanism for weeding out meritless claims [is a] motion to dismiss for failure to state a claim." *Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 425 (2014)*. Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v American State bank, 339 F.3d 764 (8th Cir. 2003)*. A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcraft v Iqbal 556 U.S. 662 (2009)*. Although detailed factual allegations are not required, more than "unadorned, the-defendant-unlawfully-harmed-me-

accusations” are required. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true, state a claim to relief that is plausible on its face. *Id.* A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

4. When a trial court is presented with extraneous materials outside of the pleadings and does not exclude those materials, a motion to dismiss for failure to state facts upon which relief can be granted shall be treated as one for summary judgment. *Norris v Davis, 2014 Ark. App. 632 (2014)*

5. The inmate seeks the sum of \$249,995.99, for alleged medical malpractice and 8th Amendment violation. Although inmate seeks an award of damages (\$249,995.99), he fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company, 362 Ark. 317, 208 S.W. 3d 153 (2008)*. The inmate’s claim, even if true, does not support a claim for monetary relief.

6. Even if the inmate were to plead with more specificity, he would still not be able to prevail. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett, 308 Ark. 291, 824 S.W. 2d 377 (1992)*. Even taking the inmate’s allegations true as pleading, and giving him the benefit of every possible inference, his mere inconvenience of alleged wrongdoing can never render a claim that is anything but speculation.

7. Pro Se parties are not given special treatment and are held to the same standard as a licensed attorney. *Pressler v. Ark. Publ. Serv. Comm’n, 2011 Ark. App. 512, at 9, 385 S.W.3d 349, 355 (citing Elder v. Mark Ford & Assocs., 103 Ark. App. 302, 288 S.W.3d 702 (2008))*. The

Claims Commission notes that under Arkansas law, a claimant choosing to represent himself is held to the same standard as an attorney. *Michael Pickens v ADC claim 190793 (ASCC 2019)*.

8. Whether a plaintiff is represented by counsel or is appearing pro se, his complaint must allege specific facts sufficient to state a claim. *See Martin v Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)*.

9. A complaint must state facts, not mere conclusions, in order to satisfy the requirements of Rule 8 of the Arkansas Rules of Civil Procedure. *Doe v Weiss, 2010 Ark. 150*.

10. In reviewing whether a complaint is subject to dismissal, the Court must accept as true all factual allegations in the complaint, but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007))*. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “Nor does a complaint suffice if it “tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id. (quoting Twombly, 550 U.S. at 557)*. Rather, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly, 550 U.S. at 570*. “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.” *Iqbal, 556 U.S. at 678*. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id. (quoting Twombly, 550 U.S. at 556)*. A well pleaded complaint may proceed even if it appears that actual proof of those facts is improbable and that recovery is very remote and unlikely. *Twombly, 550 U.S. at 556*. A complaint cannot, however, simply leave open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. *Id. at 561*. Rather, the facts set forth in the complaint must be sufficient to nudge the claims across the line from conceivable to plausible.

Id. at 570. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged –but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (quoting *Fed.R.Civ.P. 8(a)(2)*).

11. The Plausibility standard is not akin to a “probability requirement” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it” stops short of the line between possibility a plausibility of entitlement to relief’ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)



13. This inmate is making claims against the ADC’s contracted medical provider, Wellpath.

14. Wellpath is not a State agency and not subject to the jurisdiction of the Claims Commission.

15. The inmate is making 8th Amendment and 42 USC 1983 claims thereby depriving the Claims Commission of jurisdiction. *See attached Ex B*

16. The inmate is making Medical malpractice and Constitutional claims and pursuant to the law the Commission is barred from hearing such claims. These claims may be made in a Court of general jurisdiction.

17. The Claims Commission does not have the jurisdiction to hear this claim.

18. The inmate has filed a complaint that he knows is in bad faith and not supported by the facts. The Commission should award the ADC fees and costs for having to respond to this baseless complaint.

19. This same claim, if presented to a court of general jurisdiction would, as a matter of law, be dismissed.

20. “The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015). “Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.” Ark. Code Ann. § 19-10-204(3)(B) (West Supp. 2015). The claimant has not been damaged and only makes mere assertions that he has been damages. Without damages a Court would dismiss the claim in its entirety.

WHEREFORE, the Respondent prays that the motion be granted and the complaint dismissed; for their attorney’s fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,




Thomas Burns (02006)
Legal Services Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 26th day of September 2023, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Joshua Stockton ([REDACTED])

[REDACTED]



Thomas Burns

AUG 03 2023

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Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

- Mr.
- Mrs.
- Ms.
- Miss

Joshua Stockton (ADC [redacted]), Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces		
Claim No.	_____	
Date Filed	(Month) _____	(Day) _____ (Year) _____
Amount of Claim \$	_____	
Fund	_____	

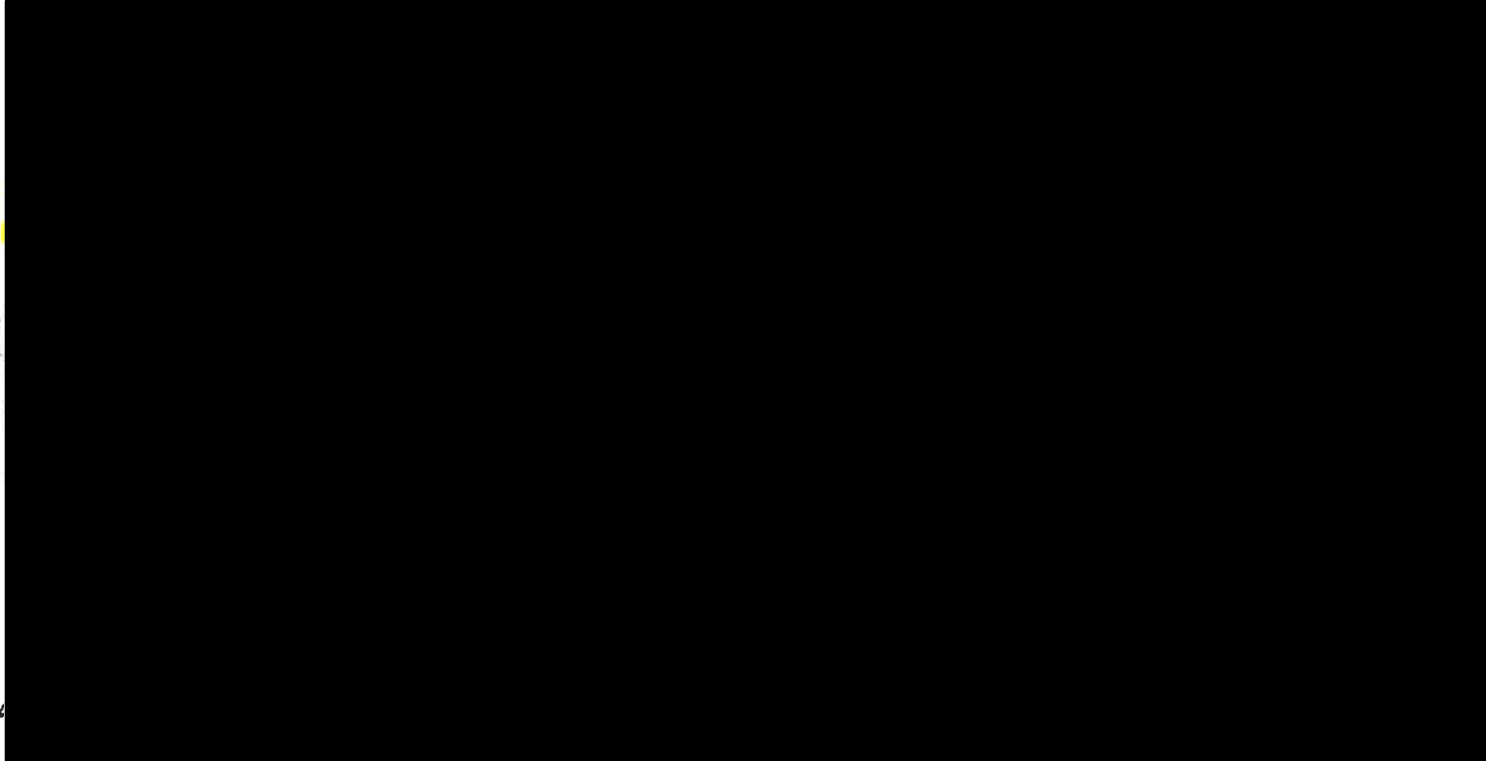
COMPLAINT

Joshua Stockton (ADC 1 [redacted]), the above named Claimant, of [redacted] (City)

County of [redacted] represented by PRO SE (SELF) (Legal Counsel, if any, for Claim)

of [redacted] (Street and No.) [redacted] (City) [redacted] (State) [redacted] (Zip Code) [redacted] (Phone No.) says:

State agency involved: ARKANSAS DIVISION OF CORRECTIONS Amount sought: \$749,995.00 (Fax No.) Two Hundred Fourty Nine Thousand



Yes (Yes or No); when? 05/30/2023 (Month) (Day) (Year); to whom? HANDEA COLLEGE - CENTRAL OFFICE A.D.C. (Department)

and that the following action was taken thereon: [redacted] 22-00294 Found with merit to it

and that \$ 0.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: and was acquired on in the following manner:

EX A

IGTT430
3GD

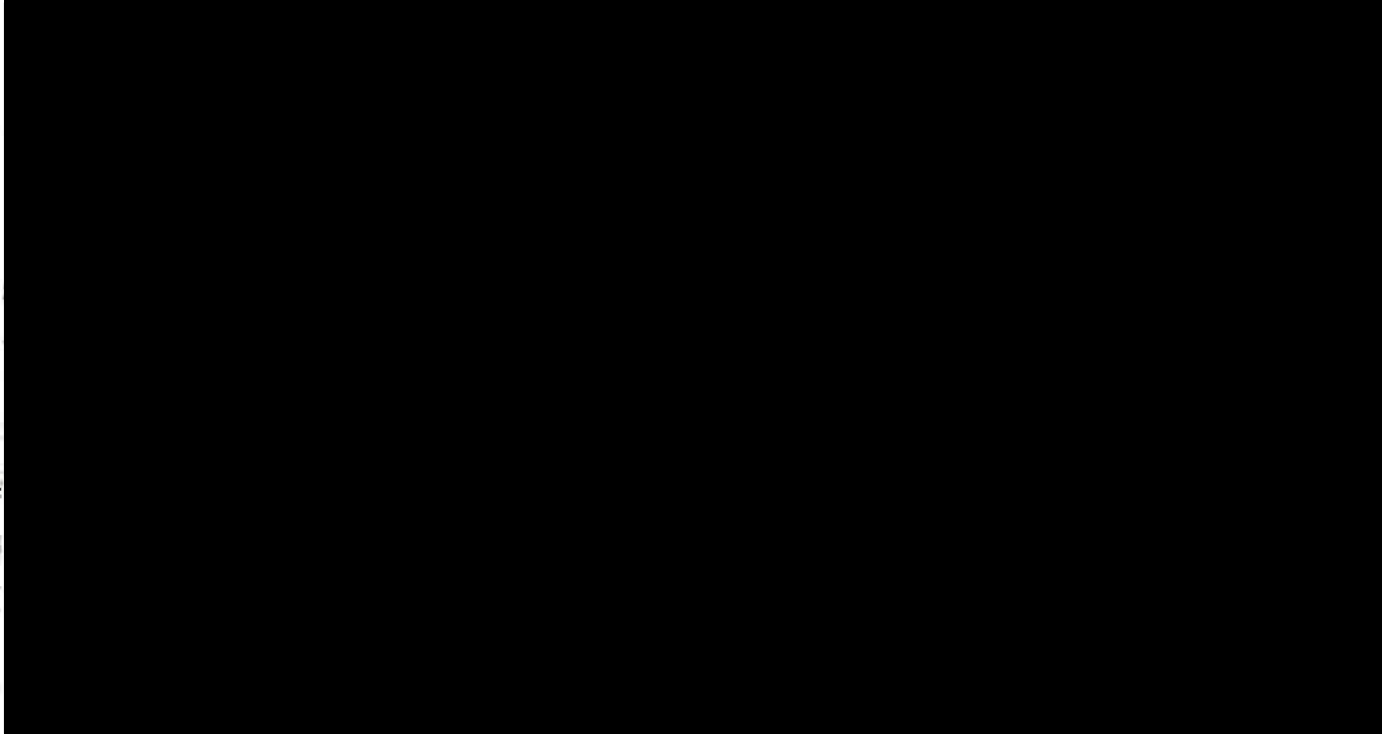
Attachment VI

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE#: [REDACTED] 22-00294

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION



Aundrea Aufclager
Director

12/14/2022
Date

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

Ex B

Before the ARKANSAS STATE CLAIMS COMMISSION
Arkansas

Joshua Stuckton (ADC [REDACTED])

State Claims Commission

v

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTIONS

No. 240163 OCT 04 2023

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Respondant

Claimants opposition to Respondants motion to Dismiss

- 1) Respondant claims that claimants claim should be dismissed for "failure to state a claim upon which relief can be granted, but fails to prove how claimants claim fails to state a claim. Upon a motion to dismiss its the 'non movants' responsibility to show facts of evidence for their motions not unsupported blanket assertions.
- 2) Respondant relies on their theory of plaintiff asserting "theories, speculation, or statutory interpretation and that claimants claim fails to state facts upon which relief can be granted", of which claimant denies for the following reasons: Although the Supreme Court has said that inmates must properly exhaust their administrative remedies and proper exhaustion is measured according to the prison's procedures, the Eighth Circuit has overlooked procedural defects in certain cases such as, Bower v. Kelley, 494 F. Appx - 218 (8th Cir. 2012) (holding that Arkansas's Prisoner properly exhausted his administrative remedies where prison official (Andrea Culclager) decided grievance on the merits (grievance PB-22-06294) which Director Andrea Culclager did find merit to claimants grievance of "A.D.C discontinuing the use of claimants Gel Arch supports" And Andrea Culclager performed her investigation and found "merit" to claimants notice of ADC interference (by Policy) and ADC gave no medical waiver need. Claimants claim claims negligence for A.D.C Director Dexter Payne's edict of a Contraband decree upon gel insoles is a fact already investigated and found with merit by Andrea Culclager.

Exhaustion to Exhaust

- 3) Under Hammett, A procedural defect will not bar a claim if the Prison decides a grievance "on the merits" leaving the reviewing court with a "Complete Administrative record" and "the benefit of the agencies institutional perspective" - Hammett, 681 F.3d at 947-48. "An exhaustion requirement protects a Correctional Institution's Authority by Compelling inmates to give the agency a fair and full opportunity to adjudicate their claims". (Quoting Woodford, 548 U.S. at 90, 126 S. Ct. at 2385), see also Jones, 549 U.S. at 219, 127 S. Ct. 923 (same). In Fouk v. Carrier, 262 F.3d 687 (8th Cir. 2001) (concluding - administrative remedies Unavailable where prison officials themselves failed to comply with grievance procedures).

Failure to exhaust (by NAME) DEFENDANTS?

4) In the Eastern District of Arkansas in 2019, in case: Greathous v. Compton,-

(E.D. ARK 2019) (on p.5, states: "The failure to name a defendant as Required

by the Arkansas Department ((Division)) of Corrections's grievance policy may constitute

a procedural defect that is waived if the defendant's conduct forming the

basis of the claim against him or her is adequately described in the

grievance and the failure to name the defendant does not prevent the

(A.D.C) from investigating the grievance on the merits". See: Daniels v.-

Hubbard, no. 5:14-cv-00360 BSM, 2015 WL 9222627, at x 1-2 (E.D. ARK.-

Dec. 17, 2015).

5) Claimant has only brought claims against Defendants in negligence due to defendants sovereign immunity, official capacity protections which bar the litigation of defendants as state actors against litigation, thus the state claims commission is the proper venue to negligence acts by state actors according to Smith v. Johnson, 779 F.3d 862 (8th cir. 2015). In Smith, the trial court's dismissal was reversed, holding that claim preclusion didn't apply because the claims commission does not have jurisdiction to address a constitutional claim against ADC officers sued in his individual capacity. Because the Arkansas Claims Commission has "jurisdiction only over those claims which -

OCT 04 2023

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are barred by the doctrine of sovereign immunity from being litigated in a Court of general Jurisdiction, the Claims Commission was the only forum in which [The inmate Plaintiff] could bring his claim against the state. Id at 870. Sovereign immunity did not bar the inmate plaintiff's claim against the officer in his individual capacity, so the Claims Commission looked Jurisdiction over that claim.

The Eighth Circuit also explained that "Because the inmate plaintiff in Smith asserted only a negligence claim before the Claims Commission, he was not precluded from bringing a deliberate indifference claim in a Section 1983 lawsuit".

One claim involves alleged criminal recklessness, where the defendant must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and... also draw the inference". The other (negligence) alleged intentional wrongdoing (negligence of the official). "The theories of negligence and intentional tort are contradictory and mutually exclusive". Hocken Smith v. Brown, 929 S.W. 2d 840, 845 (Mo. Ct. App. 1996) Accordingly, "There is generally no claim of negligence that flows from intentionally tortious conduct". BP Chem. Ltd. v. Jiangsu Sopa Corp., 285 F.3d 677, 685 (8th Cir. 2002). (Quotation content from case: - A.P.C. v. Hobbs, Case no. 5:14-LV-314 JLT/BD (E.D. Ark. Sep. 17, 2015).

- 6) Respondant states in (3.) "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged as 'a claim is facially plausible' (when), the claimant is the aforementioned stated his opposition and how he has pled facts. and section 19-10-305 provides state employees with qualified immunity from civil liability for nonmalicious acts occurring within the course and scope of their —

employment, see [2011 Ark. 20] City of Fayetteville v. Romine, 373 Ark. 318, 384 - S.W. 3d 10 (2008), section 305(a) provides that "officers and employees of the state of Arkansas are immune from liability and from suit, except to the extent that they may be covered by liability insurance, for damages for acts or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment." Ark Code Ann. - § 19-10-305 (a). Nix v. Norman, 879 F.2d 425 (8th Cir. 1989).

In the present case, section 19-10-305 is applicable as long as sufficient facts support a finding that the acts or omissions were committed maliciously, which claimant does not allege in his claim to the Arkansas State Claims Commission in his claim.

7. Claimant's burden of proof requirements are rested on the defendant's knowledge of their acts and omissions is governed by the Supreme Court's standard found in ~~Schaffer v. Weast, 546 U.S. 49, 56 (2005)~~ (Dixon v. U.S., 126 S.Ct. 2437, 165 L.Ed 2d 299, 548 U.S. 1 (2006) that's found at [548 U.S. 19] stating "The facts needed to prove or disprove the defense" lie peculiarly in the knowledge of" the defendant. Id 548, U.S. 19.

Respondant has not offered any proof of claimant's claim deficiencies only asserted medical negligence allegations of which claimant never asserted in his claim, Respondant offered no real proof of a rebuttal to claimant's negligence claim. "No instruction should be given which thus assumes, as a matter of fact, that which is not conceded or established by uncontradicted proof." New Jersey Mutual - Life Insurance Co. v. Baker, 94 U.S. 610. Respondant offered no proof that claimant's claim does not survive a motion to dismiss, only

offers the court their own theory of "allegations of medical malpractice", and that the claimants' claim lacks facially plausible materials, but doesn't show or prove how in their allegations of claimants' facts as alleged.

9.) Claimant asserts Respondents Exhibit B highlights are irrelevant as claimants claim only asserted a claim under negligent conduct by policy makers as officials and their acts or omissions. Claimant only addressed official capacity negligent conduct which the Arkansas State Commission has jurisdiction in. Claimant never stated a claim in this jurisdiction for medical malpractice or deliberate indifference as those would be individual capacity scopes outside the jurisdiction of the Commission.

10) Claimant objects to (13) that "innate is making claims against the ADCS Contracted medical provider, Wellpath" as my claim form to the Commission in allegations never states Respondents accusations, thus is conjecture that's unsupported in the facts of this response to claimant's claim. Claimant objects to (14) as irrelevant conjecture to the claim facts asserted by claimant by Respondent. Claimant objects to (15), as claimant's claim never claimed an Eighth Amendment and 42 USC 1983 claim in his claim to the State Claims Commission, only a negligence claim proper to the jurisdiction of the State Claims Commission that claimant previously asserted proper venue and claims found in (5) of this opposition, and the Sovereign Immunity allowance for a recovery avenue for claimant.

11.) Claimant calls the trier of fact to Respondents (20) - "The Commission shall make no award for any claim which, as a matter of law, should be dismissed from a Court of law or equity for reasons other than Sovereign immunity". Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015), which is all under what innate claimant claimed under. The Respondent's defense relies on jurisdiction, of which claimant has addressed the proper venue and therefore jurisdiction and an award is proper for claimant's claim of negligence of officers named given factual evidence provided to the Commission. wherefore, claimant prays that the Respondent's motion for dismissal be ~~be~~ denied, due to failure to provide evidence or proper argumentation on the claims assertions, and Respondent's motion for Attorney's fees and costs; and all other just and proper relief be denied to respondents and defendants.

Respectfully Submitted,



Joshua M. Stockton ADC # [REDACTED]

[REDACTED]

10-01-2023

Mika Tucker

From: Thomas Burns (DOC)
Sent: Tuesday, October 17, 2023 12:44 PM
To: ASCC Pleadings
Subject: Joshua Stockton v ADC 240163
Attachments: 1293_001.pdf

Motion to Add Document

Thank you,
-TB



THOMAS BURNS
DEPUTY CHIEF OF POLICE, DEPARTMENT OF CORRECTIONS
Arkansas Department of Corrections
844 Princeton Pike
Pine Bluff, Arkansas 71601
Phone: (501) 267-0000 (ext. 2000) (501) 267-0000
Email: Burns.T@adoc.state.ar.us

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

v

NO. 240163

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

MOTION TO ADD DOCUMENT TO DISMISSAL

Comes Now the Respondent, Arkansas Department of Corrections (ADC), by Thomas Burns, and for their Motion, states:

1. During the course of the matter the Attorney General let the ADC know that this same claim has been filed in the United States District Court for the Eastern District of Arkansas (USDC EDAR).
2. The claim was filed May 24, 2023. *See attached Ex A.*
3. The inmate filed the exact same claim in the Claims Commission on or about August 3, 2023.
4. This matter is the exact same facts and circumstances and incident as alleged in the Claims Complaint.
5. The inmate in this matter has chosen his forum, USDC EDAR.
6. The inmate should be barred from any further claims.

WHEREFORE, the Respondent prays that the Commission enter a order dismissing the claim; for their attorney fees and costs; and for all other just and proper relief to which they may be entitled.

Respectfully submitted,




Thomas Burns (02006)
Legal Department
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 17th day of October 2023, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Joshua Stockton ([REDACTED])
[REDACTED]



Thomas Burns

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. SEC. 1983

MAY 24 2023

TAMMY H. DOWNS, CLERK
By: [Signature] DEP CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
Central DIVISION (JURY TRIAL) (X)

Joshua Stockton Adc # [Redacted]

PLAINTIFF

ADC Employees

CASE NO. 4:23-cv-00477-LPR-JJV

V. Solomon Graves, ADC Director, Joe Page III, ADC Superintendent, Dep. Warden Goulden
A. Culclager - ADC Director Central Office, Marshal, Reed - Ch. Dep Dir. DEFENDANT
well pay the employees - Ramona Huff-admin., Dr. Ronald Stokely (prisoner)

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes X No _____

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

Parties to this lawsuit:

Plaintiffs: Joshua M. Stockton # [Redacted]

Defendants: Joe Page, Capt. Skiback

Court (If federal court, name the district; if state court, name the county):

U.S. District Court, E.D. ARK. Cen. Div.

Docket Number: 4:22-cv-01260-BRW

Name of Judge to whom case was assigned: BRW

Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?):

Motion to voluntarily dismiss, Dismissed without prejudice

Approximate date of filing lawsuit: February

Approximate date of disposition: May 4, 2023

This case assigned to District Judge Rudofsky
and to Magistrate Judge Volpe

Ex. A.

II. Place of present Confinement:

[REDACTED]

III. There is a prisoner grievance procedure in the Arkansas Department of Correction. Failure to complete the grievance procedure may affect your case in federal court.

A. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes X No _____

B. If your answer is YES, Attach copies evidencing completion of the final step of the grievance appeal procedure. FAILURE TO ATTACH THE REQUIRED COPIES MAY RESULT IN THE DISMISSAL OF YOUR COMPLAINT.

C. If your answer is NO, explain why not:

IV. Parties

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff (your name): JOSHUA M. STOCKTON
Address: [REDACTED]

(In Item B below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.)

B. Name of Defendant: Solomon Graves
Position: Director
Place of Employment: ADL
Address: Central office Division

Name of Defendant: Aundrea Culclager
Position: Dep. Director
Place of Employment: Central office
Address: CENTRAL office Division

Name of Defendant: Reed, Marshall
Position: chief deputy Director
Place of Employment: central office ADL
Address: Central office Division

WELLPATH, LLC Employees:

name of defendant: Ms. R. Huff

Position: HEALTH ADMINISTRATOR

Place of employment: Wellpath, LLC ([redacted] unit)

Address: [redacted]

name of Defendant: Dr. Ronald Stukey

Position: Wellpath doctor (provider)

Place of employment: Wellpath, LLC ([redacted] unit)

Address: [redacted]

name of Defendant: Marshall Reed

Position: chief deputy Director

Place of employment: ADC

Address: Central office Division

name of Defendant: Deputy warden Boulder

Position: Deputy warden

Place of Employment: ADC

Address: Central office Division ' Compliance Division '

name of Defendant: Capt. Skinner

Position: CAPTAIN

Place of Employment: ADC [redacted]

Address: 890 Freeman dr. ' ADC - ' Compliance Division '

Name of defendant : Joe PAGE III

Position : Superintendent

Place of Employment : ADC

Address : ADC COMPLIANCE DIVISION

V. Statement of Claim

SEE ATTACHED PAPERS

VI. Relief

State briefly exactly what YOU want the court to do for YOU. Make no legal arguments. Cite no cases or statutes.

Monetary Relief in Personal Capacity (and official Capacity for injunctive relief only); Plaintiff seeks for official Capacity injunctive relief of the ADE Continuum Mandate that blocks my ability to get my [redacted]

Monetary Relief sought for widespread [redacted] and delays and pain and suffering I'm seeking 5 million Dollars in any relief available by a jury.

I declare under penalty of perjury (18 U. S. C. § 1621 that the foregoing is true and correct.


Executed on this 23 day of May, 2023

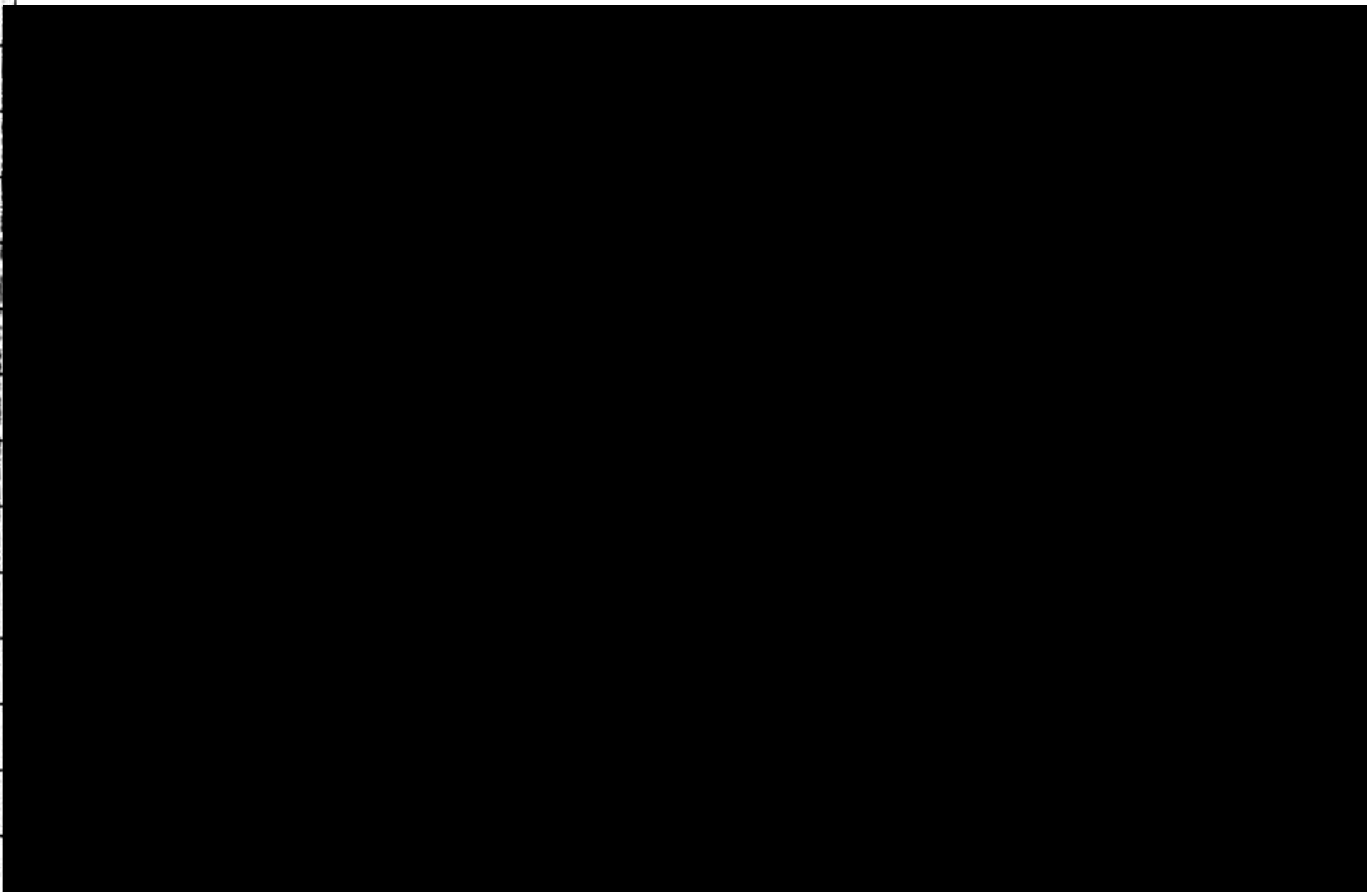
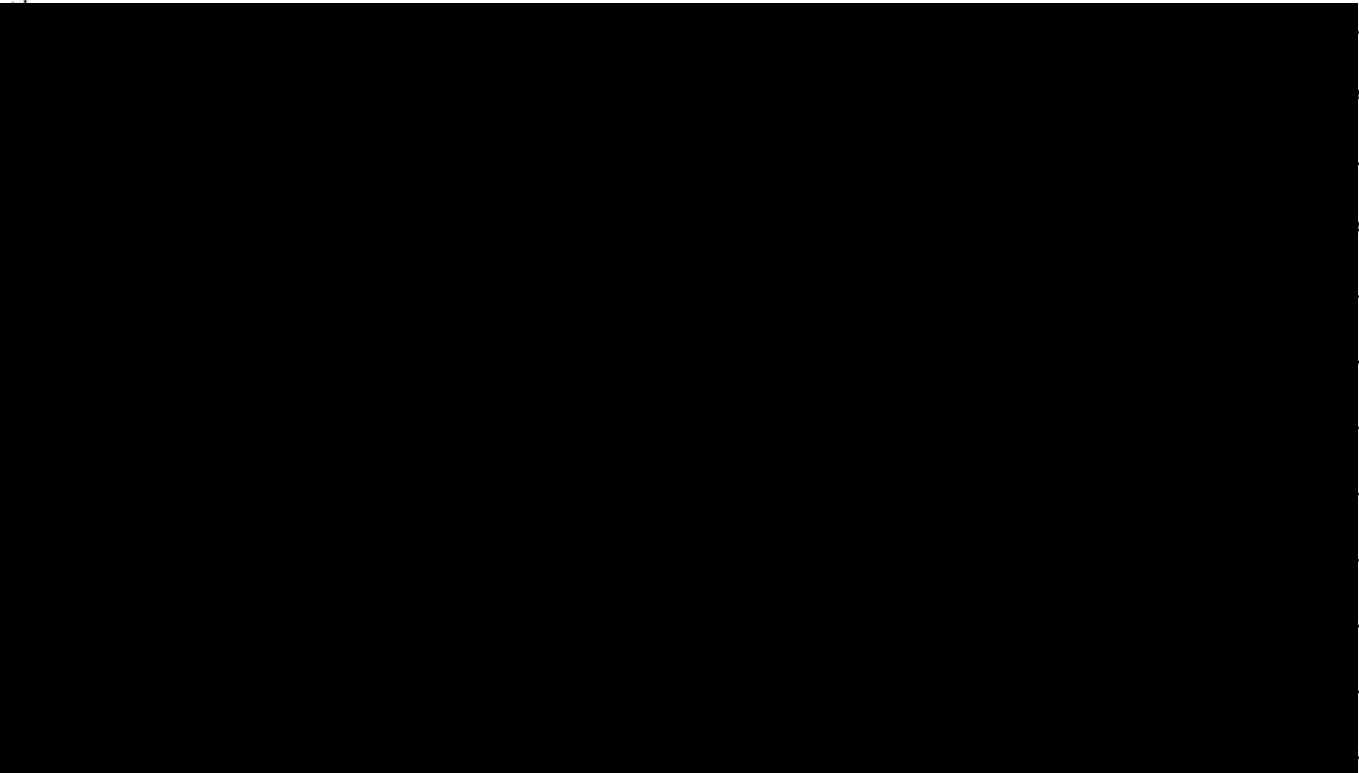
Joshua Stuckler [redacted]
[Signature]
Signature (s) of plaintiff (s)

Defendant Solomon GRAVES - Director of ADC at the time of
10/4/2022 did implement A order to make [REDACTED] PART
of the ADC Controband decree for [REDACTED] and beyond. In
doing so did not make allowances for [REDACTED]
which violated plaintiff's Constitutional Rights in the process.
It is already "established" that Supervisors and Administrators can in
fact incur liability for their personal involvement in violations of
the Constitution regarding those they care for, Even the Director of
The ADC for inadequate policies or medical supervision for which
they are ultimately responsible for A inmates health care due to
the state putting inmates in their care. Anyone whom deprives an
other person of any Constitutional right(s) are actionable in § 1983 by
direct actions, omissions, or acts they are legally required to do.

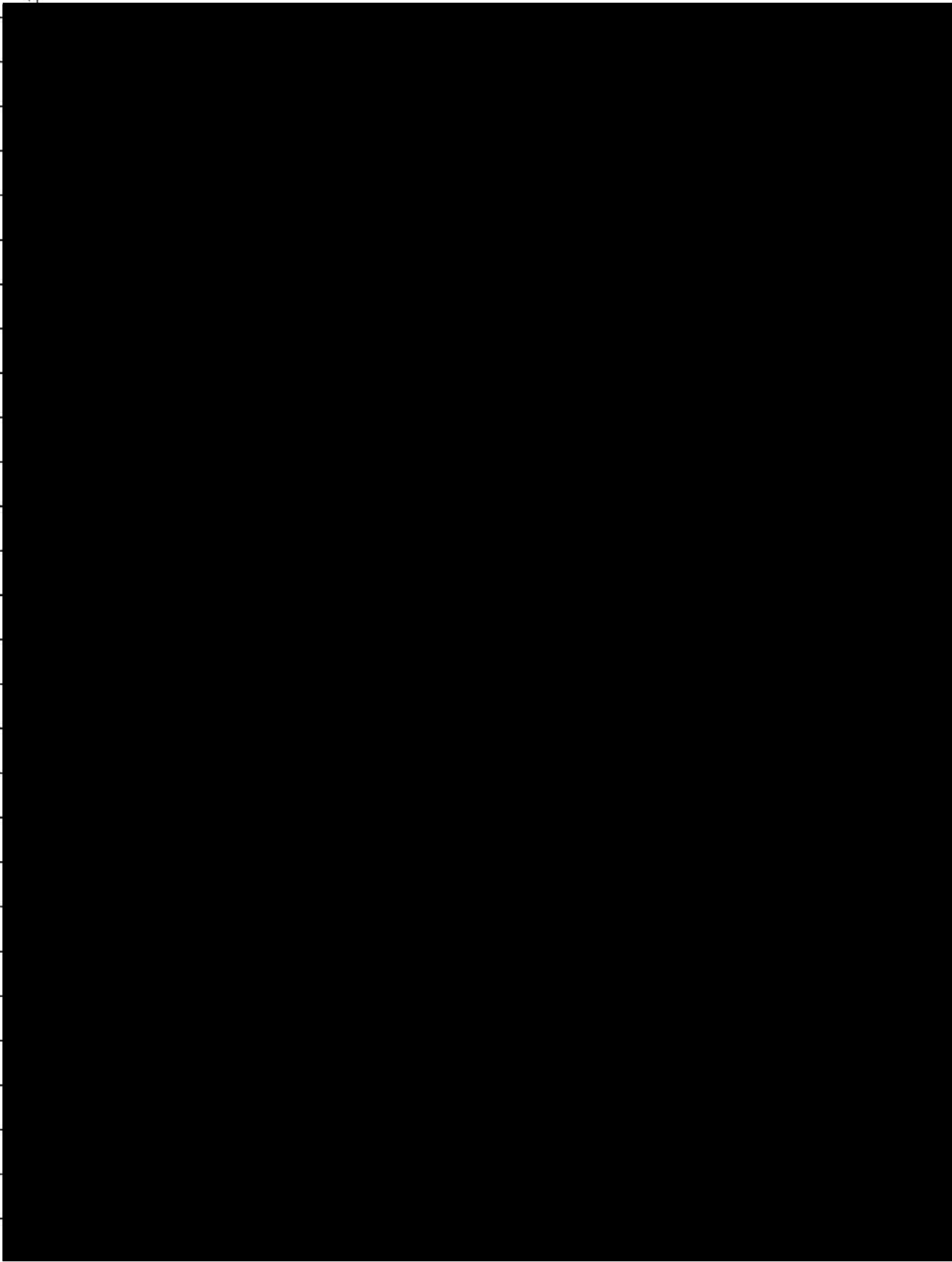
All officers, whether supervisory or not who fails to intervene when constitutional rights are violated, that officer incure liability in §1983. The officer has to have the opportunity to intervene reasonably and prior to suit plaintiff grieved all levels available to him.

defendant groves in state code § 12-27-103 "Establishment - Powers and duties" and § 12-27-109 "Oaths" state the duties of the Director and responsibilities, as well as states he took an oath to uphold the state and United States Constitutions upon

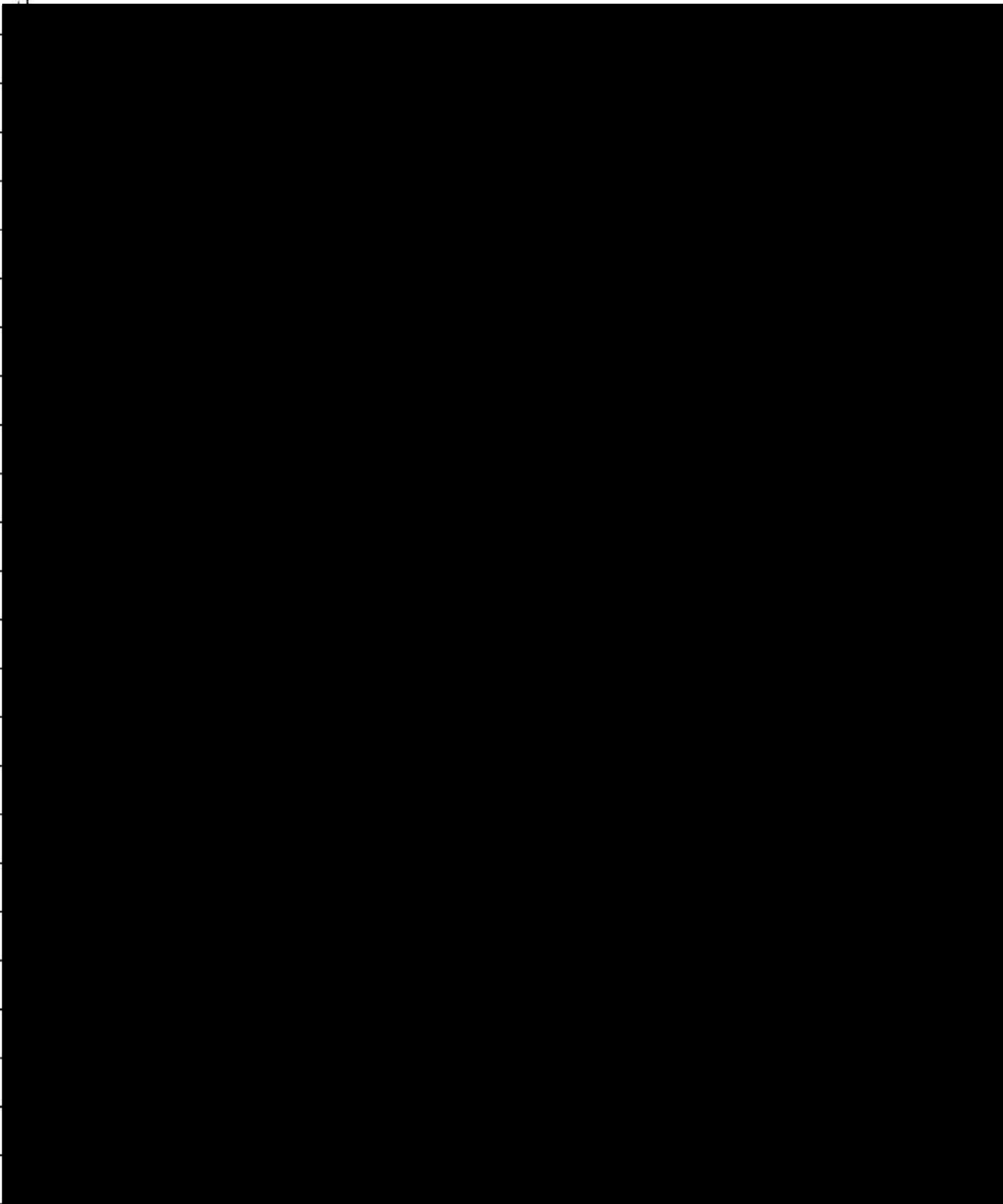




medical need of the inmates shouldn't have helped Dr. Stucky

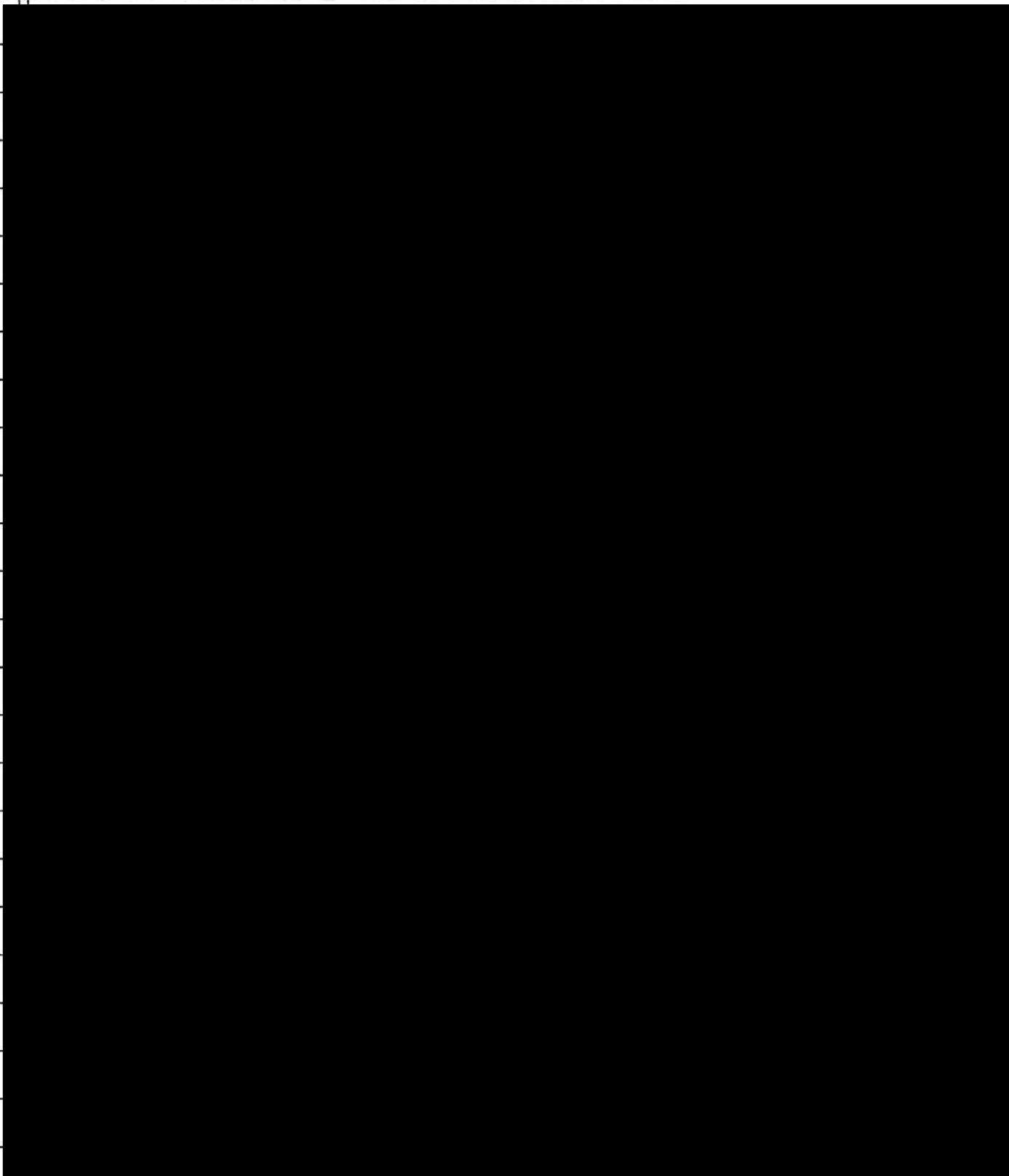


[Lined area on the left side of the page, likely a margin or a list of items, but the content is obscured by the redaction.]



see *Fruit v. Norris* 908 F.2d 1147, 1151 (8th Cir 1990);

Howard v. Adkins 887 F.2d 134, 137 (8th Cir 1989).



Failure to intervene

Plaintiff alleges that Mrs. A. Colchager Director of health services for ADC, although she said the grievance # [REDACTED] 22-06294 was with merit, the Director did not follow through with the findings and violation of the Plaintiff's medical reports and by her omission to follow through in her decision and ensure the matter was remedied by Superintendent die pages degree of control - she did nothing more to ensure the violative action was remedied. This showed a deliberate indifference to the outcomes of her own findings of 'merit' to a violation of ADC interfering with a medical need. She had a duty to intervene and the opportunity to do so in the appeals process PAST just saying a ruling as a Director of ADC. And the right to medical care is established.

Chief deputy director Marshall Reed in his response to grievance [REDACTED] 23-00096 did incur personal liability by refusing to remark on the medical delay of treatment imposed by the A.P.C. Contraband decree and by not deciding the whole issue of all conditions of confinement issues in said grievance he deliberately 'limited the scope' of the grievance which is a custom of AdC officers at Central Arizona and is established as actionable. It is well established that supervisors can incur liabilities by their deliberate indifference to constitutional allegations they decide the merits too and by their not remedying the violative custom or practice conduct. Plaintiff by grieving to all available levels give them all a chance to do so, to act, or not to act. If they are informed of (and have actual knowledge) prisoners not receiving the medical care Constitutionally needed and don't do corrective actions they're liable. Failure to take action is 'established' precedent.

Capt. Skinner was the grievance respondent upon [REDACTED] 22-00294 of which he failed to sign anywhere on the grievance response. The defendant in his failure to take corrective action of clearly grieved Constitutional violation of interference of medical needed items, by not remedying the grieved issue put personal liability upon himself due to the already established precedent that interfering with medical treatment violates the Constitution. And plaintiff upon the grievance clearly grieved his Eighth amendment rights were violated by enforcing a Controversial order on his [REDACTED]

And the state also in section 19-10-305(a) of the Ark. Code says "officers and employees of the state are immune from liability from suit, except to the extent that they may be covered by liability insurance, for damages for acts or omissions other than malicious acts or omissions, occurring within the

Course of their employment". And as a supervisor he is also held for liability for inadequate prison policies or medical supervision... Just as if he'd refused to deliver medical service himself. Also as an officer of the state he has liability to uphold the state and federal (United States) constitutional rights of prisoners as well, omission to place personal liability upon him. Essentially he failed to intervene in violative practices of APC Administration.

Joe Page III as Superintendent of ADC Pine Bluff in Grievance

22-00294 upon the decision of the Deputy Director of Central office, Joe Page III receives emails of results thus he was informed of the 'WITH MERIT'S' FINDINGS OF INMATES VIOLATION UPON HIS 8th Amendment Rights Afforded him by the Constitution. By omission in the result of A. Culdager on 12/14/22 incurs personal liability by not overturning the violative conduct upon inmates Constitutional Rights. The grievance issues giving Joe Page III an opportunity to act or not is given upon his notification. By not interjecting in the violative act they are apart to the violative Customs or Policy by omission. Failure to take any responsive action is sufficient to establish Deliberate Indifference.

Supervisors for ADC can incur liability when their corrective inaction amounts to deliberate indifference to or tacit authorization

of the violative practices. The grievance clearly informed all levels of administration of the Constitutional violation, and it is 'Established' precedent that state officials are responsible for inmate medical need and security. STATE Code 19-10-305 (a) states that state officials are immune from liability from suit, except to the extent that they may be covered by liability insurance, for damages for acts, or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment. AS A sworn official to the office of superintendent Jue Page III did swear to uphold the state Constitution as well as the Constitution of the United States and uphold the rights of those he is entrusted with, He failed to do so!

IGTT430
3GD

support Evidence #7

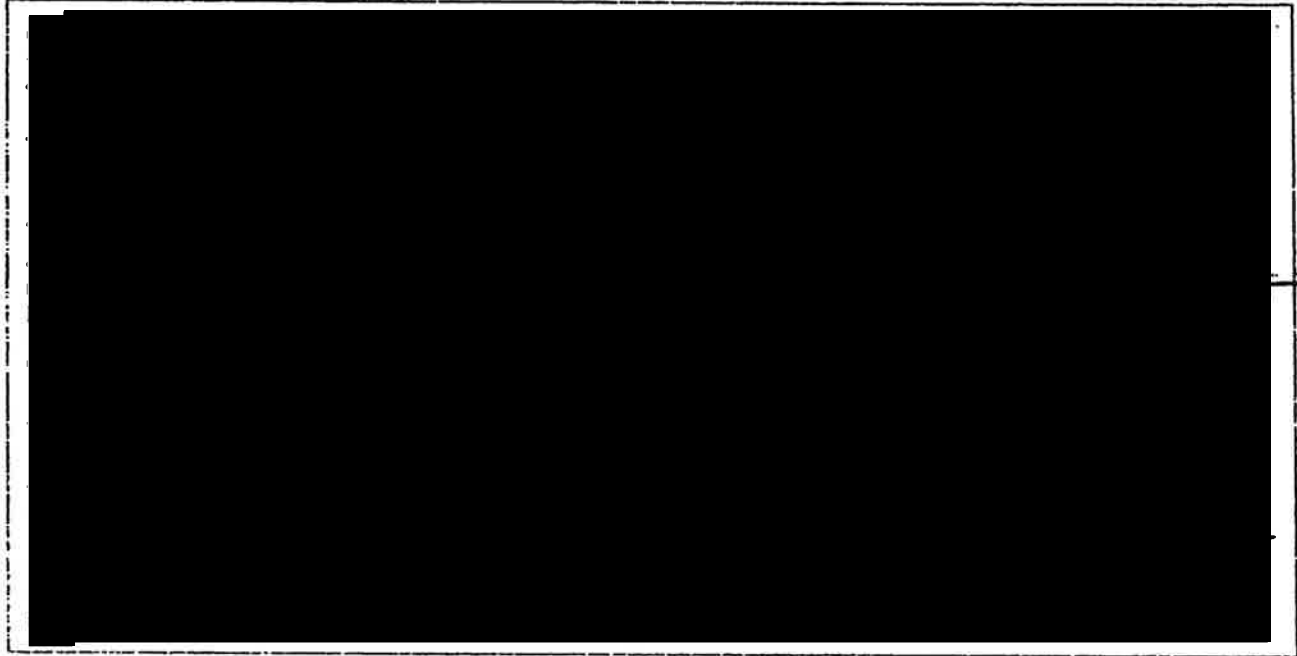
Attachment VI

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE#: [REDACTED]-22-00294

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION



Aundrea Cufclager
Director

12/14/2022
Date

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

IGTT430
3GD

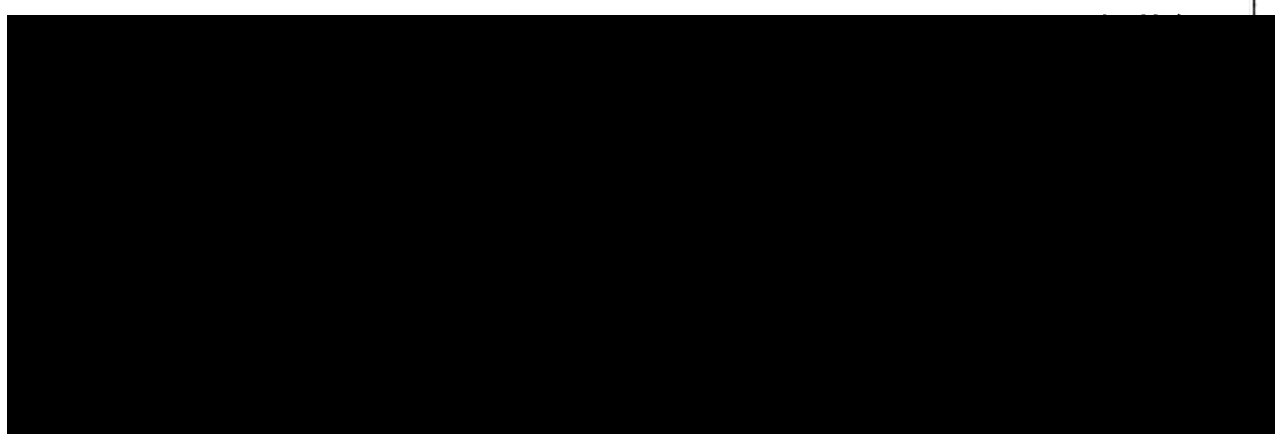
Attachment VI

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE#: [REDACTED]-23-00096

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION



On 4/27/23 the Warden responded, "Your complaint was addressed in [REDACTED] 22-00335, you have exhausted your administrative remedies regarding Grievance Number [REDACTED] 22-00335, end of statement."

Your appeal was received on 4/28/23. I have reviewed your appeal and I find that you have addressed multiple issues and only the first issue will be addressed. I find the unit is following policy and procedures for your housing area. Therefore, I find no merit in your appeal.

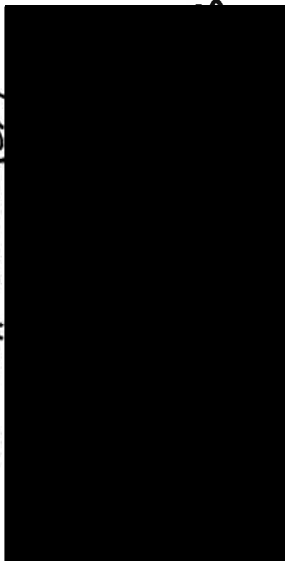
Appeal denied.

Director

Date 5-8-23

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

Joshua Stockton



LEGAC MAIL



U.S. District Courthouse

Clerks office

600 West Capitol Ave.

Suite A-149

Little Rock, AR. 72201-3325

Before the ARKANSAS STATE CLAIMS COMMISSION

Joshua Stockton (Ad [REDACTED])

Claimant

Arkansas
State Claims Commission

v.

No. 240163

OCT 25 2023

RECEIVED

ARKANSAS Department of Corrections
Division of Correction

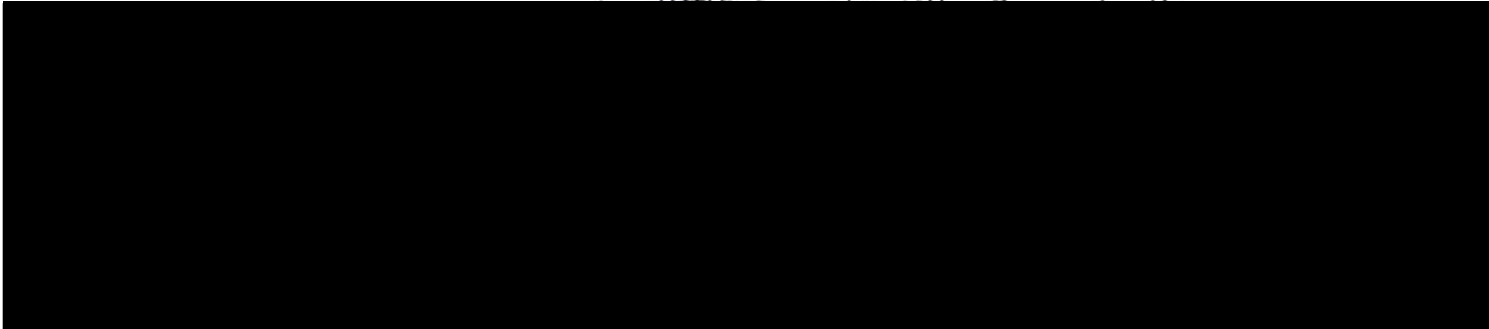
Respondant

Motion To Add Document in opposition To Dismissal

Comes now the Claimant, Joshua Matthew Stockton, in his prose capacities

States:

1) Respondant's motion to add document to dismissal should not be allowed to be brought into evidence, as claimant only in his claim cited negligence by states actors for purposes of his claim in the state claims commission. In a negligence claim, there is an element of 'intent' a party must prove in their pleading.



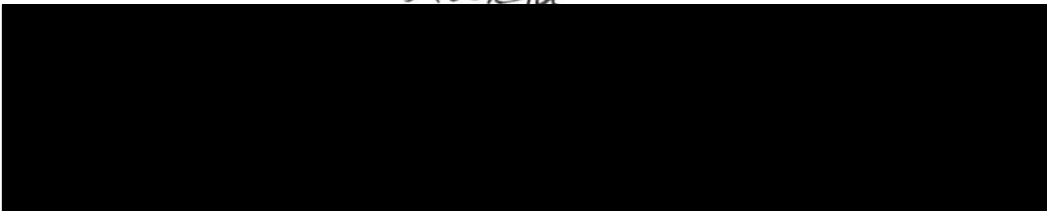
... on his decree (negligence). See: Smith, 683 S.W. 2d at 936 on issue preclusion.

Plaintiff only filed his negligence claims Against State Actors
due to their Protections in Official Capacities, STATE ACTORS ARE
not protected under Sovereign Immunities AS LONG AS Pledings of
negligence are brought through State Actors in this STATE CLAIMS
Commission. The REST OF THE Citations involve Jurisdiction.

Respectfully Submitted,



Joshua Stockton



10-21-2023

'res judicata' defense

CASE
Eastern District - Precedent

In Adc v. Hobbs, Case no. 5:14-cv-314 JLH/BD (E.D. Ark. -

Sep. 17, 2015) STATES (page 12 starting) "Recently, however, the Eighth Circuit -

addressed the issue of whether an inmate's deliberate-indifference claim

is precluded by a prior action before the Claims Commission. SMITH v. -

Johnson, 729 F.3d 867 (8th Cir. 2015). In Smith, the trial court

dismissed an inmate's Constitutional claims because he had previously

brought an action involving the same underlying facts before the Arkansas

Claims Commission. The Court of Appeals reversed the trial court's

dismissal, holding that claim preclusion does not apply because the

Claims Commission does not have jurisdiction to address a Constitutional

claim against an ADC officer sued in his individual capacity.

Because the Arkansas Claims Commission has "jurisdiction only over

those claims which are barred by the doctrine of Sovereign immunity -

from being litigated in a Court of general jurisdiction," The
"Claims Commission was the only forum in which [The inmate
Plaintiff] could bring his claims against the State." Id at 870.

Sovereign immunity did not bar the inmate plaintiff's claim against the
officer in his individual capacity, so the Claims Commission
lacked jurisdiction over that claim for the constitutional issues.

The Eighth Circuit also explained that "to invoke preclusion a
defendant must establish not only that a claim arises from the
same facts, but that the same issue was decided in the prior
proceeding." Id at 871 (Emphasis in original). Because the inmate
Plaintiff in Smith asserted only a negligence claim before the
Claims Commission, he was not precluded from bringing a
deliberate-Indifference claim in a Section 1983 lawsuit.

~~XXXXXXXXXX~~

In Smith, the district court thought the doctrine of issue preclusion
barred Smith's actions against Johnson. Issue preclusion bars the
relitigation of an issue that was actually litigated in a prior action and
was determined by, and essential to, a valid and final judgment. -

Deer/Mt. Judea Sch. Dist. v. Kimbrell, 2013 Ark. 393, 430 S.W. 3d -
29, 39 (2013). Applying that doctrine the district court ruled that
Smith was precluded from bringing a claim "based on the same facts -
that were litigated and decided against him" in the Arkansas Claims
Commission.

To invoke issue preclusion, however, a defendant must establish not
only that a claim arises from the same facts, but the same issue
was decided in the prior proceeding. Estate of Gaston v. Ford-
Motor Co. (In re Estate of Gaston), 320 Ark. 699, 898 S.W. 2d -
471, 473 (1995). The Arkansas Supreme Court requires -

a party invoking issue preclusion to establish that "the precise issue" was decided in the first proceeding, Smith, 683 S.W. 2d at 936, and interprets "very narrowly" whether an issue was previously litigated. In re Estate of Goston, 898 S.W. 2d at 473.

One claim involves alleged criminal recklessness, where the defendant must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and... which is deliberate indifference standard." also draw the inference," the other involves alleged intentional wrongdoing (negligence of the official).

"The theories of negligence and intentional tort are contradictory and mutually exclusive." Hocken Smith v. Brown, 929 S.W. 2d 840, 845 (Mo. Ct. App. 1996). Accordingly, "there is generally no claim of negligence that flows from intentionally tortious conduct". - BP Chem. Ltd. v. Jiangsu Sopa Corp., 285 F.3d 677, 685 -

(8th Cir. 2002).

The doctrine of claim preclusion in Arkansas applies to decisions of administrative agencies like the Claims Commission, Craven v. Fulton - Sanitation Serv., Inc., 361 Ark. 390, 206 S.W.3d 842, 844 (2005), and it "bars not only the re-litigation of claims that were actually litigated in the first suit, but also those that could have been litigated." Jayel Corp. v. Cochran, 366 Ark. 175, 234 S.W.3d - 278, 281 (2006). But the doctrine does "not bar a subsequent action where a party was actually prohibited from asserting a claim in the earlier action." Cater v. Cater, 341 Ark. 627, 846 S.W.2d 173, 176- (1993). The Restatement of Judgments, which has been followed by the Arkansas Courts in other respects, e.g., Ruth R. Remmel Revocable - Trust v. Roane, 284 Ark. 568, 683 S.W.2d 935, 936 (1985), likewise provides that claim preclusion is not applicable where -

"The plaintiff was unable to rely on a certain theory of the case to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts... and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief." Restatement (second) of Judgments § 26 (1)(c). The Restatement reasons that "It is unfair to preclude (the plaintiff) from a second action in which he can present those phases of the claim which he was disabled from presenting in the first" *Id.* *cont. c.*" (Quoted from *Smith v. Johnson*, - 779 F.3d 867 (8th Cir. 2015) [which reversed the district court's findings and remanded for further proceedings.]

Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Wednesday, November 8, 2023 2:37 PM
To: Thomas Burns (DOC)
Cc: ASCC Pleadings; Mika Tucker
Subject: ORDER: Joshua Stockton v. ADC, Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378
Attachments: Joshua Stockton v. ADC2.pdf; Stockton-order163.pdf; Stockton-order164.pdf; Stockton-order211.pdf; Stockton-order233.pdf; Stockton-order234.pdf; Stockton-order266.pdf; Stockton-order285.pdf; Stockton-order378.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

November 8, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Joshua Stockton v. Arkansas Division of Correction***
Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378

Dear Mr. Stockton and Mr. Burns:

Enclosed please find the Orders entered today by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 240163

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is the claim filed by Joshua Stockton (the “Claimant”) against Arkansas Division of Correction (the “Respondent”).

Respondent filed an answer denying liability.

The Commission sent correspondence to Claimant on September 6, 2023, advising that Respondent recommended that the claim be denied. In that correspondence, Claimant was given fifteen (15) calendar days to request a hearing and advised that if Claimant did not do so within the specified time frame, Claimant’s claim would be dismissed for failure to respond. To date, Claimant has not responded to the Commission’s September 6, 2023, correspondence.

As such, the Commission hereby unanimously DENIES and DISMISSES this claim for Claimant’s failure to prosecute the claim.

The Commission notes that, as of the date of this Order, eight (8) claims filed by Claimant within a two-year period have been dismissed: (1) the instant claim, Claim No. 240163, was filed on August 3, 2023, and dismissed on November 8, 2023; (2) Claim No. 240164 was filed on August 3, 2021, and dismissed on November 8, 2023; (3) Claim No. 240211 was filed on August 9, 2023, and dismissed on November 8, 2023; (4) Claim No. 240233 was file on August 12, 2023, and dismissed on November 8, 2023; (5) Claim No.

240234 was filed on August 12, 2023, and dismissed on November 8, 2023; (6) Claim No. 240266 was filed on August 17, 2023, and dismissed on November 8, 2023; (7) Claim No. 240285 was filed on August 23, 2023, and dismissed on November 8, 2023; and (8) Claim No. 240378 was filed on September 9, 2023, and dismissed on November 8, 2023.

Ark. Code Ann. § 19-10-221 provides,


An inmate in the Division of Correction or the Division of Community Correction who has filed more than three (3) unsuccessful claims or actions under this subchapter within a period of two (2) years may have his or her subsequent claims or motions dismissed by the Arkansas State Claims Commission upon receipt as abuse of process, for one (1) year from the date of dismissal of the inmate's third unsuccessful claim.

Accordingly, the Commission bars Claimant from filing any claims for one year from the date of this Order. Any claims submitted by Claimant within a year from the date of this Order will be dismissed upon receipt pursuant to Ark. Code Ann. § 19-10-221. The Commission notes that this statute does not authorize the Commission to dismiss any pending claims that Claimant may have filed before the date of this Order.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: November 8, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Arkansas State Claims Commission

Joshua Stockton ADC [REDACTED]

CLAIMANT

V.

Claim no. 240163, 240164, 240211, 240233, 240234

Arkansas Department of Corrections 240266, 240285, 240378

Division of Corrections

Respondent
Arkansas
State Claims Commission

NOV 17 2023

NOTICE OF APPEAL

RECEIVED

pursuant to Ark. Code ann. § 19-10-211 (supp. 1997), claimant Joshua

Stockton Appeals to the General Assembly for his appeal of this cited claim

against Defendants in their official capacities as STATE Employees.

The Arkansas State Claims Commission's denied all at one time, after claimant did

responses to Respondents motions for summary judgments and/or Motion for dismissals

of which claimant responded to. The Claims Commission sent correspondence's to claimant

that he had 15 days to respond to request a hearing after notices were served

to Respondents Counsel, of which claimant did in letter formats (incorporating

multiple claim numbers) in a response for claimant's wanting a trial. The

claimant did respond to each claim notice and did put Attu: Mike Tucker in

his requests for trial Responses, all sent in prior to the 15 day response period of expiration. Inside one or more of these claim numbers have the response letters in their records. All someone has to do is look for them! perhaps

The General assembly will do so in their investigation of appellate to their Authority

This appeal of claims nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285 -

and 240328 are disputed. As claimant met criteria 1) and 2) on Exhibit 1

claimant appeals to the General assembly according to Ark. Code Ann. § 19-10-211 -

(2) (1).

under oath sworn, and Respectfully Submitted -

 Adc # 

Joshua Stockton

 r 

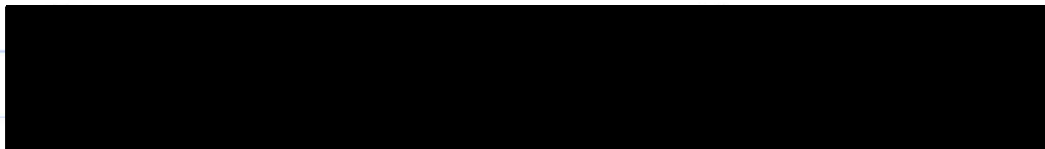


Exhibit 1

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]

RE: *Joshua Stockton v. Arkansas Division of Correction*
Claim No. 240164

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)