

OMAR S. FOLK, Plaintiff v. BUREAU OF PRISONS, et al., Defendants
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
2021 U.S. Dist. LEXIS 44638
Civil No. 3:18-cv-2252
March 10, 2021, Decided
March 10, 2021, Filed

Editorial Information: Subsequent History

Affirmed by, Motion denied by Folk v. Bureau of Prisons, 2021 U.S. App. LEXIS 23798 (3d Cir. Pa., Aug. 11, 2021)

Editorial Information: Prior History

Folk v. Bureau of Prisons, 2019 U.S. Dist. LEXIS 165940, 2019 WL 4724799 (M.D. Pa., Sept. 26, 2019)

Counsel {2021 U.S. Dist. LEXIS 1} Omar S. Folk, Plaintiff, Pro se, White Deer, PA.

For Bureau of Prisons, Employee's and Medical Staff, PA-C Samuel Gosa, Elizabeth Santos/Stahl, Clinical Director, Brian Buschman, D. Parker, M. Magyar, R. Parkyn, C. Smith, Jennifer Holtz-Apple, PA-C Zalno, Co. Gentzyel, R&D Fausey, M. Washington, Defendants: Samuel Dalke, US Attorney's Office, Middle District of PA - Prisoner, Harrisburg, PA.

For David J. Ball, Defendant: Ari J. Sliffman, German, Gallagher & Murtagh, PC, Philadelphia, PA; Jacob C. Lehman, German Gallagher & Murtagh, P.C., Philadelphia, PA.

Judges: Robert D. Mariani, United States District Judge.

Opinion

Opinion by: Robert D. Mariani

Opinion

MEMORANDUM

I. Factual Background & Procedural History

Plaintiff **Omar Folk** ("Folk"), an inmate confined at the Federal Correctional Institution, Allenwood Medium, in White Deer, Pennsylvania ("FCI-Allenwood"), initiated this action pursuant to *Bivens*,¹ 28 U.S.C. § 1331. (Doc. 1). On March 9, 2020, the Court dismissed Folk's first amended complaint for failure to comply with Rules 8 and 20 of the Federal Rules of Civil Procedure. (Docs. 82, 83). The Court directed Folk to file a proposed second amended complaint that strictly complied with Federal Rules of Civil Procedure 8 and 20. (*Id.*). After being granted extensions of time, Folk filed his proposed second amended complaint {2021 U.S. Dist. LEXIS 2} on or about May 11, 2020. (Doc. 101). In the second amended complaint, Folk names approximately fifty-one Defendants. (*See id.*). The following Defendants have been served and have representation in this action: Samuel Gosa, Brian Buschman, Elizabeth Stahl, Beth Zalno, Geona Fausey, Milton Washington, Darlene Parker, Ryan Parkyn, Michael Magyar, Jennifer Holtzapapple, Charles S. Smith, and M. Gentzyel (collectively,

"BOP Defendants"), and Dr. David J. Ball, a private physician. The remaining newly named Defendants have not yet been served.

Presently pending before the Court is the BOP Defendants' motion (Doc. 104) to dismiss based on Folk's failure to comply with Rules 8 and 20 of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court will grant the motion to dismiss. The Court will also dismiss the unserved Defendants from this action.

II. Discussion

A. Federal Rules of Civil Procedure 8 and 20

Folk's 247-page proposed second amended complaint contains allegations of distinct acts committed by disparate parties spanning his entire seven-year term of incarceration. (Doc. 101). He names approximately fifty-one different Defendants and raises approximately ten different claims. (*Id.*).

Federal Rule of Civil Procedure 8 establishes the general rules of pleading. See Fed. R. Civ. P. 8. Rule 8(a) requires a pleading{2021 U.S. Dist. LEXIS 3} to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) speaks to factual allegations, requiring that "[e]ach allegation . . . be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). These rules task the Plaintiff to provide "the defendant notice of what the . . . claim is and the grounds upon which it rests." *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). This standard requires more than legal labels and conclusory assertions: a complaint must include enough facts to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

Folk's second amended complaint fails to meet these basic pleading requirements. The factual narrative spans seven years and involves fifty-one different individuals. Folk appears to list *all* of his alleged medical ailments, issues, and interactions beginning in 2013 through the present. (See Doc. 101). It is evident that Folk's second amended complaint "[l]eaves] the defendants having to guess what of the many things discussed" constitute causes of action, the legal theory on which those causes may rest, and the Defendants against whom each cause is lodged. See *Binsack v. Lackawanna Cty. Prison*, 438 F. App'x 158, 160 (3d Cir. 2011) (nonprecedential). Folk's second amended complaint thus fails to comply with Rule 8.

The lack of clarity in Folk's second{2021 U.S. Dist. LEXIS 4} amended complaint causes an additional problem. Rules 18 and 20 of the Federal Rules of Civil Procedure explain the circumstances in which multiple claims and multiple defendants may be joined. Rule 18 states that a party "may join . . . as many claims as it has against an opposing party." Fed. R. Civ. P. 18(a). Thus, when an action involves only one defendant, a plaintiff may assert every claim he has against that defendant, regardless of whether the claims are factually or legally related to one another, subject only to the limits of federal subject-matter jurisdiction. See 7 Charles Alan Wright & Arthur Miller, et al., *Federal Practice & Procedure* § 1582 (3d ed. 2019); see also Fed. R. Civ. P. 18(a).

When a plaintiff seeks to assert claims against *multiple* defendants, Rule 20 also comes into play. See Wright & Miller, *supra*, § 1655. Rule 20 governs permissive joinder of parties and explains that a plaintiff may only join multiple defendants in a single case if (1) "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences," and (2) "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). In other words, notwithstanding the broad joinder-of-claims language of Rule 18(a), a{2021 U.S. Dist. LEXIS 5} plaintiff may join multiple defendants in a single complaint only if he asserts at least one claim linking *all* defendants

that (1) arises out of the same transaction or occurrence and (2) involves a common question of law or fact. *Id.*; Wright & Miller, *supra*, § 1655. That is, there must be at least one common claim against all named defendants. Once a plaintiff satisfies this requirement, he may invoke Rule 18 to assert "as many claims as [he] has" against one or more defendants, even if those additional claims are unrelated to the common claim linking all defendants. See Fed. R. Civ. P. 18(a); Wright & Miller, *supra*, § 1655.

The Court finds that Folk's second amended complaint is in violation of Rule 20, as was his first amended complaint. On March 9, 2020, the Court issued a detailed Memorandum and Order directing Folk to file a second amended complaint that contained only the claims and Defendants that were related and involved the same transactions or occurrences and had a common legal and factual basis as required by Rule 20(a). (Docs. 82, 83). The Court also directed that all claims that were unrelated must be filed as separate actions. (Doc. 82). Instead of complying with the terms of the March 9, 2020 Memorandum and Order, Folk filed his second amended complaint which contains{2021 U.S. Dist. LEXIS 6} numerous allegations and are related only insofar as they all occurred at FCI-Allenwood. In the second amended complaint, Folk sets forth various, disjointed claims related to his dental treatment, delay in receiving teeth cleaning and tooth extraction, inadequate treatment for his gallbladder, inadequate treatment for his mental health condition, delayed physical therapy, permanent discoloration in his leg and foot, denial of his special diet, permanent nerve damage in his quadriceps, inadequate treatment for his quadriceps and knee injuries, and harassment claims. (See Doc. 101). The fifty-one named Defendants and their alleged conduct are essentially unrelated, and they do not meet the requirements of joinder. It is quite clear that Folk failed to comply with the March 9, 2020 Order with respect to joining unrelated claims and parties in one pleading.

Given that the alleged acts have been committed by disparate parties at different times over the course of seven years, and do not arise out of the same transaction, occurrence, or series of transactions or occurrences, the Court will dismiss the second amended complaint against the BOP Defendants.

B. The Unserved Defendants

Although{2021 U.S. Dist. LEXIS 7} in some instances it is appropriate for a Court to dismiss claims, *sua sponte*, against parties for whom dismissal is appropriate, but for whatever reason have failed to join in the motion, the Court declines to do so here because the remaining Defendants have not been served. See *Bryson v. Brand Insulations*, 621 F.2d 556, 559 (3d Cir. 1980) ("[F]or a court to grant judgment on the pleadings, *sua sponte*, is not error. The district court may on its own initiative enter an order dismissing the action provided the complaint affords a sufficient basis for the court's action."); *Ryle v. Fuh*, 820 F. App'x 121, 123-24 (3d Cir. 2020) (affirming District Court's granting of defendant's motion to dismiss, and dismissal against some defendants *sua sponte*, where the Court dismissed the complaint with prejudice). Under § 1915(e)(2)(B) of the Prisoner Litigation Reform Act, however, the Court has an obligation to dismiss a complaint "at any time the court determines" the complaint is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from suit. 28 U.S.C. § 1915(e)(2)(B) (emphasis added). See, e.g., *Brown v. Sage*, 941 F.3d 655, 659 (3d Cir. 2019) (en banc) (noting that under the PLRA the district court shall at any time dismiss any case which, *inter alia*, fails to state a claim upon which relief may be granted);{2021 U.S. Dist. LEXIS 8} *Lopez v. Smith*, 203 F.3d 1122, 1126 n.6 (9th Cir. 2000); *Bower v. Rey*, 2016 U.S. Dist. LEXIS 174356, 2016 WL 7324526 (M.D. Pa. Dec. 16, 2016); *Bracey v. Pa. Dep't of Corrs.*, 2012 U.S. Dist. LEXIS 69792, 2012 WL 1825828 (W.D. Pa. May 18, 2012) ("The Court's obligation to dismiss a complaint under the PLRA screening provisions is not excused even after defendants have filed a motion to dismiss."). That section applies to this

action because Folk is a prisoner proceeding *in forma pauperis*. See 28 U.S.C. § 1915(e)(2).

In determining whether a prisoner's complaint states a claim under § 1915(e)(2)(B), the Court is guided by the Rule 12(b)(6) motion to dismiss standard. Under Rule 12(b)(6), the Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (quoting *Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008)). While a complaint need only contain "a short and plain statement of the claim," Fed. R. Civ. P. 8(a)(2), and detailed factual allegations are not required, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 555, 570. "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (internal quotations omitted).

Folk's claims against the remaining unserved Defendants—approximately thirty-five individuals—suffer from the same defects{2021 U.S. Dist. LEXIS 9} articulated above. As such, the unserved Defendants are entitled to dismissal from this action.

III. Leave to Amend

When a complaint fails to present a prima facie case of liability, district courts must generally grant leave to amend before dismissing the complaint. See *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir. 2000). Specifically, the Third Circuit Court of Appeals has admonished that when a complaint is subject to dismissal for failure to state a claim, courts should liberally grant leave to amend "unless such an amendment would be inequitable or futile." *Phillips*, 515 F.3d at 245 (citing *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004)). For the reasons set forth above, the Court concludes that any further amendment would be futile, and Folk will not be permitted leave to file a third amended complaint. See *Jones v. Unknown D. O. C. Bus Driver & Transp. Crew*, 944 F.3d 478, 483 (3d Cir. 2019) (where inmate plaintiff "has already had two chances to tell his story . . . giving him further leave to amend would be futile.").

IV. Conclusion

The Court will grant the BOP Defendants' motion (Doc. 104) to dismiss the second amended complaint based on Folk's failure to comply with Rules 8 and 20 of the Federal Rules of Civil Procedure. The Court will also dismiss the unserved Defendants from this action.

A separate Order shall issue.

/s/ Robert D. Mariani

Robert D. Mariani

United States District Judge

Dated: March 10, 2021{2021 U.S. Dist. LEXIS 10}

ORDER

AND NOW, this 10th day of March, 2021, upon consideration of the BOP Defendants' motion (Doc. 104) to dismiss, and for the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED THAT:**

1. The motion (Doc. 104) is **GRANTED**.

2. The unserved Defendants are **DISMISSED** pursuant to 28 U.S.C. § 1915(e).
3. The remaining pending motions (Docs. 133, 134, 135, 138, 142, 145, 151) are **DISMISSED** as moot.
4. The Clerk of Court is directed to **CLOSE** this case.
5. Any appeal from this Order is **DEEMED** frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/s/ Robert D. Mariani

Robert D. Mariani

United States District Judge

Footnotes

1

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (holding that there exists an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights).

Appendix A

OMAR S. FOLK, Appellant v. BUREAU OF PRISONS, Employees and Medical Staff; PA-C SAMUEL GOSA; ELIZABETH SANTOS/STAHL, Clinical Director; DR. ROBERT E. PUCCELL; JOHN T. BURN; BRIAN BUSCHMAN; D. PARKER; M. MAGYAR; R. PARKYN; C. SMITH; JENNIFER HOLTZ-APPLE; DAVID J. BALL; PA-C ZALNO; CO. GENTZYL; R&D FAUSEY; M. WASHINGTON; L. HUNTER; J. POTOPE; T. GREELY; T. ANDRESS; T. CULLEN; J. MARIS; A. RODERMEL; A. DEWALT; C. CRAIG; NICK MAIZE; C. ERICKSON; E. STAHL; J. WALKER; C. CAIN; J. FREYNIK; D. NICOLLETTE; T. THOMAS
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
2023 U.S. App. LEXIS 12908
Nos. 22-3078 & 22-3208
March 2, 2023, Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
May 25, 2023, Opinion Filed

Notice:

NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE
RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE
COURT. PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1
GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

As Corrected May 29, 2023

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1} On Appeal from the United States District Court for the Middle District of Pennsylvania. (M.D. Pa. Civil Action No. 3:18-cv-02252). District Judge: Honorable Robert D. Mariani. Folk v. Bureau of Prisons, 2019 U.S. Dist. LEXIS 165940, 2019 WL 4724799 (M.D. Pa., Sept. 26, 2019)

Counsel

OMAR SIERRE FOLK, Plaintiff - Appellant (22-3078, 22-3208): , Pro se,
Minersville, PA.

For FEDERAL BUREAU OF PRISONS, Employee's and
Medical Staff, Defendant - Appellee (22-3078, 22-3208): Samuel S. Dalke, Esq., Navin Jani,
Esq., Office of United States Attorney Middle District of Pennsylvania, Harrisburg, PA.

For DAVID J. BALL, Defendant (22-3078, 22-3208): Jacob C.
Lehman, Esq., Ari J. Sliffman, Esq., German Gallagher & Murtagh, Philadelphia, PA.

Judges: Before: GREENAWAY, JR., MATEY, and FREEMAN, Circuit Judges.

Opinion

OPINION*

PER CURIAM

Omar Sierre Folk appeals from two orders of the District Court denying his post-judgment motions.

CIRHOT

For the reasons that follow, we will summarily affirm the District Court's judgment.

In 2018, **Folk** brought a civil rights action in the District Court regarding his medical care in prison. In 2021, the District Court dismissed his complaint. After **Folk** appealed, we affirmed the District Court's judgment, and Folk's subsequent petition for a writ of certiorari was denied. See Folk v. Bureau of Prisons, No. 21-1543, 2021 U.S. App. LEXIS 23798, 2021 WL 3521143, at *1 (3d Cir. Aug. 11, 2021), cert. denied, 143 S. Ct. 133, 214 L. Ed. 2d 39 (2022).

Folk then {2023 U.S. App. LEXIS 2} returned to the District Court. He filed a motion seeking reconsideration of the denial of a prior motion he filed to amend his complaint, as well as a motion for leave to file a certificate of merit regarding his claim of professional negligence. The District Court denied both motions, noting that Folk's appeal had concluded and that he presented no argument to support reopening the case. **Folk** then filed another motion for leave to file a certificate of merit, which was denied. **Folk** has appealed both decisions.¹

The District Court properly concluded that Folk's motions did not present an appropriate basis for reopening his case. See Budget Blinds, Inc. v. White, 536 F.3d 244, 255 (3d Cir. 2008); Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). **Folk** had an opportunity to make arguments about his underlying factual allegations throughout District Court proceedings and on appeal, and he has made arguments regarding filing a certificate of merit since early on in the District Court litigation. Cf. Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988) (explaining that motions for reconsideration "may not be used as a substitute for appeal"), overruled on other grounds by Lizardo v. United States, 619 F.3d 273, 276-77, 54 V.I. 827 (3d Cir. 2010).

{2023 U.S. App. LEXIS 3} Accordingly, we will summarily affirm the District Court's orders.²

Footnotes

*

This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We may summarily affirm a district court's decision if an appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

2

Folk's pending motions are denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK,

Plaintiff

v.

BUREAU OF PRISONS, *et al.*,

Defendants

Civil No. 3:18-cv-2252

(Judge Mariani)

ORDER

AND NOW, this 2nd day of November, 2022, upon consideration of Plaintiff's motion (Doc. 211) for leave to file a certificate of merit, and in light of the fact that this action was closed on March 10, 2021 (Docs. 165, 166)¹, well in advance of Plaintiff's present motion for leave to file a certificate of merit, **IT IS HEREBY ORDERED THAT** the motion (Doc. 211) is **DISMISSED**.



Robert D. Mariani
United States District Judge

¹ On August 11, 2021, the United States Court of Appeals for the Third Circuit affirmed this Court's March 10, 2021 Memorandum and Order. (Docs. 181, 187, *Folk v. Bureau of Prisons, et al.*, No. 21-1543 (3d Cir. Aug. 11, 2021)). Additionally, on October 3, 2022, the United States Supreme Court denied Plaintiff's petition for writ of certiorari. See *Folk v. Bureau of Prisons, et al.*, No. 21-7861 (2002).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK,

Plaintiff

v.

BUREAU OF PRISONS, *et al.*,

Defendants

Civil No. 3:18-cv-2252

(Judge Mariani)

FILED
SCRANTON

OCT 05 2022

PER

DEPUTY CLERK

ORDER

AND NOW, this 4th day of October, 2022, upon consideration of Plaintiff's motion (Doc. 196) for leave to file a third amended complaint, and upon further consideration of the Court's Memorandum and Order dated March 10, 2021 (Docs. 165, 166) closing this matter, and the Mandate of the United States Court of Appeals for the Third Circuit (Docs. 181, 187, *Folk v. Bureau of Prisons, et al.*, No. 21-1543 (3d Cir. Aug. 11, 2021)), affirming this Court's March 10, 2021 Memorandum and Order, **IT IS HEREBY ORDERED THAT** the motion (Doc. 196) is **DISMISSED** as moot.



Robert D. Mariani
United States District Judge

OMAR S. FOLK, Plaintiff v. BUREAU OF PRISONS, et al., Defendants
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
2021 U.S. Dist. LEXIS 44635
Civil No. 3:18-cv-2252
March 10, 2021, Decided
March 10, 2021, Filed

Counsel {2021 U.S. Dist. LEXIS 1} Omar S. Folk, Plaintiff, Pro se, White Deer, PA.

For Bureau of Prisons, Employee's and Medical Staff, PA-C Samuel Gosa, Elizabeth Santos/Stahl, Clinical Director, Brian Buschman, D. Parker, M. Magyar, R. Parkyn, C. Smith, Jennifer Holtz-Apple, PA-C Zalno, Co. Gentzyel, R&D Fausey, M. Washington, Defendants: Samuel Dalke, US Attorney's Office, Middle District of PA - Prisoner, Harrisburg, PA.

For David J. Ball, Defendant: Ari J. Sliffman, German, Gallagher & Murtagh, PC, Philadelphia, PA; Jacob C. Lehman, German Gallagher & Murtagh, P.C., Philadelphia, PA.

Judges: Robert D. Mariani, United States District Judge.

Opinion

Opinion by: Robert D. Mariani

Opinion

MEMORANDUM

Plaintiff **Omar Folk** ("Folk"), an inmate confined at the Federal Correctional Institution, Allenwood Medium, in White Deer, Pennsylvania ("FCI-Allenwood"), initiated this action pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).¹ (Doc. 1). The matter is proceeding via a second amended complaint. (Doc. 101). Named as Defendants are several individuals employed by the Federal Bureau of Prisons ("BOP"), and Dr. David J. Ball, a private physician. Presently pending before the Court is Defendant Ball's motion (Doc. 110) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Court will grant the motion{2021 U.S. Dist. LEXIS 2} to dismiss.

I. Allegations of the Second Amended Complaint

Folk alleges that Dr. Ball violated his Eighth Amendment rights and committed medical negligence for failing to adequately treat his knee and quadriceps injuries. (Doc. 101). Folk asserts that Dr. Ball treated him on at least seven occasions from 2013 to 2018. (*Id.* at ¶¶ 85, 87, 92, 201). Dr. Ball ordered three magnetic resonance imaging ("MRI") scans and two x-rays of Folk's leg and ordered nerve tests. (*Id.* at ¶¶ 85, 92, 201). Dr. Ball recommended injections to help alleviate Folk's pain, but Folk declined the injections. (*Id.* at ¶ 201). On April 29, 2016, Dr. Ball performed arthroscopic surgery on Folk's right knee. (*Id.* at ¶ 92).

Folk further alleges that he suffered a ruptured quadriceps muscle and Dr. Ball refused to perform surgery on the quadriceps. (*Id.* at ¶¶ 85, 92). Dr. Ball recommended that Folk participate in physical

therapy and use a stationary bike. (*Id.* at ¶ 92).

II. Legal Standard

A complaint must be dismissed under Fed. R. Civ. P. 12(b)(6) if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The plaintiff must aver "factual content that allows the court to draw the reasonable inference that the defendant{2021 U.S. Dist. LEXIS 3} is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

"Though a complaint 'does not need detailed factual allegations, . . . a formulaic recitation of the elements of a cause of action will not do.' *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241, 245 (3d Cir. 2012) (citing *Twombly*, 550 U.S. at 555). In other words, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 118 (3d Cir. 2013) (internal citations and quotation marks omitted). A court "take[s] as true all the factual allegations in the Complaint and the reasonable inferences that can be drawn from those facts, but . . . disregard[s] legal conclusions and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ethypharm S.A. France v. Abbott Laboratories*, 707 F.3d 223, 231, n.14 (3d Cir. 2013) (internal citations and quotation marks omitted).

Twombly and *Iqbal* require [a district court] to take the following three steps to determine the sufficiency of a complaint: First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement{2021 U.S. Dist. LEXIS 4} for relief. *Connolly v. Steel Valley Sch. Dist.*, 706 F.3d 209, 212 (3d Cir. 2013).

"[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 (internal citations and quotation marks omitted). This "plausibility" determination will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

However, even "if a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008).

[E]ven when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time.*Id.*

III. Discussion

Dr. Ball moves to dismiss the second amended complaint on three grounds: (1) Dr. Ball is not a federal actor subject to an Eighth Amendment claim;³ (2) failure to state an Eighth Amendment claim; and, (3) failure to obtain a certificate of merit for the professional negligence claim, see Pa. R. Civ. P. 1042.3. (Doc. 111).

A. Eighth Amendment Claim

Folk alleges that{2021 U.S. Dist. LEXIS 5} Defendant Dr. Ball was deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment, for failing to adequately treat his knee and quadriceps injuries. The Eighth Amendment prohibits the infliction of cruel and unusual punishment on prisoners. *Fuentes v. Wagner*, 206 F.3d 335, 344 (3d Cir. 2000). In the context of medical care, the Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). To establish an Eighth Amendment claim based on a prison's denial of medical care, an inmate must allege acts or omissions by prison officials that were sufficiently harmful to establish deliberate indifference to a serious medical need. See *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004); *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003). The relevant inquiry is whether the defendant: (1) was subjectively deliberately indifferent (2) to the plaintiff's objectively serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 834, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994); *Chavarriaga v. N.J. Dep't of Corr.*, 806 F.3d 210, 226 (3d Cir. 2015).

The "deliberate indifference" prong of the applicable Eighth Amendment analysis requires that the defendant actually know of and disregard "an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. Circumstantial evidence can establish subjective knowledge on the part of the defendant if it shows that the excessive risk was so obvious that the official must have known about it. See *Beers-Capitol v. Whetzel*, 256 F.3d 120, 133 (3d Cir. 2001) (citing *Farmer*, 511 U.S. at 842). The Third Circuit has found deliberate indifference when a prison{2021 U.S. Dist. LEXIS 6} official: "(1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197.

The second prong of the Eighth Amendment inquiry is whether the plaintiff's medical needs were serious. A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). Not every condition is a serious medical need; instead, the serious medical need element contemplates a condition of urgency, namely, one that may produce death, degeneration, or extreme pain. See *id.*

Moreover, because only egregious acts or omissions can violate this standard, mere medical malpractice cannot result in an Eighth Amendment violation. *White v. Napoleon*, 897 F.2d 103, 108-10 (3d Cir. 1990); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) ("[M]edical malpractice does not become a constitutional violation merely because the victim is a prisoner."). The Supreme Court has held that negligence or inadvertence alone do not rise to the level of a constitutional violation. *Whitley v. Albers*, 475 U.S. 312, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986). The Supreme Court has also noted that "Mack of due care suggests no more than{2021 U.S. Dist. LEXIS 7} a failure to measure up to the conduct of a reasonable person." *Daniels v. Williams*, 474 U.S. 327, 332, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). Where a state of mind is relevant, the complaint is inadequate if it merely contains conclusory allegations describing the requisite state of mind such as "intentionally" or "recklessly" without supporting factual allegations. *Wilson v. Seiter*, 501 U.S. 294, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

Prison medical authorities are given considerable latitude in the diagnosis and treatment of inmate patients, see *Young v. Kazmerski*, 266 F. App'x 191, 194 (3d Cir. 2008), and a doctor's disagreement with the professional judgment of another doctor is not actionable under the Eighth Amendment. See *White*, 897 F.2d at 108-10. Furthermore, it is well-settled that an inmate's dissatisfaction with a course of medical treatment, standing alone, does not give rise to a viable Eighth Amendment claim.

See *Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) ("[A]s long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights."); *Pearson v. Prison Health Serv.*, 850 F.3d 528, 535 (3d Cir. 2017) ("[W]hen medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care.").

Here, Folk acknowledges that Dr. Ball treated him on several occasions for his knee and quadriceps injuries. Dr. Ball evaluated Folk's quadriceps injury and determined that surgery would not be successful and could lead to severe and {2021 U.S. Dist. LEXIS 8} permanent nerve damage. (Doc. 101 ¶ 92). Folk maintains that Dr. Ball should have performed surgery on his quadriceps, rather than the alternate treatments prescribed by Dr. Ball. Over the course of his treatment of Folk, Dr. Ball ordered diagnostic testing, including MRIs, x-rays, and nerve tests. (*Id.* at ¶¶ 85, 92, 101). Dr. Ball also performed arthroscopic knee surgery, recommended pain injections, and referred Folk to physical therapy. (*Id.* at ¶¶ 92, 201).

Stripped to its essentials, Folk's claim is simply a dispute between an inmate and his doctor over the precise nature of his medical treatment. A showing of deliberate indifference requires more. See *Brown*, 903 F.2d at 278; *Pearson*, 850 F.3d at 535. Folk's own allegations provide that he received regular medical care from Dr. Ball, as well as other physicians and medical personnel. Although Folk disagrees with Dr. Ball about the proper course of treatment, such disagreement is not tantamount to a constitutional violation. The most that can be said of Folk's claim is that it asserts that Dr. Ball's professional judgment was deficient. As articulated above, this is not enough to rise to the level of a constitutional violation and courts will not second guess whether a particular {2021 U.S. Dist. LEXIS 9} course of treatment is adequate or proper. See *Parham v. Johnson*, 126 F.3d 454, 458 n.7 (3d Cir. 1997) (quoting *Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979)); *Spruill*, 372 F.3d at 235 (holding that "mere disagreement as to the proper medical treatment" is insufficient to state a constitutional violation). Moreover, there is no indication that Dr. Ball's actions were based on an ulterior motive beyond providing routine patient care. See *Spruill*, 372 F.3d at 237 (noting that in order to state a deliberate indifference claim, a plaintiff should in some way "connect[] his factual allegations to the alleged mental states" of the defendants). Accordingly, the Court will grant Dr. Ball's motion to dismiss the Eighth Amendment Claim.

B. Professional Negligence Claim

Defendant Dr. Ball next argues that Folk's professional negligence claim must be dismissed based on his failure to timely file a certificate of merit ("COM"); as required by Pennsylvania Rule of Civil Procedure 1042.3. (Doc. 111, pp. 15-16). Rule 1042.3 requires a plaintiff alleging professional negligence to file a COM within sixty (60) days of filing the complaint. Pa. R. Civ. P. 1042.3. The certificate must include one of the following: a written attestation by "an appropriate licensed professional" that there is a "reasonable probability that the care, skill or knowledge exercised or exhibited" by the defendant "fell below acceptable professional standards," {2021 U.S. Dist. LEXIS 10} and that this was the cause of the plaintiff's injuries; a statement that the claim against the defendant is based only on the professional negligence of those for whom the defendant is responsible; or a statement that expert testimony is unnecessary for the plaintiff's claim to proceed. Pa. R. Civ. P. 1042.3(a)(1)-(3). Failure to file a certificate of merit is fatal to a plaintiff's claim. (Pa. R. Civ. P. 1042.7). A defendant seeking to dismiss for want of a certificate must first file written notice of their intent to do so, no sooner than thirty (30) days after the complaint was filed. Pa. R. Civ. P. 1042.6(a).

As a threshold matter, the Court finds that Rule 1042.3 applies to this action. The Third Circuit has determined that the certificate of merit requirement is a substantive rule of Pennsylvania law,

applicable to federal court actions under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938). See *Liggon-Redding v. Estate of Robert Sugarman*, 659 F.3d 258 (3d Cir. 2011); *Chin v. Chrysler LLC*, 538 F.3d 272, 278 (3d Cir. 2008).

Pursuant to Pennsylvania law, "a court may consider two equitable exceptions when a plaintiff has improperly failed to file a COM: whether the plaintiff has substantially complied with Rule 1042.3 and whether the plaintiff has offered a reasonable explanation or legitimate excuse for failure to comply." *Ramos v. Quien*, 631 F. Supp. 2d 601, 611 (E.D. Pa. 2008) (citing *Womer v. Hilliker*, 589 Pa. 256, 908 A.2d 269, 276, 279 (Pa. 2006)). Federal courts have since applied these equitable considerations to determine if a plaintiff who fails to timely file {2021 U.S. Dist. LEXIS 11} a certificate of merit may be relieved from the requirement if he provides a reasonable explanation or legitimate excuse. See *Perez v. Griffin*, 304 F. App'x 72, 74 (3d Cir. 2008) (observing that "failure to comply with Rule 1042.3 is not fatal to claims of professional liability if the Plaintiff can show 'reasonable excuse' for the noncompliance") (quoting *Womer*, 908 A.2d at 279-80).

In the instant action, Folk was required to file a certificate of merit producing expert testimony that his medical treatment deviated from acceptable medical standards, and to show that the deviation was the proximate cause of any injuries. Folk's medical claims are not within the knowledge of lay persons, as they relate to allegations that Dr. Ball was negligent in providing medical care. Specifically, Folk claims that he was not provided adequate treatment for his quadriceps and knee injuries.³ This claim is clearly "an integral part of the process of rendering medical treatment" which involves professional medical judgment which is beyond the realm of the lay person. *Raige v. Holtzapple*, 2009 U.S. Dist. LEXIS 73624, 2009 WL 2588849, *4 (M.D. Pa. 2009) ("Where the conduct at issue constituted an integral part of rendering medical treatment, and involved diagnosis, care, and treatment by a licensed professional, . . . the action is one that is characterized as a professional {2021 U.S. Dist. LEXIS 12} negligence action requiring expert testimony."). It cannot be said that a decision of whether, when or what type of treatment should be provided "is so simple or the lack of skill or care is so obvious as to be within the range of experience and comprehension of even non-professional persons." *Hightower-Warren v. Silk*, 548 Pa. 459, 698 A.2d 52, 54 n.1 (Pa. 1997). Accordingly, a certificate of merit is required for the professional negligence claim.

Folk filed his second amended complaint on or about May 11, 2020. (Doc. 101). Folk did not file the requisite certificate of merit, did not request an extension of time in which to do so, and failed to show a reasonable explanation or legitimate excuse for failure to timely file a certificate of merit. Consequently, the Court will grant Dr. Ball's motion to dismiss the professional negligence claim based on Folk's failure to file a certificate of merit.

IV. Leave to Amend

When a complaint fails to present a prima facie case of liability, district courts must generally grant leave to amend before dismissing the complaint. See *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir. 2000). Specifically, the Third Circuit Court of Appeals has admonished that when a complaint is subject to dismissal for failure to state a claim, courts should liberally grant leave to amend {2021 U.S. Dist. LEXIS 13} "unless such an amendment would be inequitable or futile." *Phillips*, 515 F.3d at 245 (citing *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004)). For the reasons set forth above, the Court concludes that any further amendment would be futile, and Folk will not be permitted leave to file a third amended complaint. See *Jones v. Unknown D.O.C. Bus Driver & Transp. Crew*, 944 F.3d 478, 483 (3d Cir. 2019) (where inmate plaintiff "has already had two chances to tell his story . . . giving him further leave to amend would be futile.").

V. Conclusion

The Court will grant Defendant Ball's motion (Doc. 110) to dismiss. A separate Order shall issue.

/s/ Robert D. Mariani

Robert D. Mariani

United States District Judge

Dated: March 10, 2021

ORDER

AND NOW, this 10th day of March, 2021, upon consideration of Defendant Ball's motion (Doc. 110) to dismiss, and for the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED THAT:**

1. The motion (Doc. 110) is **GRANTED**.
2. The claims against Defendant David J. Ball are **DISMISSED**.

/s/ Robert D. Mariani

Robert D. Mariani

United States District Judge

Footnotes

1

In *Bivens*, the United States Supreme Court created a federal tort counterpart to the remedy created by 42 U.S.C. § 1983 as it applies to federal officers.

2

The Court only includes the allegations pertaining to Dr. Ball.

3

For purposes of this Memorandum, the Court finds that Dr. Ball is a federal actor subject to liability on the Eighth Amendment Claim. As such, the Court moves directly to the merits of the claims.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK,

Plaintiff

v.

BUREAU OF PRISONS, *et al.*,

Defendants

Civil No. 3:18-cv-2252

(Judge Mariani)

FILED
SCRANTON

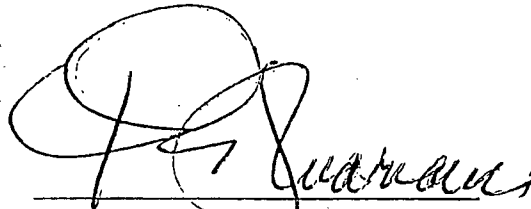
OCT 05 2022

PER

DEPUTY CLERK

ORDER

AND NOW, this 4th day of October, 2022, upon consideration of Plaintiff's motion (Doc. 196) for leave to file a third amended complaint, and upon further consideration of the Court's Memorandum and Order dated March 10, 2021 (Docs. 165, 166) closing this matter, and the Mandate of the United States Court of Appeals for the Third Circuit (Docs. 181, 187, *Folk v. Bureau of Prisons, et al.*, No. 21-1543 (3d Cir. Aug. 11, 2021)), affirming this Court's March 10, 2021 Memorandum and Order, **IT IS HEREBY ORDERED THAT** the motion (Doc. 196) is **DISMISSED** as moot.



Robert D. Mariani
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK,

Civil No. 3:18-cv-2252

Plaintiff

(Judge Mariani)

v.

BUREAU OF PRISONS, *et al.*,

Defendants

FILED
SCRANTON

OCT 25 2022

PER

DEPUTY CLERK

ORDER

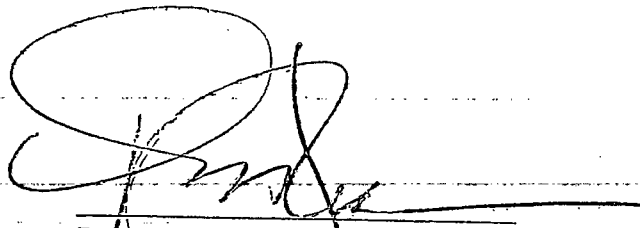
AND NOW, this 24th day of October, 2022, upon consideration of Plaintiff's motion (Doc. 205) for reconsideration of the October 4, 2022 Court Order (Doc. 203) dismissing as moot his motion for leave to file a third amended complaint¹, and in light of the fact that this action was closed on March 10, 2021 (Docs. 165, 166), well in advance of Plaintiff's motion for leave to amend, the Court finds no reason to revisit its October 4, 2022 Order and that Plaintiff has failed to demonstrate reliance on one of three major grounds needed for a proper motion for reconsideration, *North River Ins. Co. v. Cigna Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995) (stating that the three major grounds include: "(1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or], (3) the need to correct clear error [of law] or prevent manifest injustice."),

¹ On October 4, 2022, the Court dismissed as moot Plaintiff's motion for leave to file a third amended complaint. (Doc. 203). The Court noted that this action was closed on March 10, 2021, and that the United States Court of Appeals for the Third Circuit affirmed this Court's March 10, 2021 Memorandum and Order. Additionally, on October 3, 2022, the United States Supreme Court denied Plaintiff's petition for writ of certiorari. See *Folk v. Bureau of Prisons, et al.*, No. 21-7861 (2022).

but, instead, simply disagrees with the Court's disposition of this matter, **IT IS HEREBY**

ORDERED THAT:

1. The motion (Doc. 205) for reconsideration is **DENIED**.
2. The motion (Doc. 208) for leave to file a certificate of merit is **DISMISSED**.



Robert D. Mariani
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK,

Plaintiff

v.

BUREAU OF PRISONS, *et al.*,

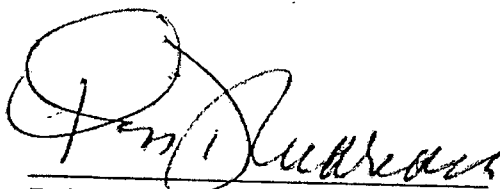
Defendants

Civil No. 3:18-cv-2252

(Judge Mariani)

ORDER

AND NOW, this 2nd day of November, 2022, upon consideration of Plaintiff's motion (Doc. 211) for leave to file a certificate of merit, and in light of the fact that this action was closed on March 10, 2021 (Docs. 165, 166)¹, well in advance of Plaintiff's present motion for leave to file a certificate of merit, **IT IS HEREBY ORDERED THAT** the motion (Doc. 211) is **DISMISSED**.



Robert D. Mariani
United States District Judge

¹ On August 11, 2021, the United States Court of Appeals for the Third Circuit affirmed this Court's March 10, 2021 Memorandum and Order. (Docs. 181, 187, *Folk v. Bureau of Prisons, et al.*, No. 21-1543 (3d Cir. Aug. 11, 2021)). Additionally, on October 3, 2022, the United States Supreme Court denied Plaintiff's petition for writ of certiorari. See *Folk v. Bureau of Prisons, et al.*, No. 21-7861 (2002).

Exhibit A
Doc. 196

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK	:	
	:	
Plaintiff,	:	THIRD AMEND COMPLAINT
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
	:	OR
	:	
	:	SETTLEMENT
UNITED STATES OF AMERICA et al.,	:	No. 3:18-cv-2252
	:	(Hon. Robert D. Mariani)
Defendant's	:	(Mag. C. Carlson)

PLAINTIFF'S THIRD AMEND COMPLAINT FOR
MOTION TO LEAVE AN AMEND UNDER FED. R.
CIV. P. 15(c)(1)(B) TO REPOSE SECOND
AMEND COMPLAINT 15(a)(2) DOC. 30

Plaintiff Omar S. Folk, for his Third Amend Complaint against defendant's United States as sole defendant for all defendant's in Doc. 30 under there individually and official capacities.

THIRD AMEND COMPLAINT

I. Parties in this Complaint.

A. Plaintiff:

1.) Plaintiff, Omar S. Folk was living in York PA. Plaintiff is currently a federal prisoner. Plaintiff was at all times, during the alleged events, housed as a federal prisoner at FCI Allenwood Complex.

B. Defendants:

2.) United States Sole defendant to follow in Doc. 30.

II. Basis For Jurisdiction.

3.) 28 U.S.C. § 1331 and 28 U.S.C. § 1346 states that "the District Court shall have original jurisdiction of all Civil Actions arising under the constitution, Laws, or Treaties of the United States."

Diversity Jurisdiction.

4.) 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441 states that, the District Courts shall original Jurisdiction of all Civil Actions where the matter in controversy exceed the sum value of \$75,000, exclusive of interest and costs, and is between (1) citizens of different states.

5.) Plaintiff believes his Action provides this Honorable Court with both Federal Question Jurisdiction and Diversity Jurisdiction.

III. Venue.

6.) It is important to note that if the Action is based on Diversity and a Federal Question, the venue provision for a Federal Question case applies. 28 U.S.C. § 1391(b) provides generally for venue in (1) a judicial District where any Defendant resides, if all Defendants reside in the same State, (2) a judicial District in which a substantial part of the events giving rise to claim occurred, or (3) a judicial District in which any Defendant may be found, if there is no District in which the Action may otherwise be brought.

7.) Plaintiff beleives that all Defendants reside in the State of Pennsylvania. All events giving rise to Plaintiff's claim arose in the State of Pennsylvania. Plaintiff is reasonably sure that all Defendants can be found in the State Pennsylvania at the present time.

IV. Statement of Claim.

8.) On or about 11-22-13 "United States": Folk encounter MD Brian Buschman for intake at USP Allenwood Allenwood. During this time

Folk had in his possession "Hinge-Knee-Brace" that had a lock-out mechanism for 120° and 90° degrees. MD Brian Büschman "United States" taken Folk "hinge-Knee-Brace" due to security reason and order consult to see Ortho Doctor Ball 11-26-13 and PA-C C. Craig was witness. At this point Dr. Ball order that Hinge-Knee-Brace be taken also and order Cane, Medium Sleeve and Physical Therapy. Folk receive Physical Therapy off and on since 2014 up to 4-1-15 X-Ray for right-knee ligament tare and infection/Osteomyelitis. On 4-21-15 MRI result shown V-quadricep and Patella tendon appear expanded and heterogenous and considerable artifact is present from the surgical sutures which limit our evaluation for continuity of the tendons. On 5-20-15 Folk encounter Dr. Ball and he order Folk to ride bike as altered instead of surgery. On 11-24-15 Folk encounter Dr. Ball again and Folk was still stating right-leg keep giving out and I'm suffering pain in right-knee. On 4-29-16 Folk encounter Dr. Ball in Geisinger Hospital Right-Knee operation was perform. 5-24-16 Folk encounter Dr. Ball and he mention how is your knee now after I taken allograft out of your right-knee and scrape black mineral off your knee bone. Also mention Dr. Ball "United States" I did not perform any treatment on right v-quadricep. On 7-5-16 Folk was called down to Health by PA-C Holtzapple for his Cane to be taken. On 8-10-16 Folk encounter PA-C Woods for "NMES" machine that will treat and send electric shocks to right-V-Quadricep muscle. On 10-12-16 receive X-Ray that resulted into Chronic Cortical irregularity inferior patella pole. On Dec. 7, 2016 Folk encounter PT Andrews and explain to PT Andrews I have not really been using NMES machine as I have been suffering excruciating pain in right-side and I'm waiting for "Cholecystectomy". On Dec. 15, 2016 Folk was

Transfer to FCI Allenwood Medium. On or about 1/10/17 Folk encounter PA-C Gosa pertaining to a new Patella-Knee-Brace and size 16 soft shoe. Folk original "Hinge-Knee-Brace" was taken on 11-22-13. On 4-26-17 Folk encounter PT Andrews and she noted some improvement in Right V-Quadricep area but still lacking in full extension and distal quad and knee extension AROM 5-10, promo. Folk explain to PT Andrews he still suffer pain in dent area of my right-leg. Then PT Andrews "United States" stated to Folk you have permanent deformity in right-leg and cannot do nothing eles for you Folk. On 11/16/17 Folk encounter "United States" PA-C Gosa requesting X-Ray due to pain in right-knee. On 12-8-17 Plaintiff receive X-Ray it shown mild to med DJD (R) Knee. On 3-26-18 Folk encounter Dr. Ball as he suffer ripped up "Strap-Knee-Brace" and pain Right V-Quadricep Dr. Ball check the V-Quadricep and rule out rupture quad and also noted Folk still has only 20° degrees full extension after all these years and order MRI also re-issue the "Hinge-Knee-Brace". On 4-24-18 Folk encounter PA-C Gosa and he provided Folk with "Hine-Knee-Brace".. On 5-30-18 MRI was provided only on Right V-Quadricep. On 7-24-18 Folk encounter Dr. Ball in regard to operation of Right V-Quadricep. Dr. Ball mention if you don't suffer permanent damage or not I will not perform surgery as you have permanent deformity in that area of V-quadricep anyway. Folk assist on re-attaching the right V-quadricep. On 11-5-18 Folk receive BP-11 response pertaining to "Hinge-Knee-Brace" being to big. This complaint point to PA-C Gosa, Dr. Ball, AHSA R. Parkyn and Dr. T. Cullen. On 11-7-18 8:57am Plaintiff sent email Acting PA-C Zalno inregards to Large-Hinge-Knee-Brace and size 16 soft shoe. on 3:10pm Folk encounter Geona Fausey after leaving the law library and entering the shack to be patted down. At this point

Folk was target for retaliation by R&D Mailroom staff by asking Folk to take off his "Hinge-Knee-Brace" and order to walk through the metal detector. Folk stated clear I had this "Hinge-Knee-Brace" since 4-24-18 and was never told to take it off. R&D Mailroom Fausey stated who is your PA-C Gosa but who is Acting for him is PA-C Zalno. At this time R&D Mailroom Ms. Fausey called down to Health Service and spoke with PA-C Powanda in regards to another inmate who was told not to take off his hinge-brace. But when spoke to PA-C Zalno she stated Folk can take off his "Hinge-Knee-Brace". At this time this began continues doctrine of retaliation thereafter. On 5pm Rec move Folk encounter R&D Mailroom Ms. Fausey and CO. M. Gentzyel as Ms. Fausey "United States" retaliated on Folk once again by ordering Folk to take off "Hinge-Knee-Brace" and walk through metal detector without any support on right-knee or right-V-Quadricep. Then suffer unsanitary condition and emotional Distress and Deliberate Indifference.. On 11-10-18 Folk encounter M. Gentzyel who follow the lead in R&D Fausey by ordering Folk to take off his "Hinge-Knee-Brace" "United States" sole defendant liable 100%. On 11-13-18 7:30am Folk encounter A-W Washington during mainline explaining about to him about "Hinge-Knee-Brace" and LT John Doe present. Folk explain that M. Gentzyel order me take off my "Hinge-Knee-Brace" on 11-10-18 and stated Folk you were getting sassy with my guard. On or about 10:30am Co.. Murphy on 3A came looking for Folk to be sent down to R&D Mailroom to be re-profile but it was not successful due to amount of metal in "Hinge-Knee-Brace". On or about 11-19-18 Folk encounter M. Gentzyel who retaliated on Folk by tell me to take "Hinge-Knee-Brace and walk through the metal detector around 11:30am and Folk refuse to go

through the shack. Folk now go and put on his "Strap-Knee-Brace" do to being retaliated on. Now Folk go down to Law Library at 12:30pm. But early recall occur because "Fog" now Folk leaving from Law Library and entering the shack and was harass about his mesh bag by Co. Mattingly when Folk stated clear you are retaliating on me. At this point Folk request to see LT and was order to the bench by Mattingly. Folk walk to the bench and M. Gentzyel came over and stated lets go inside and then demand Folk to strip search. Folk stated am I going to the SHU at this time M. Gentzyel stated no. Folk was deprive of his Fourth Amendment ~~rights when third time squatting after being completely naked this Co.~~ M. Gentzyel order Folk to squat and say "LET ME SEE IT" "ASS HOLE". . Folk fourth amendment rights, first amendment rights, eighth amendment rights also fifth amendment. At this point Folk spoke to LT Walker and another LT John Doe "United States" sole defendant. Then Folk was told by Capt. Hunter to go back on the 3A block. On 6-4-19 Folk encounter M. Gentzyel during control movement while patted down he squeeze Folk left-leg after know Folk suffer bacterial infection. Folk was retaliated on due to to "Hinge-Knee-Brace" because Capt. Hunter order all staff to patdown search Folk. On 6/19 Folk experience lump on Right-Eye Pterygium, causing puss in right eye and pain. On 7/30/19 Folk encounter PA-C Gosa and Dr. T. Cullen as I explain first to PA-C Gosa during a chronic care visit that the lump is on my eye-lid then same to Dr. T. Cullen. On 9-24-19 the Optometrist stated it is Chalazion order eye drops. This occurred from M. Gentzyel squeezing Folk left-leg during control movement because he was authorize to wear "Hinge-Knee-Brace" instead of taken it off during the control movement. On 7-30-19 Folk encounter **"United States"** M. Gentzyel on 3A after Folk left and went

down to law library this Co. M. Gentzyel trash Folk cell and confiscated
mailling stamps and Folk "NMES" battery. When he bacame aware Folk file
to ADA for help and Prison Soceity advocate John. Folk suffer retaliation
emotional distress, Fourth Amendment violation,, Fifth Amendment viola-
tion under Class of One violation. On 8-13-19 Folk encounter SIS Cain,
LT Walker and Co. M. Gentzyel upon being harass in the shack after
being patted down by Co. Stigar couple times in the morning. Now during
control movement in after noon hours Folk was confronted by Co. M.
Gentzyel as he order to Co. Stigar to not patdown Folk as she "Female"
and she should not patdown search you Folk. At this time Folk stated
you not patting me down as last time you squeeze my left-leg and now
I suffer lump on right-eye lid. Folk walk away and M. Gentzyel order
Folk to LT office. At this time Folk was harass and retaliated on as
he was strip naked and had legal mail taken by SIS Cain. Folk suffer
from Fourth Amendment violatïon, emotional distress, retaliation,
eighth amendmentviolation and Negligence for unsanitary condition.
Thisastem again from Hinge-Knee-Brace as the Capt. Hunter stated Folk
will be patted down. Now M. Gentzyel makes sex remark in regards , to
a women staff patting down Folk in the shack fifth amendment violation.
On 9-19 Folk encounter Dr. Ball and refuse his service. On 3-24-20
Folk encounter Dr. Ball now this time he order Folk to see Nerve
Specialist and receive a new "Hinge-knee-Brace" when before Folk
last visit 7-24-18 he refuse operation of right v-quadricep. When
the facts Folk encounter PT Andrews and she noted that Folk Right V-
Quadricep was not firing in lower position. On 6-2-20 Folk encounter
Nerve Specialist Mr. Hallstrom "United States" during this encounter
Folk receive a nerve test on each leg which establish function with

impulse accept for Right V-Quadricep when needle was place into that area Folk receive no response at all even when Nerve Specialist Mr. Hallstrom stated to lift up right-foot and right leg. Folk stated still no response and Mr. Hallstrom stated you need to Ortho Doctor and stated "Something is Wrong"! It could be due to scar tissue! Folk mention the PT Andrews stated in the past before 3-26-18, Folk right V-Quadricep muscle was firing but still had complication. Then stated to further use NMES machine to build up muscle mass. Folk further mention to Mr. Hallstrom that on 2-11-20 PT Andrews stated clear to Folk right V-Quadricep has no function and you need to see Dr. Ball and Folk mention Dr. Ball does not want to perform surgery. Then PT Andrews stated you can see another Ortho Doctor on the board of Geisinger Medical Hospital. On 6-23-20 Folk encounter Dr. Ball while house in SHU with handcuff due to retaliation reasons. At this time Dr. Ball stated lets look at the Nerve Test results which at this point he noted that Mr. Hallstrom said it was normal. Folk directed his attention that this is impossible while LPN Bloom was present as witness "United States"-sole defendant under § 4042(a)(2). Then Folk has explain in the record up above therefore it's no need to move any further. On 4-27-21 Folk encounter Dr. Ball again in regards to his new "Hinge-Knee-Brace" as Folk was house in SHU and was not allowed to wear his "Hinge-Knee-Brace" during 6-23-20 appointment by Dr. Ball. This further led to to MRI for left-knee having Creptis and cracking in knee. On 5-21-21 Folk encounter M. Gentzyel in SHU before outside transit making remarks to harass and intimidate Folk for outside trip. Folk has made clear before M. Gentzyel retaliated on number of reason upon "Hinge-Knee-Brace".

On 8-27-21 Folk encounter Dr. Lynn who stated Folk did not suffer any infection although Folk just receive medication Keflex which cure Folk infection in left-toes and left thigh. This was from diabetes Type II when on 5-21-21 doctor noted 1.3cm marginal spurring, multifocal chondrosis with fissuring and ulceration, and lateral tibia subluxation. Then in the same time Folk pink-eye in left-eye, resolve after taking the Keflex from 7-30-21 to 8-6-21.

9.) On or about 8-22-14 Folk encounter Robert Purcell Jr. for Endoscopy which tested positive by Pathologist "Eosiniphilic-Esophagitis" and Hiatal Hernia also Reflux Esophagitis abdominal pain from greasy foods along with nausea and vomiting and continuing PPI RX. On 10-21-15 7:17am Folk encounter Dr. Burn and witness Jane Doe now during this time Folk explain about pain in right-side sharp stabbing pain when eating greasy foods. At this time Dr. Burns stated little ones are the ones needed remove "GALLSTONES". Folk stated I need my gallbladder remove or something because I have been going through this for years without no improvement. Dr. Burns order for Carafate and Folk mention I had this medication down in county on 6-13-13 for 145 days 1g before each meal. Folk also mention to Dr. Burns I had prescribe course of treatment that was record back in DCP 7-20-12 pointing to Memorial Hospital York PA. 17402 on 7-19-12 when experiencing pain in stomach burning pain and nausea and vomiting that night after eating pizza and sausage from Car Auction and Fast food place. On 12-2-15 Folk encounter Robert Purcell Jr. for Endoscopy test and was rule again from positive biopsy "Eosiniphilic-Esophagitis". Folk direct the Ultrasound 7-16-15 size 18x15x9mm "Gallstone Size". On 5/2/16 18x16mm "Cholelithiasis". On 10-7-16 Folk encounter Dr. Buschman at Chronic

Care Visit when explaining to him Folk still suffer burning pain in stomach and stabbing needle pain after eating foods out of the Kitchen in USP Allenwood. At this point I tell Dr. Buschman if you don't do something I will be force to file Civil Action as this been going on up here for almost three years. On 10-12-16 Folk encounter Dr. Bradley J. Mudge and witness John Doe in PA Office. Doctor Mudge stated what did they say was wrong and Folk mention they stated I have Eosiniphilic-Esophagitis, Reflux-Esophagitis and Hiatal Hernia also uclers. At this point Dr. Mudge stated what is wrong you need your gallbladder remove. On 2/3/17 Folk undergo surgery at Evangelical Community Hospital Do. Bradley J. Mudge remove Gallbladder and One Single Yellow Green Egg-Shaped Calculus and Cystic Artery. On 3-30-17 Folk encounter PA-C Gosa explaing to him why did'nt I see Dr. Mudge about my after care of my gallbladder removal. I have bloatedness and cramps. "Something is Wrong" I need a upper GI check. At this point PA-C Gosa stated Dr. Mudge do not what to see you Folk. On 6-1-17 Folk file a grievance on PA-C Gosa for not ordering a consult with Dr. Mudge as he still had pain on right-side with bloatedness and cramps. On 6-19-17 Folk receive Ultrasound of abdomen which reviewed my liver size went down one cm from previous Ultra. United States is sole defendant and Clinical Director Stahl. On 12-13-17 Folk encounter Casemanager Parker Team and spoke about custody classification points when the facts Folk points drop after seeking medical attention for gallbladder removal. At this time Ms Parker became made and put Folk on FRP restriction and did not provide a special diet as commissary was Folk only food supply after having gallbladder remove. Retaliation, Emotional Distress, Negligence

Fifth Amendment Violation as Folk suffer discrimination under due process of law when other inmate not Folk color was not subject to FRP restriction on 12-13-17 for not paying FRP fine. On 12-20-17 Folk encounter PA-C Gosa during Chronic Visit and Folk request once again for outside Dr. Mudge and Upper GI to rule pain on right-side and bloatedness, cramps after, gallbladder removal with the request for Special Diet. All was denied by PA-C Gosa. On 4-9-18 Folk encounter Dental Chief Barkauskas and HYG. Heap who stated to Folk my teeth look good. On 7-30-18 Folk encounter HYG. Ms. Heap upon this X-Ray Ms. Heap "United States" stated to Folk your No. 12 tooth is "Black" during this encounter Folk mention he did not suffer any pain after teeth clean. But HYG. Ms. Heap further stated to Folk you need No. 12 extracted. At this point Folk stated I will have this tooth remove. All this occurred from not receiving special diet and suffer from Diabetes. On 8-13-18 Folk encounter "United States" Dentist Wright who extracted No. 12 tooth. On 8-20-18 Folk encounter Dentist Wright after seeing him on two other occasion 8-15-18 and 8-17-18. Now Folk seeks to receive antibiotics due to face swelling and pain after Folk spoke with LPN Bloom who mention to Folk your face is swollen. At this point Dentist Wright did not want to prescribe antibiotics until Folk stated clear I will file BP-8 on you and go down to mainline and address my concerns to Warden. On 9-19-18 Folk sent email to PA-C Gosa explaining I have been waking up in need of urinating almost five times a night. Before this Folk also send Dr. Cullen directing my issue of moles growing under armpits and after gallbladder remove and still having pain

water only for the days. On 6-12-19 Folk encounter Dr. Burns at Giesinger Hospital for his procedure of Endoscopy and Colonoscopy that reveal irritation more so because season was salty and evaluate my high blood pressure. Then this was also the reason of Folk looking like ate up with cuts like a knife was slicing my inside. Beside the point of suffer MRSA and other bacterial infection that was cause by Diabetes. On 6-25-19 Folk recommended Nutrient Supplement drink and was denied by Regional Pharmist. On 8-9-19 Folk encounter Dietitian from Health Service under "United States" who denied Folk recommendation for Nutrient Supplement drink and Special Diet. By stating Folk receive special diet out in commissary. On 9-24-19 Folk encounter Optemtrist after seeing Dr. Cullen and PA-C Gosa in July 7-2019 at this time Folk right-eye-lid was swollen and a pimple was on the inside. Folk belief it was MRSA or bacterial infection. Which was to be from not receiving a special diet and Diabetes. On 12-10-19 Folk encounter Optemtrist after taking Napcon which did not work and now Optemtrist rule out Chazalion. Which once again Folk suffer from Diabetes and do from not receiving Special Diet. On Jan. 31, 2020 Folk encounter M. Gentzyel who harass and retaliated on Folk for filing about his medical condition. PA-C Gosa was present during this encounter did nothing to remove this officer from outside trip. On. 3-10-20 Folk was denied once again medical treatment for CT-Scan and retaliated on with negligence and deliberate indifference also emotional distress. On 6-9-20 Folk encounter M. Gentzyel who denied Folk medical treatment and by lying on Folk for threatening him to assault him and his fellow guards supported false accusation that led Folk to SHU. Folk did

40 days in SHU and lost good time credit for 27 days. After the facts Warden Howard and Capt. Hunter knew Folk had file multiple grievance against this staff. On 7-16-20 Folk was release from SHU and "NMES" machine was stolen. Folk suffer Fourth Amendment violation, Retaliation, Emotional Distress and Deliberate Indifference and Negligence. This led to Folk filing multiple grievances even after trying either to receive new "NMES" or to have "NMES" machine remove from "MDS" chart by medical staff PA-C Gosa who still continue to not schedule Physical Therapy consult by PT Ms. Andrews. This occurred from Folk filing Second Amend Complaint Doc. 101 and United States response on 6-4-20 Doc. 104. On 3/13/20 Folk encounter Ophthalmologist stated to Folk you should stop taking "Napcon" eye drop due to consuming for long time can lead to eye lost. Then further prescribe Folk steroid drop and mention he could cut the lump out but it would be a positive for MRSA or bacterial infection "United States" mention about Pterygium and Chazalion". Folk stated clear after left-leg was squeeze M. Gentzyel "United States" on June 4, 2019, thereafter my right-eye-lid swollen up. Folk suffer retaliation, negligence, emotional distress and deliberate indifference from Diabetes and stemming from Folk denied special diet. On 3-26-20 Folk encounter "United States" Ms. Parker who denied Folk Special Diet instead place Folk on restriction and denied Folk food to eat. On 6-17-20 Folk encounter PA-C Fabian and Dr. Burns while house in SHU. Folk explain to them I ate greasy potatoes in SHU and started to suffer diarrhea and blood in stool. Folk encounter Co. Ames for help and next morning PA-C Gosa was encounter now PA-C Gosa did not want take specimen of stool and blood on tissue in clear bag. Which PA-C Gosa denied to take. Dr. Burn order Folk to take colest-

ipol 1 GM to help make stool solid. Folk suffer from not receiving special diet that cause diabetes. On 7-10-20 Folk encounter Dr. T. Cullen and witness who check Folk blood pressure and weight. Folk explain after Dr. T. Cullen mention to Folk you are healthy. But did not address why the weight loss happen so fast as Folk stated I don't work out. Then Folk stated this stemming from tooth extraction in Aug. 13, 2018 and wound care from 9-20-18 up to 10-24-18 which was from MRSA, Cellulitis and being denied special diet. In the event Folk suffer from retaliation, emotional distress, negligence and deliberate indifference, Diabetes. On 8-14-20 Folk encounter Dr. Burn and PA-C Fabian, at this time Folk has started gaining weight back and Dr. Burns stated ok you don't have colitis and Crohn's. Folk explain this stem from bacterial infection MRSA. Now PA-C Fabian stated after Folk mention he need special diet and she mark it. Folk was retaliated, on because last page it was stratch out. On 8-25-20 Folk denied consult to see Dietitian due to retaliation, emotional distress, negligence, and deliberate indifference after being prescribe recommendation by Dr. Burns and PA-C Fabian for special Diet. Folk was never called down for Telemed visit. On 9-2-20 Folk encounter "United States" CT-Scan and during the exam it was Hiatal Hernia was present. On 9-21-20 Folk encounter "United States" M. Gentzyel at Evangical Hospital in Lewisburg PA upon undergoing Cystoscopy by "United States" Urologist Dr. Knight. Folk ask Dr. Knight did he do a biopsy on penis to, rule out Reddish/Purple discoloration which Folk belief stem from vasculitis/ Diabetes. Urologist Dr. Knight mention only in regards to the prostate being size of a 50 cent peice. Folk encounter "United States" Ms. Parker for special diet still continue to retaliate on Folk upon

payment. Folk encounter "United States" as he suffer Emotional Distress, retaliation and deliberate indifference. On 3-2-21 # 24 for complication pain in lower teeth. This stem from Diabetes is cause of this and denied special diet to treat disease. On 5-21-21 Folk encounter "United Staes" and it was documented that CT-Scan with contrast did not show any deformities. But Folk previous CT-Scan without contrast, shown Hiatal Hernia and in previous EGD was shown the same. Folk suffer retaliation, emotional Distress, Deliberate Indifference and negligence. Folk MRI on 5-21-21 "United States" shown 1.3cm cyst or tumor on left-knee that stem from diabetes. On 7-1-21 Folk encounter "United States" # 15B tooth Filled due to diabetes stemming, from denied special diet. On 7-19-21 Folk receive teeth clean by HYG Heap "United States" on 7-20-21 Folk encounter "United States" on 7-20-21 Folk encounter "United States" PA-C Gosa, Folk now had issue with his left-toes. This occurred from diabetes and not receiving special diet. On 7-30-21 Folk encounter United States PA-C Gosa after filing grievance to be seen and Unit Team Mr. Divers stated for Folk to go down to medical after I explain about toes and left-leg. When previous Folk encounter PA-C Gosa he threaten to put Folk in SHU on 7-27-21. Now upon Folk encounter "United States" PA-C Gosa after complaining that left-knee swollen real bad and red spot on left-thigh that was warm to the touch. Folk stated to PA-C Gosa to give him antibiotics now he order Keflex which Folk mention just months ago he need. Folk suffer diabetes and denied special diet and retaliation, emotional distress, negligence and deliberate Indifference. See(Egbert v. Boule, Case No. 21-147(Cert. Granted Nov. 5, 2021)(Whether a Bivens remedy should be available for a federal agent's vilation of a person's First Amendment and Fourth Amendment

violation).

V. STATUTE OF LIMITATION

10.) For Constitutional tort claims and Bivens Action, Courts borrow the statute of limitations for personal torts and suits from the state where the claim arose. *Hardin v. Straub*, 490 U.S. 536, 538, 109 S.Ct. 1998, 104 L.Ed. 2d 582(1989); See(*Fortune v. Bitner*, 2004 U.S. Dist. Dist. Lexis 33519 No. 3:cv-01-0111 MD PA. Feb. 5, 2004) Third Amend Complaint was met under Fed. R. Civ. P. 15(c)(2)); See(*Pub. Health Equip. & Supply Co. v. Clarke Mosquito Control Prods*, 410 Fed. Appx. 738; 2010 U.S. App. Lexis 25241 No. 10-50193 5th Cir. Dec. 9, 2010); *Lane v. Varner*, 2007 U.S. Dist. Lexis 61260 No. 3:cv-07-0177 MD PA Aug. 21, 2007)(Second Amend Complaint superceded original and First Amend Complaint);, See(*Cotton v. Alleghany County, et al.*, 2012 U.S. Dist. Lexis 144058 No. 11-969 WD PA Oct. 4, 2012)(Third Amend Complaint granted out of the same conduct, transaction and occurrence as alleged in the original complaint and other requirements of Fed. R. Civ. P. 15(c) were, thus, the claim related back also inmate adequately stated a Monell claim against the county); See(*SEPTA v. Orrstown Fin. Servs.*, 12 F.4th; 2021 U.S. App. Lexis 26503; 110 Fed. R. Servs. 3d(Callaghan) 1356 No. 20-2829 3d Cir. Sept. 2, 2021)(District Court properly granted plaintiff leave to amend because Fed. R. Civ. P. 15(c) allowed amendment of pleading after expiration of repose period, subject to Rule's ordinary constraints, because Rule's "relation-back" doctrine left legislatively mandated deadline intact and did not disturb defendant's vested rights to repose in case. Which First Amend and Second Amend would have met the relevant statute of repose). See also (*Buttolph v. Prime Care Medical INC*, 750 Fed. Appx. 168; 2018 U.S. App.

Lexis 26636 No. 17-1651(3d cir. 9/19/18); See(Washington v. Link, 750 Fed. Appx. 84; 2018 U.S. App. Lexis 25418 No. 18-1791 3d Cir. Sept. 7, 2018)(NMES has been stolen since 6-9-20 due to Retaliation as the same and MDS chart states Folk has possession of Tens Unit that is False PA-C Gosa continue retaliated). See(Romero v. Ansan, 2020 U.S. App. 29194 No. 19-1056 3d Cir. Sept. 15, 2020)(Hinge-Knee-Brace delayed for retaliated reason for Folk requesting smaller Hinge-knee-Brace).

VI. Injuries.

- 1.) Denied (Special Diet) to treat Diabetes Type II or I that cause Tooth Extraction's 2014 to 2018 and teeth filling up to 2021, Osteomyelitis, MRSA, Gallbladder Remove and One Single Yellow Green Egg-Shaped Calculus, Left-leg Purple-Reddish-Black in Coloration, Toe Nails Black, Loss of Vision in both eye's, Eosinophilic-Esophagitis; Blood Clots, Black in Coloration in teeth on jaw-bones and knee's, ulcers and erythema.
- 2.) Insufficient Physical Therapy without "Hinge-Knee-Brace" cause surgery in April 29, 2016 R-Knee, Right V-Quadricep Rupture Mar. 27, 2018, receive new "Hinge-Knee-Brace" on 4-24-18 to 11-5-18 BP-11 Response, Retaliation Strip Search, Left-Leg Squeeze cause permanent Reddish/Purple discoloration Penis, Right Eye-Lid Lump and lost of eye sight, Quarter Searches stolen NMES battery 7-30-19 and NMES machine permanent stolen 7-16-20, SHU lost of 27 good time days, Right-Lower V-Quadricep permanent damage 2-11-20 and 6-2-20.

VII. Exhaustion of Administrative Remedies.

11.) Plaintiff's claims arose while he was confined at "USP Allenwood" and "FCI Allenwood Medium" a courts have explained that a failure to exhaust administrative remedies may be excused where where certain conditions are met. Under Ross v. Blake, 136 S.Ct. 1850, 195 L.Ed 2d 117(2016), the proper inquiry is "whether administrative remedies were actually available to the aggrieved inmate." and "three circumstances" make such remedies unavailable, even if

those remedies are "officially on the the books"; First, an administrative remedy may be unavailable when" it operates as a simple dead end-with officers unable or consistently unwilling to provide any relief to aggrieved inmates." Second, "an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use." In other words, "Some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it." Third, an administrative remedy may be unavailable "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." See (Korba v. Haystings, 2021 U.S. App. Lexis 16970 No. 19-2826 3d Cir. June 8, 2021)(The district court erred by concluding that a curative amendment as to the claims against the prison officials would be futile based upon the prisoner's failure to exhaust his administrative remedies because the prisoner's adequately supplemented his complaint to show that he had exhausted his administrative remedies order vacated and matter remanded); See (Gooch v. Young, 24 F. 4th 624; 2022 U.S. App. Lexis:20421 No. 21-1702 7th Cir. 24, 2022)(District Court erred by granting summary judgment on prisoner's Eighth Amendment claim for alleged failure to exhaust administrative remedies under 42 U.S.C.S § 1997(e) B-9 grievance form. Further, prisoner attested that he feared for his life if he continued with the BOP's administrative-remedy process as guards told him that he was going to die if he complained about prison staff order vacated, and case remanded).

VIII. Relief Sought

12.) As approximate result of the Defendant's tortious acts, Plaintiff suffered irreparable harm for which there is no longer adequate remedy at law. Plaintiff prays this Honorable Judge Mariani would find

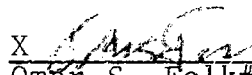
that Plaintiff's is entitled to the following award: 36.5 Million Dollars.

(1) Plaintiff will consolidate under Rule 42(a) § 1983, § 1346 and § 1331 civil action's under No. 3:cv-13-474 and 3:18-cv-2252 also FTCA claims Doc. 66,169 and 174.

IX. Previous Lawsuits.

13.) Plaintiff file previously lawsuit's in No. 3:07-cv-1499 and 3:cv-13-474 that don't count for three strikes under PLRA remedy.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5 day of May, 2022 X 
Omar S. Folk#70338-067
FCI Allenwood Medium
P.O. Box. 2000
White Deer, PA. 17887

Via Mail

Navin JaniAUSA
ACCOUNT
228 Walnut St.
Suite 220
P.O. Box. 11754
Harrisburg, PA. 17108

Exhibit B
Doc. 197

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OMAR S. FOLK

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Respondent.

Civil No. TRT-NER-2021-07321
No. TRT-NER-2022-00788
No. TRT-NER-2022-00197
No. TRT-NER-2022-00790
No. TRT-NER-2022-01230
No. TRT-NER-2021-05374

No. 3:18-02252
(Judge Mariani)
(Magistrate Judge Carlson)

PLAINTIFF'S FILE A NOTICE OF INTENT
TO PURSUE UNDER ORDINARY NEGLIGENCE
TO PROCEED ON CERTIFICATE OF MERIT

AND NOW, Here Comes Plaintiff's Omar S. Folk Pro-Se, who avers the following relief which be explain below:

PA. R. C. P. No. 1042.3("Rule 1042.3") provides in pertinent part; Rule 1042.3(a)(3). Certificate of Merit

- (a) In any action based upon an allegation that a licensed deviated from an acceptable professional standard, the attorney for the Plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by attorney or party that either
- (1) an appropriate licensed professional has supplied a written statement that there exist a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, or
 - (2) the claim that the defendant deviated from acceptable professional standards is based solely on allegations that other licensed professional for whom this defendant is responsible deviated from an acceptable professional standard,
 - (3) expert testimony of an appropriate licensed professional unnecessary for prosecution of the claim.

Upon this Folk will move forward under PA. R. C. Civ. P. 1042.3(a)(3), bring forth the negligence claims arising from FCI Allenwood Medium. These event will proceed with TRT-NER-2022-00790, TRT-NER-2022-05374, TRT-NER-2022-00788, TRT-NER-2022-00197, TRT-NER-2022-1230 and TRT-NER-2021-07321. See(Smith v. Friend Hospital, 2007 PA. Super 188, 928 A. 2d 1072, 1074-75 (PA. Super. Ct. 2007))(quoting PA. R. Civ. 1042.3).

Plaintiff will consolidate Doc. 66, 169 and 174 to be joined by other FTCA claims up above. The record should follow Plaintiff suffer Diabetes Type II due to not receiving special diet. Amongst otherthings Plaintiff suffer re-occurring injuries which consolidate each FTCA claim as one. Then the record in other Circuit Court's states "COM" can be waive as a split in Circuit's Court state a failure to file "COM" is not grounds for dismissal. See(Pledger v. Lynch Case No. 18-2213 U.S. App. Lexis 21587 (4th Cir. July 21, 2021); See(Gallivan v. US, 943 F.3d 291, 294(6th Cir. 2019); See(Young v. US, 942 F.3d 349, 351(7th Cir. 2019); See(Shady Grove Orthopedic Associates P.A. v. Allstate Insurance C., 599 U.S. 393, 130 S.Ct. 1431, 176 L.Ed. 2d 311(2010)(Supreme Court decided "COM" is not warranted to plead action in Federal Court); See(All Plaintiffs v. All Defendants, 645 F.3d 329, 337(5th Cir. 2011); See(Shields v. US, 436 F. Supp. 3d 540, 543-44(D. Conn. 2020);See(Corley v. US, 2021 U.S. App. Lexis 25504 2d Cir. Aug. 25, 2021); See,also(Petrus v. United States, No. cv-16-53, 2022 WL 910263, at *2(D.V.I. Mar. 29, 2022)(Savage J.) (finding the reasoning of these Circuit courts persuasive and holding that Minnesota's certificate of merit requirement did not apply in FTCA case).

Plaintiff's assertion is develope upon each matter differently as TRT-NER-2022-00790; Folk follow in denial Special Diet after being place

on FRP restriction that cause Folk to be denied commissary in Doc. 197 at 11 and 16. This in action is not to be supported by expert testimony but credibility as "United States" cause Folk to suffer emotional distress, retaliation, negligence and deliberate indifference. With the evidence of discrimination when other inmates did not pay any FRP payment at all from other ethnic background which develop into class of one discrimination under 1st Amendment and Fifth Amendment Rights after the facts Folk was denied Special Diet after suffering Diabetes Type II or I. See(Doc. 169 to consolidate with Doc. 197).

~~Plaintiff's assertion is develop upon each matter differently~~ as TRT-NER-2021-05374; Folk turn to Physical Therapy Doc. 174 at 3Line 5-14 and Doc. 197 at 2-8. Folk denied prescribe course of treatment for "Hinge-Knee-Brace" with physical therapy that led to Folk substituting Cane, Medium Sleeve and Electric device "NMES" machine. "United States" realize physical therapy led to multiple operation and permanent damage to Right V-Quadricep and Folk not fully being able extend Right Leg. Folk conclusion is not subject on Malpractice but negligence and credibility issue as "United States" authorize Folk to receive "Hinge-Knee-Brace" on 4-24-18 after taking it on 11-22-13 and realizing Folk still cannot receive the full range in Right-Leg. Then right-quad has permanent nerve damage after Mr. Hallstrom place needle in Folk lower Right V-Quadricep that had no response at all after multiple times needle was place all the way down in lower right v-quadricep. Folk suffer deliberate indifference, emotional distress, negligence and retaliation. See(Doc. 174 at 3 Line 5-23 to consolidate with Doc. 197).

Plaintiff's assertion is develop upon each matter differently as TRT-NER-2022-00788; Folk follow in recommendation by Ophthalmologist

to stop taking "Napcon A" for long period of time can lead to lost of sight. When the record also clear Folk suffer from Diabetes that cause Osteomyelitis, Cellulitis and MRSA as Folk suffer toes, leg's and teeth infection's all do to Folk not receiving Special Diet.

Folk turn to Doc. 174 at 2 Line 6-22 and Doc. 197 at 9 Line 6-7 and at 12-16 this cause Folk to suffer deliberate indifference, emotional distress, negligence and retaliation. See (Doc. 174 at 2 Line 23-27, at 3)

Plaintiff's assertion is develop upon each matter differently as TRT-NER-00197; Folk contention is directed on credibility when PA-C Gosa has a clear mindset to deflect and cause Folk to suffer from not receiving Special Diet which could treat Diabetes illness. See (Doc. 197 at 10-12). Then PA-C Gosa failure to document Folk high blood pressure condition, heart condition timely when record is very simple PA-C Gosa failed to provide Folk with medical treatment from Dr. Mudge for consult since 2-3-17 up to present time. As Folk suffer (Ketone) in urine with combination of blood in urine and protein in urine. These clinically finding are from Hyperglycemia and Hypoglycemia as Folk suffer waking up with need to urinate multiple times at night and in the morning need to consume sugar as my sugar is low due to Diabetes Type II or I. Which Folk to this day has not receive any medication as such metformin or Endocrinologist consult but this deadly disease run in each side of my family and high blood pressure as well as heart failure. Now PA-C Gosa should be remove from PA when causing Folk to suffer retaliation, emotional distress, negligence and deliberate indifference. See (Doc. 66, Doc. 169 to consolidate with Doc. 197).

Plaintiff's is develop upon each matter differently as TRT-NER-2022-01230; Folk follow in the failure to protect when Folk

denied medical treatment for outside medical treatment. See(Doc. 197 at 7-8 and 13-14 "Third Amend Complaint"). At this point Folk position turn on credibility fact finding and "United States" is liable to ordinary negligence when Folk suffer "High Blood Pressure" during encounter which led to Kidney failure and Folk house in SHU after being retaliated on filing about medical treatment. Folk lost 27 days good time credit and prescribe medical treatment also legal mail tampering which should follow in Discovery under "Admission" and Deposition. Folk suffer deliberate indifference, emotional distress, retaliation and negligence.

Plaintiff assertion is develop upon each matter differently as TRT-NER-2021-07321; Folk turn to Third Amend Complaint Doc. 197 at 16, which should proceed in ordinary negligence and deliberate indifference as Folk suffer Diabetes Type II. When record follow to up above in the Third Amend Complaint to follow with teeth, toes infection, black toe nails, both knee's and leg's infection's that is clearly enable to not rule out this disease. Therefore Malpractice is off the table when this fact finding should be resolve on credibility and discovery. Furthermore Folk direction is very simple (Osteomyelitis) is hand to hand with (Diabetes). Which is the cause of the deadly disease when Folk suffering black in coloration from jawbone(teeth), legs and knee's all the way down to toe nails. Folk suffer deliberate indifference, negligence, emotional distress and retaliation when being denied diagnose for Diabetes all these years BOP Breach Duty Care § 4042(a)(2) denying medical treatment, suitable living condition. See(Dinks v. J. Potope, et al., 2020 U.S. Dist. Lexis 139477 No. 4-19-cv-1460 MD PA. Aug. 5, 2020)(Folk suffer same issue with only the facts of being denied Glucose Check by health providers and

soft shoes Apex were approve). These conclusion up above are guided by Folk theory in alleging administrative failure rather than medical malpractice, the complaint sound in ordinary negligence. As Plaintiff will also satisfy licensed professional is unnecessary for prosecution of the claims." According to Plaintiff the gravamen of his claims is that his prison health care providers neglected to ensure that he received adequate medical treatment, something which is apparent without the necessity or benefit of an expert witness in this case. Plaintiff unequivocally asserts that his claims of negligence are so patently obvious, that expert testimony is not required, pursuant to Pa. R. C.P. 1042(3)(a)(3). In Liggon-Redding v. Estate of Sugman, 659 F.3d 258; 265 (3d Cir. 2011), a case involving another pro-se Plaintiff, the Court of Appeals provide the district court with specific guidance regarding the course of the district court should follow when considering a pro-se filing to a notice under Rule 1042.3 which stated pursuant to rule 1042.3 (a)(3) that expert testimony was not required to prove that Plaintiff's claim. Which the facts also clear it's split in other circuit's that "COM" is not needed to be filed.

Wherefore Mr. Folk prays Honorable Judge Mariani "GRANTED"
"Plaintiff's File A Notice of Intent To Pursue under Ordinary Negligence
To Proceed on Certificate of Merit."

Date: May 9, 2022

Respectfully Submitted,



Omar S. Folk#70338067
FCI Allenwood Medium
P.O. Box. 2000
White Deer, PA. 17887

Exhibit C

70338-067

HNL
Lab Medicine

HNL Lab Medicine
704 Roble Road, Allentown, PA 18109-9110
(610) 402-4221
www.HNL.com

PATHOLOGY REPORT

Patient: FOLK, OMAR SIERRE

Provider:

DOB/Sex: (Age: 41) M
Address: PO SCHUYLKILL
PO BOX 700
MINERSVILLE, PA 17954
Phone:
Acct/ MRN: 110593298 / 1001099695
Location: C7435 Schuylkill Endoscopy Center
Colled Date: 4/17/2023 Receive Date: 4/19/2023
Copy to: No Copy to physicians specified

AMRIT P NARULA
48 TUNNEL ROAD
STE 104
POTTSVILLE, PA 17901

S23-23364

DIAGNOSIS :

A. GE JUNCTION, BIOPSY:

- Gastroesophageal junctional mucosa with acute inflammation and marked intraepithelial eosinophilia (up to approximately 200 eosinophils per high power field); (see comment)
- Negative for intestinal metaplasia or dysplasia

COMMENTS:

The differential diagnosis would include eosinophilic esophagitis and reflux esophagitis, although the marked degree of eosinophilia would favor the former. Clinical and endoscopic correlation are recommended.

Electronically Signed Out by Christopher Sebastiano, MD.

q: 4/24/2023
Finalized: 4/24/2023
Billing Fee Codes: A: LEV428305

Clinical History & Preoperative Diagnosis:

Pre-Op: Dysphagia

Post-Op: Esophageal ulcers, Biopsied; Normal stomach; Normal examined duodenum; LA Grade D reflux esophagitis; 1 cm hiatal hernia

GROSS DESCRIPTION:

A. The specimen is submitted in formalin and labeled with the patient's name, date of birth, and "esophagus gastroesophageal junction multiple esophageal ulcers and esophagus gastroesophageal junction multiple esophageal ulcers" on the accompanying protocol and specimen container. The specimen consists of four tan soft tissue fragments measuring 0.2 cm to 0.3 cm in greatest dimension. The entire specimen is submitted in one cassette. Cold Ischemia Time: Not given

In: 4/20/2023
TH
Electronically Released at 794 Roble Road, Allentown, PA 18109
Lab Director: Caitlin Murphy, PhD

Stain Notes:
For H and E stained sections, a pathologist has verified the stain as acceptable.

One or more of the stains performed may have been developed and its performance characteristics determined by either HNL Lab Medicine or an outside reference laboratory. Stains such as this have not been cleared or approved by the U. S. Food and Drug Administration. The FDA has determined that such clearance or approval is not necessary. This test is used for clinical purposes and should not be reported as investigational or for research. This laboratory and our reference laboratories are certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) as qualified to perform high complexity clinical laboratory testing.

04/25/23 8:21 AM

MRN: 1001099695

Acct:
110593298

Name: FOLK, OMAR SIERRE

Page 1 of 2

FCI/FPC Schuylkill
P.O. Box 700
Minersville, PA 17954
EX. 2

Attach. A, p.53