

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-CV-02203-RM-KLM

SALVADOR MAGLUTA,

Plaintiff,

V.

CHARLES DANIELS, Former Warden, FCC Florence, in his individual and official capacities;
DAVID ALLRED, DO, Former Clinical Director, FCC Florence, in his individual and official capacities;
GEORGE SANTINI, MD, Clinical Director, FCC Florence, in his individual and official capacities;
LISA McDERMOTT, Assistant Health Services Administrator, FCC Florence, in her individual and official capacities;
TERESA NEHLS, Former Nurse Practitioner, FCC Florence, in her individual and official capacities;
NIXON ROBERTS, DDS, Dentist, FCC Florence, in his individual and official capacities; and
JOHN DOE #1 – 15, Unknown Staff, FCC Florence, in their individual and official capacities;

Defendants.

FOURTH AMENDED COMPLAINT AND JURY DEMAND

Salvador Magluta, through his attorneys, Adam Frank and Faisal Salahuddin of FRANK & SALAHUDDIN LLC and Paul Petruzzi of THE LAW OFFICES OF PAUL D. PETRUZZI, P.A., respectfully alleges for his Fourth Amended Complaint and Jury Demand as follows:

INTRODUCTION

1. This is an action for declaratory, injunctive, and monetary relief against Defendants Former Warden Charles Daniels, Former Clinical Director David Allred, DO, Clinical Director George Santini, MD, Assistant Health Services Administrator Lisa McDermott, Former Nurse Practitioner Teresa Nehls, Dentist Nixon Roberts, DDS, and John Does one through fifteen. All Defendants

encountered Plaintiff through their current or former employment at the Federal Correctional Complex (FCC) in Florence, Colorado.

2. Between March 27, 2013 and the present, Defendants have repeatedly exhibited deliberate indifference to Plaintiff's serious medical conditions involving his kidneys and his dental and oral health. As a result, Plaintiff spent years in constant severe pain. Defendants acted individually and as part of a conspiracy with their fellow Defendants. Defendants' knowing, intentional, and willful conduct keeping Plaintiff in a state of near-constant severe pain imposed an atypical and significant hardship on Plaintiff such that Plaintiff has served, and is serving, his sentence in a manner that is qualitatively different from that of other prisoners.

3. Defendants' conduct violated Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment. Defendants' conduct deprived Plaintiff of a liberty interest without due process of law in violation of the Fifth Amendment.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 US 388 (1971), the Administrative Procedure Act (APA), 5 U.S.C. §§ 702, *et. seq.*, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. *See Simmat v. United States Bureau of Prisons*, 413 F.3d 1225, 1228 (10th Cir. 2005).

5. Plaintiff seeks declaratory relief, injunctive relief, and damages as set forth herein. 28 U.S.C. §§ 2201-02; Fed. R. Civ. P. 65. Plaintiff seeks relief in the nature of mandamus, 28 U.S.C. § 1361.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391. All of the events alleged herein occurred in the State of Colorado, and all of the parties were residents of and/or domiciled in the State at the time of the events giving rise to this litigation.

PARTIES

7. Plaintiff Salvador Magluta is a federal prisoner incarcerated in this District at the Federal Correctional Complex (FCC) Florence, ADX. At all times relevant to the subject matter of this litigation, Mr. Magluta was a resident of and domiciled in the United States and Colorado.

8. Defendant Charles Daniels was the Warden at FCC Florence at all times relevant to this complaint. Warden Daniels was responsible for the care, custody, and treatment of all inmates in his charge. Warden Daniels was personally involved in, and personally directed his fellow Defendants' unconstitutional activities and conduct set forth in this complaint. Warden Daniels' conduct and statements in the presence of his subordinates created an environment that encouraged other correctional and medical employees to further violate Plaintiff's constitutional rights. Defendant Daniels is presently the Warden at USP Terre Haute.

9. Defendant David Allred, DO, was a physician employed as the Clinical Director of Medical Services at FCC Florence ("FCC"). Dr. Allred was responsible for the care and treatment of inmates at FCC until approximately January 2014. Dr. Allred performed or supervised Plaintiff's "Chronic Care" medical encounters, reviewed Plaintiff's medical test results and x-rays, supervised the diagnostic and treatment procedures his subordinates conducted on Plaintiff, made medical diagnoses of Plaintiff, prescribed medication to Plaintiff, and approved prescriptions for Plaintiff recommended by subordinates. Until January 2014, he made the ultimate decisions concerning whether and when Plaintiff would receive medical care. Defendant Allred acted with deliberate indifference to Plaintiff's serious medical needs.

10. Defendant George Santini, MD, is a physician who has been employed as the Clinical Director of Medical Services at FCC since approximately January 2014. Since then, he has been responsible for the medical care of inmates at FCC Florence. Dr. Santini performed or supervised Plaintiff's "Chronic Care" medical encounters, reviewed Plaintiff's medical test results and x-rays,

supervised the diagnostic and treatment procedures his subordinates conducted on Plaintiff, made medical diagnoses of Plaintiff, prescribed medication to Plaintiff, and approved prescriptions for Plaintiff recommended by subordinates. After January 2014, he made the decisions concerning whether and when Plaintiff would receive medical care. Defendant Santini acted with deliberate indifference to Plaintiff's serious medical needs.

11. Defendant Lisa McDermott is employed as the Assistant Health Services Administrator at FCC. At all relevant times, she supervised Defendant Nehls and others engaged in the delivery of health care services at FCC. At all relevant times, Ms. McDermott was responsible for ensuring that the medical needs of inmates at FCC are met and that prompt and appropriate medical/dental care and treatment is provided to inmates, including Plaintiff. Defendant McDermott acted with deliberate indifference to Plaintiff's serious medical needs.

12. Defendant Teresa Nehls was employed as a Nurse Practitioner at FCC Florence. At all times relevant to this complaint, Ms. Nehls was responsible for assessing the medical needs of inmates in her charge. She is and was responsible for addressing Plaintiff's specific medical care and treatment as a direct provider of medical care at FCC. Defendant unconstitutionally delayed and denied Plaintiff medically necessary care and treatment. Defendant Nehls acted with deliberate indifference to Plaintiff's serious medical needs.

13. Defendant Nixon Roberts, DDS, is and was a dentist employed by FCC. He was responsible for the delivery of dental care services to Plaintiff. Defendant Nixon delayed and denied medically necessary dental care and treatment. Defendant Roberts acted with deliberate indifference to Plaintiff's serious medical needs.

14. Defendants John Doe #1 - #15 are employed in various capacities at FCC with direct responsibility for ensuring plaintiff's adequate care, safekeeping, custody, and treatment. Defendants John Doe #1 - #15 acted with deliberate indifference to Plaintiff's serious medical needs.

STATEMENT OF FACTS

I. Relevant Facts Pre-Dating Defendants' Unconstitutional Actions

15. On March 1, 2013, Plaintiff was incarcerated at USP Terre Haute.

16. On March 1, 2013, unknown officers with United States Bureau of Prisons (“BOP”) searched Plaintiff and his cellmate’s cell. These officers found two cellular phones. After this search, Plaintiff and his cellmate were both placed in the Special Housing Unit (“SHU”).¹

17. On or about March 19 and 20, 2013, plaintiff complained to institutional medical staff at USP Terre Haute that he was experiencing severe abdominal pain. USP Terre Haute employee Nurse Danna Dobbins prescribed Plaintiff Acetaminophen/Codeine pills for the pain.

18. On March 20, 2013, medical Staff at USP Terre Haute performed an x-ray on Plaintiff. According to USP Terre Haute employee Dr. Justin McClain, the x-ray showed a 9 millimeter calcification as well as other calcifications in Plaintiff’s renal fossa. Dr. McClain’s opinion was that the calcification likely represented kidney stones.

19. Plaintiff was transferred from USP Terre Haute to FCC Florence on March 27, 2013.²

20. When Plaintiff arrived at FCC Florence, at the direction of Defendants Allred and Daniels, Nurse Craig Thompson conducted a medical intake appointment with Plaintiff.

21. During Nurse Thompson’s medical intake appointment with Plaintiff, Plaintiff advised Nurse Thompson about the 9 mm calcification on his left kidney. Plaintiff told Nurse Thompson that this was extremely painful.

¹ Plaintiff is currently challenging the validity of the findings, conclusions, and sanctions imposed by the Discipline Hearing Officer (DHO). *See Magluta v. Oliver*, Case No. 15-CV-01749-RM.

² Within FCC Florence, Plaintiff was transferred to ADX on September 4, 2013.

22. Plaintiff also advised Nurse Thompson about Plaintiff's current need for dental care to address oral infections, numerous cavities, chipped teeth, and other oral issues that were causing Plaintiff extreme pain.

II. Defendants' Deliberate Indifference to Plaintiff's Serious Medical Needs Concerning His Left Kidney

23. Defendant Allred read Nurse Thompson's report and signed it.

24. On April 5, 2013, Defendant Allred, completed Plaintiff's medical intake screening. This involved Defendant Allred reading Plaintiff's medical records from his prior facilities and conducting his own physical examination.

25. Based on Defendant Allred's review of Plaintiff's medical records and physical examination, Defendant Allred noted that Plaintiff was in renal failure. He diagnosed Plaintiff with a kidney stone in his left kidney. He also noted that Plaintiff suffered from PTSD, anxiety, depression, diabetes, ulcerative colitis, and hypertension.

26. Defendant Allred told Plaintiff that Plaintiff's kidney stone was too large to pass on its own and could only be removed through medical intervention.

27. On April 10, 2013, Defendant Nehls conducted a physical examination of Plaintiff and reviewed Plaintiff's medical records. Based on Defendant Nehls' review of Plaintiff's medical records and physical examination, she wrote that Plaintiff had a kidney-ureter-bladder ("KUB") x-ray at USP Terre Haute, and that this x-ray showed that Plaintiff had a 9 mm kidney stone in his left kidney. Defendant Nehls also noted that Plaintiff had recently had blood in his urine.

28. For the first time of what would become regular falsification of Plaintiff's medical records, Defendant Nehls falsely wrote that Plaintiff was in only mild pain. Plaintiff's pain was extreme.

29. Both Defendants Allred and Nehls told Plaintiff that they agreed on the required course of treatment: the calcification on Plaintiff's left kidney had to be promptly removed by surgery due to

its size and the risk of renal failure if left untreated. Defendants Allred and Nehls each separately assured plaintiff that such treatment would commence “soon.”

30. In spite of their knowledge that Plaintiff had a kidney stone that was too big to pass on its own – a serious medical condition – Defendants Allred and Nehls and later Defendant Santini withheld treatment from Plaintiff for 16 months.

31. Plaintiff spent these 16 months in near-constant excruciating pain.

32. Plaintiff did not receive surgery to address the kidney stone until July 15, 2015.

33. After conclusion of the FCC intake screening process conducted by Defendants Nehls and Allred, Plaintiff continued to experience frequent and unrelenting pain related to Plaintiff’s kidney. Plaintiff’s pain got worse over time, as the pain descended to his testicle. Plaintiff experienced persistent painful urination, had almost constant nausea, and suffered pulsating headaches.

34. Plaintiff regularly told Defendant Daniels about his symptoms, in writing and in person.

35. During the 16 months that Defendants withheld treatment, Plaintiff regularly communicated the extent of his suffering to each Defendant when each Defendant interacted with Plaintiff.

36. From March 27, 2013 until September 4, 2013 when Plaintiff was transferred within FCC Florence to ADX, Defendants Daniels and McDermott did weekly “rounds” during which they spoke with Plaintiff. At each one of these weekly “rounds” meetings, Plaintiff directly informed Defendants Daniels and McDermott of the extent of his ongoing pain and his need for treatment.

37. Defendant McDermott regularly came by Plaintiff’s cell and spoke to Plaintiff in between the weekly “rounds” visits. At these additional visits, Plaintiff again advised Defendant McDermott of his ongoing pain and need for medical treatment.

38. During one “rounds” visit early in Plaintiff’s incarceration at FCC Florence, Plaintiff told Defendant McDermott about his extreme pain, and that it was worse than normal. Defendant McDermott told plaintiff “absent a heart attack, you have to wait on the list.”

39. For every day of Plaintiff's ongoing incarceration, he has taken medication. As a result, he has been visited daily by a succession of John Doe Defendants as the John Doe Defendants passed out medication. Plaintiff made daily complaints to these John Doe Defendants concerning the extent of his pain and his need for medical treatment.

40. During the 16 months during which the Defendants withheld treatment, the Defendants regularly verified the continued existence of Plaintiff's serious medical condition – a kidney stone in his left kidney that was too big to pass on its own – and yet continued to refuse to treat it. These medical verifications were performed by Defendants Nehls, Allred, and/or Santini.

41. For example, on April 18, 2013, Defendant Nehls ordered a KUB x-ray on Plaintiff. This x-ray was performed on April 26, 2013. According to Dr. Arie I. Moscovitz, the radiologist who looked at the x-ray, the x-ray showed no change from the March 20, 2013 x-ray.

42. On May 13, 2013, a Defendant John Doe performed and a Defendant John Doe interpreted an ultrasound of Plaintiff's kidney. Defendant John Doe falsely claimed that in spite of the plain evidence on the x-ray, this ultrasound showed no kidney stone.

43. On June 22, 2013, Defendant Nehls examined Plaintiff. She falsely documented Plaintiff's pain as a 4 on a scale of 1 to 10 and as only sporadic. In reality, Plaintiff had reported his pain as extreme and constant, like being stabbed with a knife. Defendant Nehls requested that Plaintiff receive a CT scan of his kidney. Defendant Allred co-signed Defendant Nehls' request.

44. In addition to the pain from the 10 mm kidney stone, in approximately June 2013, Plaintiff experienced increasingly severe and unrelenting pain in his abdomen, kidney, back, and testicle. Plaintiff had a constant urge to urinate but had extreme difficulty doing so due to the intense burning sensation brought on by urination. Plaintiff reported these symptoms to Defendants Nehls and Allred during the medical appointments described herein, as well as through repeated medical request forms known informally as "cop-outs."

45. Every time Plaintiff sent a “cop-out,” he wrote and handed in two additional copies. These were each always marked to go to Defendant McDermott and Defendant Daniels.

46. In July 2013, Plaintiff’s pain and suffering from became so profound that Plaintiff became unable to stand. Plaintiff’s persistent and repetitive pleas and requests for care and treatment at medical appointments with Defendants Allred and Nehls, at in-person visits on rounds with Defendants Daniels and McDermott, and though “cop-outs” picked up by John Doe Defendants were ignored and met with deliberate indifference.

47. On July 11, 2013, Defendant Allred informed Plaintiff that in spite of the medical need for a CT scan of plaintiff’s kidney, Defendant Allred – in his role as the head of the “Utilization Review Committee” – would not allow Plaintiff to be transported to a hospital for the CT scan.

48. A kidney CT scan is a prerequisite before a surgeon will operate on a kidney stone. Denying Plaintiff the scan denied Plaintiff treatment for his extremely painful and serious medical condition.

49. On July 16, 2013, Nurse Craig Thompson responded to Plaintiff’s urgent request for medical attention. He took a urine specimen from Plaintiff and tested it. Plaintiff’s urine sample revealed large amounts of blood in the urine as well as an infection. Nurse Thompson administered intravenous treatments to Plaintiff for infection control and reported this development to Defendants Allred and Nehls.

50. On July 16, 2013, Plaintiff told Nurse Thompson the extent of his excruciating pain: “I’ve been having this pain in my left abdomen which goes to my back for the past 4 days. I can’t stand it anymore.” Plaintiff gave the same information to Defendant Nehls on July 17, 2013.

51. On July 17, 2013, Defendant Nehls saw Plaintiff. She continued to falsely document Plaintiff’s pain as mild (3 out of 10) when Plaintiff actually reported it as severe. She ordered another KUB x-ray. Unsurprisingly, this x-ray showed that Plaintiff still had a 10 mm kidney stone. Defendant Nehls also learned that Plaintiff still had blood in his urine.

52. On July 17, 2013, Plaintiff was present in the room with a Detention Officer when Nurse Cink spoke to Defendant Nehls and an x-ray technician about Plaintiff's x-ray. In this conversation (overheard by Plaintiff and the Detention Officer), Defendant Nehls learned that the kidney stone had shifted down and sideways. This change made Plaintiff's condition even more severe and painful. In the kidney stone's new position, it blocked Plaintiff's ureter even further.

53. During this conversation, Defendant Nehls stated that Plaintiff needed to go to the hospital.

54. Defendant Nehls, Nurse Cink, and the x-ray technician then left the room to discuss their treatment plan for Plaintiff further. Plaintiff has learned that during this conversation, Defendant Nehls spoke with Defendant Daniels. Defendant Daniels told Defendant Nehls that Plaintiff would not be allowed to leave FCC Florence for treatment.

55. When Defendant Nehls returned to the room, she told Plaintiff that he would not be going to the hospital. Instead, Defendant Nehls told Plaintiff that Defendant Nehls would use a "shotgun approach" to treating Plaintiff's kidney stone.

56. Though Defendants Daniels, Nehls, and Allred knew that Plaintiff's kidney stone required immediate treatment at a hospital, it would be another six months before they would allow Plaintiff to receive this necessary treatment.

57. Plaintiff learned from multiple Detention Officers that there were orders in place that Plaintiff would not be transported out of FCC Florence for treatment. These orders came from Defendants Daniels and McDermott.

58. Defendant Nehls falsified an entire medical encounter with Plaintiff on July 18, 2013. Defendant Allred co-signed this fraudulent medical record.

59. On July 21, 2013, Plaintiff submitted an urgent "cop-out" to Defendants McDermott, Daniels, and Allred. In this "cop-out," he reiterated his extreme pain and his request for treatment.

60. On July 21, 2013, Plaintiff sent a separate “cop-out” to Defendant Nehls. In it, he once again reiterated his constant excruciating pain and his immediate need for treatment.

61. On July 24, 2013, Defendant Nehls saw Plaintiff. In this encounter, she again falsified Defendant’s level of pain. Though the medical records demonstrate that Plaintiff’s chief complaint that day was “pain,” Defendant Nehls wrote that Plaintiff stated he was not in pain. She yet again ordered another KUB x-ray. This x-ray showed that the kidney stone was still shifted down and sideways, still blocking much of the flow of urine into Plaintiff’s ureter.

62. Given x-rays but no treatment for his underlying condition, Plaintiff continued reporting his painful symptoms on virtually a daily basis by telling whoever gave him his nightly medication and through sending “cop-outs” to Defendants Allred, Nehls, Daniels, McDermott, and John Does.

63. Plaintiff also described his pain and need for treatment personally with Defendant Daniels and Defendant McDermott during their weekly “rounds.” During Defendant Daniels’ and Defendant McDermott’s weekly visits as a part of their “rounds,” Plaintiff always articulated his medical concerns and pain to them.

64. On one instance in July 2013, during “rounds” Defendants Daniels and McDermott plainly told Plaintiff that they were denying Plaintiff treatment because he was engaged in litigation against them. In this instance, Defendant Daniels rhetorically asked plaintiff, “Why should I help when you keep filing lawsuits against us?” Defendant McDermott added that her only responsibility was “to ensure that you’re alive every 24 hours.”

65. At the time of this encounter, Defendant Daniels was a defendant in Civil Action No. 11-CV-02381, in which Plaintiff was also the Plaintiff.

66. On another date, Plaintiff prepared a pro se draft of a temporary restraining order that addressed Defendant Daniels’ denial of medical care to Plaintiff, among other subjects. During “rounds,” Plaintiff gave this draft to Defendant Daniels. Defendant Daniels smirked and told

Plaintiff he should “just stop filing lawsuits.” As Defendant Daniels walked away, he stated, “Magluta, this is strictly business.”

67. Based upon the results from Plaintiff’s medical tests and their observations of Plaintiff, Defendants Allred and Nehls knew Plaintiff was suffering from a worsening kidney infection that caused blood-laden urine, pain and suffering, and the growth and migration of the kidney stone.

68. Defendants Allred and Nehls knew that the calcification was causing hydronephrosis,³ a condition which, if left untreated, results in permanent kidney failure and abject pain.

69. Plaintiff learned from Detention Officers that Defendants Allred and Nehls communicated this knowledge to Defendants Daniels and McDermott.

70. On August 2, 2013, Defendant Nehls made a second request for a CT scan for Plaintiff’s left kidney. Defendant Allred co-signed this request.

71. Defendant Nehls acknowledged that the condition was serious and that it had worsened, telling Plaintiff that he required treatment at a hospital. However, she refused to get treatment for Plaintiff, returning him to his cell with instructions to “Return Immediately if Condition Worsens.”

72. Plaintiff’s condition did indeed worsen. Plaintiff communicated this information to a John Doe Defendant. The John Doe Defendant did not transport Plaintiff back to medical.

73. On August 5, 2013, Plaintiff’s then-counsel, Neil M. Schuster, Esq., sent an urgent letter to Defendants McDermott and Daniels describing Plaintiff’s constant pain and suffering, imploring FCC staff to provide immediate care and treatment.

³ Hydronephrosis refers to distension of the pelvis and calyces of the kidney by urine that cannot flow past an obstruction in a ureter. Prolonged hydronephrosis causes atrophy and eventual loss of kidney function.

74. Neither Defendant McDermott nor Defendant Daniels acknowledged or responded to Mr. Schuster's letter. Defendants McDermott and Allred continued to ignore Plaintiff's in-person and written requests for care for his extreme pain and for treatment for his underlying conditions.

75. Without treatment, Plaintiff's symptoms from his kidney stones and infection worsened.

76. On September 12, 2013, Defendant Allred – in his role as the head of the “Utilization Review Committee” – approved Plaintiff for a CT scan.

77. Plaintiff did not receive the CT scan until January 24, 2014. All Defendants worked together to cause this inexplicable additional 4.5-month delay in order to keep Plaintiff in extreme pain.

78. Dr. Harlow Curtis performed the January 24, 2014 CT scan. The CT scan confirmed the calcification in the left kidney (*i.e.*, the kidney stone) and revealed cysts and hydronephrosis.

79. Dr. Curtis's report was sent to Defendant Allred. On January 31, 2014, Defendant Allred noted that the CT scan showed a kidney stone that was obstructing Plaintiff's kidney function. Finally confronted with this inevitable evidence, Defendant Allred had no choice but to request a urology consult for Plaintiff.

80. Between Defendant Allred making the request for a urology consult and the decision to allow the consult coming before the Utilization Review Committee, Defendant Santini took over from Defendant Allred as the head of the Utilization Review Committee.

81. On February 12, 2014, Defendant Santini approved Plaintiff's urology consultation.

82. However, acting with deliberate indifference to Plaintiff's serious medical need, Defendant Santini inexplicably delayed Plaintiff's treatment by an additional four months. Though Plaintiff was recommended for a urology consult in January and approved in February, Defendant Santini delayed Plaintiff's urology consult until May 14, 2014.

83. On May 14, 2014, Plaintiff was finally brought to a hospital for examination by a surgeon, Dr. Christopher T. Harrington, MD.

84. On May 14, 2014, Dr. Harrington – through his report – advised Defendants Allred and Santini that Plaintiff had hydronephrosis and that this condition could cause further kidney damage. Dr. Harrington warned Defendants Santini and Allred of the risks inherent in further delaying treatment and surgery. Dr. Harrington requested Plaintiff be scheduled for surgery on June 10, 2014.

85. By this time, 16 months since the onset of plaintiff's kidney disease and Plaintiff's kidney function had greatly deteriorated. At the time of the surgery, Plaintiff was in stage 4 of Chronic Kidney Disease ("CKD"). Stage 4 of CKD is characterized by severely decreased kidney function, resulting in waste products building up in Plaintiff's blood. A patient with Stage 4 CKD will experience extreme pain, as well as many other symptoms.

86. On July 15, 2014 – two months after Dr. Harrington advised Defendants Allred and Santini of the urgent need for surgery – Dr. Harrington performed the surgery. Though Plaintiff had limited interaction with Dr. Harrington at the time of the surgery, Dr. Harrington advised Plaintiff that the surgery was necessary "to prevent *further* kidney damage."

87. Following surgery, Defendants did not give Plaintiff any post-operative medical instructions.

88. In the wake of Plaintiff's surgery, Plaintiff's pain and suffering were intense. Directly after the surgery, Plaintiff was given an antibiotic and pain-killing medication. However, once Plaintiff returned to FCC Florence, Defendants stopped giving Plaintiff antibiotics or pain-killing medication after three days. Defendants collectively agreed that in the wake of Plaintiff's surgery, they would deny Plaintiff pain-killing medication.

89. Defendants did not provide Plaintiff with any post-operative information or instructions.

90. As a part of the surgery, Dr. Harrington placed a stent in Plaintiff's ureter. Dr. Harrington ordered a follow up examination of Plaintiff 2 to 3 weeks after surgery to remove the stent.

91. However, all Defendants worked together to further delay Plaintiff's medical care and ensure that Plaintiff was not brought back to Dr. Harrington for two months. Defendants failed to bring

Plaintiff for the stent-removal appointment until September 3, 2014, at which time Dr. Harrington removed the stent.

92. From March 27, 2013 until the stent was removed on September 3, 2014, Defendants conspired to keep, and did keep, Plaintiff in a state of near-constant excruciating pain from the kidney stones, the kidney infection, and the continued presence of the stent.

93. Once the stent was removed, after 17 months of near-constant extreme pain, Plaintiff was finally able to pass the remaining kidney stones and gain relief.

94. After the stent removal, Plaintiff's CKD improved from Stage 4 to Stage 3.

III. Defendants' Deliberate Indifference to Plaintiff's Serious Medical Needs Concerning His Dental and Oral Health

95. At the same time that Defendants were denying and delaying Plaintiff medical care for his kidney stones and infections, Defendants were undertaking a similar course of unconstitutional behavior with respect to Plaintiff's dental and oral health.

96. In Plaintiff's initial medical appointment at FCC Florence with Nurse Thompson, Nurse Thompson recorded that Plaintiff had multiple dental issues that required attention.

97. In Plaintiff's April 5, 2013 appointment with Defendant Allred, Plaintiff told Defendant Allred about his need for dental care and his constant oral pain.

98. On April 7, 2013, Plaintiff sent a "cop-out" in which he told the medical staff that he had a broken tooth that was throbbing with pain and preventing him from eating. FCC employee wrote back to Plaintiff that he was added to the list of inmates requiring dental treatment.

99. On or about April 15, 2013, Plaintiff sent another "cop-out" requesting dental care.

100. On April 19, 2013, dental care provider Diane Weidley wrote a report in which she indicated that Plaintiff was not escorted to the dental clinic and that as a result, she did not provide him any dental health services.

101. At all relevant times, Plaintiff was housed in a manner that made it impossible for him to go to the dental clinic without an escort from an FCC Florence employee. As a result of Defendant Daniels' decision to house Plaintiff in this way, Defendant Daniels and his employees at FCC were able to and did repeatedly deny Plaintiff dental care by simply not escorting Plaintiff to the dental clinic. Defendant Daniels conspired with Defendant McDermott and numerous John Doe defendants to ensure that Plaintiff was not transported to the dental clinic even when he was due to be seen. In so doing, Defendant Daniels, Defendant McDermott, and the John Doe defendants exhibited deliberate indifference to Plaintiff's serious medical needs.

102. For example, on May 3, dental care provider A. Brouillet wrote a report that Plaintiff was scheduled to be seen in the dental clinic but that he was not escorted there. Plaintiff was not escorted to the dental clinic at the direction of Defendants Daniels and McDermott. Defendants Daniels' and McDermott's unconstitutional orders were carried out by John Doe Defendants.

103. Plaintiff next saw a health care provider on May 9. Nurse Cink noted that Plaintiff had pain in a right upper tooth and gum redness and swelling. Nurse Cink recorded Plaintiff's pain as a 4 out of 10. He prescribed Penicillin for the infection. He did not take Plaintiff to the dental clinic.

104. In June 2013, the infection returned. Plaintiff sent a "cop-out" indicating that he again needed antibiotics for an oral infection.

105. On June 22, 2013, Plaintiff was seen for a regular medical appointment by Defendant Nehls. Plaintiff informed Defendant Nehls that his oral health had worsened. Plaintiff told Defendant Nehls that he had constant pain in the top-left and top-right of his mouth and that he had great difficulty eating. As she did with Plaintiff's kidney pain, Defendant Nehls falsified Plaintiff's medical records, reporting that Plaintiff's pain was only sporadic and mild. Plaintiff's pain had actually worsened since May 9, 2013. Defendant Nehls did note that Plaintiff had a tooth on the top-left side of his mouth that was broken.

106. On July 19 and again on July 23, 2013, Plaintiff was on the list to be seen at the dental clinic. On both dates, at the direction of Defendant Daniels, Defendant McDermott, and John Doe Defendants refused to transport Plaintiff or allow Plaintiff to be transported to the dental clinic.

107. On August 2, 2013, Plaintiff was once again scheduled to be seen at the dental clinic and was not transported there by John Doe defendants at Defendant Daniels' and Defendant McDermott's direction. This time, John Doe Defendants falsified a "Medical Treatment Refusal" form on which they indicated that it was Plaintiff who refused to go to the dental clinic. As this was false, Plaintiff refused to sign the form.

108. On October 10 and again on October 20, 2013, Plaintiff put in "cop-outs" begging to be seen by a dentist. He wrote that his pain was extreme – 10 out of 10. He continued to have great difficulty eating. Plaintiff was informed that he was still on the list to be seen.

109. Plaintiff did not see a dentist until October 31, 2013, when he saw Defendant Roberts. Defendant Roberts told Plaintiff that he had an oral infection, multiple abscesses, broken teeth, and the need for multiple tooth extractions. Defendant Roberts recorded Plaintiff's pain as a 4 out of 10. Defendant Roberts gave Plaintiff antibiotics and noted that teeth #3 and #13 required extraction.

110. Plaintiff's oral infections were a grave health danger. An oral infection can easily enter the bloodstream and travel to different parts of the body, creating life-threatening health problems.

111. On December 5, 2013, at the direction of Defendant Daniels, and Defendant McDermott, John Doe Defendants refused to transport Plaintiff to the dental clinic.

112. On December 9, 2013, Plaintiff again saw Defendant Roberts. At this appointment, Defendant Roberts recorded Plaintiff's pain as a 7 out of 10. Defendant Roberts extracted tooth #3. However, he did nothing regarding tooth #13. Defendant Roberts thus kept Plaintiff in a state of constant pain by refusing to extract tooth #13.

113. During the December 9, 2013 appointment with Defendant Roberts, Defendant Roberts told Plaintiff that Plaintiff would be brought back to the dental clinic in a week to have tooth #13 extracted. This did not occur.

114. On January 23, 2014, Defendant Roberts examined Plaintiff. He falsely reported that Plaintiff was in no pain. Defendant Roberts confirmed that tooth #13 required extraction. He also noted that teeth #1 and #16 required extraction as well. He also recorded that seven other teeth required what he termed “composite restoration” – teeth #2, #4, #5, #20, #21, #28, and #29.

115. In April 2014, Plaintiff had still not received treatment for tooth #13, let alone #1 and #16 or the seven that required restoration. On April 9, 2014, Plaintiff was sick with a bad flu. He was constantly coughing and had diarrhea. The John Doe Defendants chose this day to bring Plaintiff to the dental clinic. Plaintiff wrote on the refusal form that the only reason he was refusing care was because he was incredibly sick, and that he desperately wanted dental care as soon as possible.

116. On the basis of Plaintiff’s so-called refusal, Defendant Nixon directed hygienist Cimarossa to take Plaintiff off the list of inmates who were to receive dental care. Nobody told Plaintiff, and Plaintiff’s dental issues, still untreated, persisted.

117. Plaintiff found out he had been removed from the list of inmates scheduled to receive dental care when Plaintiff requested and paid for Plaintiff’s own medical records.

118. Once Plaintiff had this information, On July 28, 2014, Plaintiff put in a “cop-out” to protest his removal from the list of inmates scheduled to receive dental care, to request that he receive dental care, and to describe his current dental problems.

119. In Plaintiff’s July 28, 2014 “cop-out,” Plaintiff told John Doe Defendants and Defendant Daniels that he had three broken teeth that required extraction and a tooth that required a filling based on all the damage caused by his lack of dental care. Plaintiff still had difficulty eating. Plaintiff was told that he was on the list.

120. On July 31, 2014, Defendant Roberts saw Plaintiff. He falsely reported that Plaintiff was in no pain when Plaintiff was in considerable pain. Defendant Roberts scheduled Plaintiff to have extractions on teeth #1, #16, and (likely erroneously) #17.

121. On August 7, 2014, Defendant Roberts extracted teeth #1, #13, and #16. He falsely reported that Plaintiff was in no pain when Plaintiff was in considerable pain.

122. On August 7, 2014, Defendant Roberts also performed an unknown procedure on the seven teeth that required restoration – teeth #2, #4, #5, #20, #21, #28, and #29.

123. The unknown procedure Defendant Roberts performed on Plaintiff's teeth that required restoration immediately caused these teeth to begin to darken. These teeth started turning black.

124. On August 24, 2014, Plaintiff submitted a "cop-out" indicating that the extraction of tooth #13 had removed the pain from that area. However, he reported that the entire right side of his mouth was now in extreme pain. He was told he was on the list of people to be seen.

125. On August 28, 2014, Plaintiff saw Defendant Roberts. Defendant Roberts recorded Plaintiff's pain as 4 out of 10. Defendant Roberts recorded that, in spite of the procedures he had supposedly performed on August 7, teeth #2, #4, #28, #29, #31, and #32 required restoration. He or his untrained John Doe Defendant trainee performed an unknown procedure on these teeth.

126. On September 29, 2014, Plaintiff saw Defendant Roberts. Defendant Roberts recorded Plaintiff's pain as 3 out of 10. Defendant Roberts recorded that, in spite of the procedures he had supposedly performed on August 7 and 28, teeth #4, #6, #11, #15, #20, #21, #27, and #31 required restoration. He or his untrained John Doe Defendant trainee once again performed an unknown procedure on these teeth.

127. On October 27, 2014, Plaintiff submitted a "cop-out" in which he indicated that whatever Dr. Roberts was doing to his teeth, pieces of tooth or something Dr. Roberts was using were falling out of his mouth. As a result, Plaintiff could not bite down and was in pain.

128. In another “cop-out” on October 30, 2014, Plaintiff once again described his dental problems and pain, including his difficulties eating.

129. On November 3, 2014, Plaintiff put in yet another request for dental care. Plaintiff was told that he was on the list of people to be seen.

130. On November 6, 2014, Plaintiff saw Defendant Roberts. Defendant Roberts recorded Plaintiff’s pain as 3 out of 10. Defendant Roberts recorded that, in spite of the procedures he had supposedly performed on August 7 and 28 and on September 29, teeth #2, #4, #5, #6, #15, #20, #29, and #31 required restoration. He or his untrained John Doe Defendant trainee once again performed an unknown procedure on these teeth.

131. Plaintiff was seen in the dental clinic in early February 2015 for an issue regarding dentures. At this visit, he received no care for his teeth.

132. Defendant Roberts saw Plaintiff in the dental clinic on February 19, 2015 for an issue regarding dentures. At this visit he received no care for his teeth.

133. Defendant Roberts saw Plaintiff in the dental clinic on April 30, 2015. Plaintiff told Defendant Roberts about his extreme pain.

134. On June 25, 2015, Defendant Roberts decided that teeth #2 and #31 each required a root canal. Plaintiff again told Defendant Roberts about his extreme pain.

135. On July 2, 2015, Plaintiff saw a different dentist. This dentist did nothing.

136. Plaintiff did not receive a root canal on tooth #2 until August 27, 2015, over 20 months after Defendant Roberts pulled tooth #3 and refused to pull tooth #13. Further, at this point, Plaintiff still needed a root canal on tooth #31.

137. Defendant Roberts saw Plaintiff in the dental clinic on September 10, 2015. At this point, Plaintiff reported his pain as from tooth #31 as a 10 of 10. 21 months after Defendant Roberts saw Plaintiff and extracted tooth #3, he extracted tooth #31. For this entire period of time, Defendants

Roberts kept Plaintiff in a state of constant pain where he had extreme difficulty eating, with multiple broken, rotting teeth in his mouth.

138. Despite the work allegedly done on Plaintiff's teeth by Defendants Roberts or his untrained John Doe Defendant trainee, Dentist Terry Haunschuld later saw Plaintiff and noted that Plaintiff's teeth #2, #4, #5, #6, #7, #8, #10, #11, #15, #20, #21, #22, #23, #24, #25, #26, #27, #28, and #32 all required restoration.

IV. The Statute of Limitations Is Tolloed While The Bureau of Prisons Addressed Plaintiff's Administrative Grievances

139. Plaintiff is entitled to equitable tolling of any statute of limitations while he exhausted his administrative remedies within the Bureau of Prisons.

140. Plaintiff filed grievances labeled nos. 737155, 793416, and 746610 related to Defendants' denial of medical care for his kidneys, medical care for his oral and dental health, and retaliation.

141. Plaintiff filed grievance 737155 on May 20, 2013. In this grievance, he alleged retaliation. This grievance was not exhausted until July 22, 2013. Plaintiff filed grievance 746610 on August 6, 2013 related to denial of medical care for his kidneys and oral and dental health. This grievance was not exhausted until February 15, 2014. Plaintiff filed grievance 793416 on August 12, 2014 related to denial of medical care for his kidneys and retaliation. This grievance was not exhausted until December 24, 2014. Plaintiff diligently pursued all grievances.

**First Cause of Action: Deliberate Indifference – Kidneys
Eighth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702
Defendants: Daniels, Allred, Santini, McDermott, Nehls, official and individual capacities⁴**

142. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

⁴ In each cause of action, Plaintiff seeks monetary relief from Defendants in their individual capacities and all other relief from Defendants in their official capacities.

143. Defendants Daniels, Allred, Santini, McDermott, and Nehls, acting in both their individual and official capacities acted with deliberate indifference to Plaintiff's serious medical needs regarding his kidney.

144. Defendants' deliberate indifference to Plaintiff's serious medical needs regarding his kidney caused Plaintiff excruciating pain and caused damage to Plaintiff's kidney.

Second Cause of Action: Conspiracy – Deliberate Indifference – Kidneys
Eighth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702

Defendants: Daniels, Allred, Santini, McDermott, Nehls, official and individual capacities

145. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

146. Defendants Daniels, Allred, Santini, McDermott, and Nehls, acting in both their individual and official capacities conspired with each other to and succeeded in acting with deliberate indifference to Plaintiff's serious medical needs regarding his kidney.

147. Defendants' conspiracy to act with deliberate indifference to Plaintiff's serious medical needs regarding his kidney caused Plaintiff excruciating pain and caused damage to Plaintiff's kidney.

Third Cause of Action: Deliberate Indifference – Oral and Dental
Eighth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702

Defendants: Daniels, McDermott, Roberts, official and individual capacities

148. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

149. Defendants Daniels, McDermott, and Roberts, acting in both their individual and official capacities acted with deliberate indifference to Plaintiff's serious medical needs regarding his oral and dental health.

150. Defendants' deliberate indifference to Plaintiff's serious medical needs regarding his oral and dental health caused Plaintiff excruciating pain and caused damage to Plaintiff's teeth and mouth.

Fourth Cause of Action: Conspiracy – Deliberate Indifference – Oral and Dental
Eighth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702

Defendants: Daniels, McDermott, Roberts, official and individual capacities

151. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

152. Defendants Daniels, McDermott, and Roberts, acting in both their individual and official capacities conspired with each other to and succeeded in acting with deliberate indifference to Plaintiff's serious medical needs regarding his oral and dental health.

153. Defendants' conspiracy to act with deliberate indifference to Plaintiff's serious medical needs regarding his oral and dental health caused Plaintiff excruciating pain and caused damage to Plaintiff's teeth and mouth.

Fifth Cause of Action: Atypical and Significant Hardship

Fifth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702

Defendants: Daniels, Allred, Santini, McDermott, Nehls, Roberts, official and individual capacities

154. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

155. Defendants Daniels, Allred, Santini, McDermott, Nehls, and Roberts, acting in both their individual and official capacities, kept Plaintiff in a state of near-constant pain during the timeframe described in this complaint.

156. By keeping Plaintiff in a state of near-constant pain during his incarceration, Defendants caused Plaintiff to serve his sentence under conditions that were qualitatively different from those of other inmates, imposing an atypical and significant hardship on Plaintiff, in relation to the ordinary incidents of prison life.

Sixth Cause of Action: Conspiracy – Atypical and Significant Hardship

Fifth Amendment, *Bivens, Simmat*, 5 U.S.C. § 702

Defendants: Daniels, Allred, Santini, McDermott, Nehls, Roberts, official and individual capacities

157. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

158. Defendants Daniels, Allred, Santini, McDermott, Nehls, and Roberts, acting in both their individual and official capacities, conspired to and succeeded in keeping Plaintiff in a state of near-constant pain during the timeframe described in this complaint.

159. By conspiring to and succeeding in keeping Plaintiff in a state of near-constant pain during his incarceration, Defendants caused Plaintiff to serve his sentence under conditions that were qualitatively different from those of other inmates, imposing an atypical and significant hardship on Plaintiff, in relation to the ordinary incidents of prison life.

Seventh Cause of Action: Retaliation for Accessing Courts
First Amendment, Fifth Amendment, *Bivens*, *Simmat*, 5 U.S.C. § 702
Defendants: Daniels, McDermott, official and individual capacities

160. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

161. Defendants Daniels and McDermott undertook the illegal and unconstitutional actions described in this Complaint in retaliation for Plaintiff filing a lawsuit against Defendant Daniels and other employees of the Bureau of Prisons.

162. Defendants Daniels and McDermott explicitly told Plaintiff that Defendants were violating Plaintiff's constitutional rights in retaliation for his access to the courts, as described herein in paragraphs 63 through 65.

Eighth Cause of Action: Conspiracy – Retaliation for Accessing Courts
First Amendment, Fifth Amendment, *Bivens*, *Simmat*, 5 U.S.C. § 702
Defendants: Daniels, Allred, Santini, McDermott, Nehls, Roberts, official and individual capacities

163. Plaintiff incorporates all other paragraphs as if fully detailed below in this cause of action.

164. Defendants Daniels, McDermott, Allred, Santini, Nehls, and Roberts conspired to undertake and did successfully did undertake the illegal and unconstitutional actions described in this Complaint in retaliation for Plaintiff filing a lawsuit against Defendant Daniels and other employees of the Bureau of Prisons.

165. Defendants Daniels and McDermott explicitly told Plaintiff that Defendants were violating Plaintiff's constitutional rights in retaliation for his access to the courts, as described herein in paragraphs 63 through 65.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the following relief against all Defendants:

1. Trial by jury on all issues triable;
2. Compensatory damages;
3. Punitive damages;
4. Payment of Plaintiff's reasonable attorneys' fees and litigation costs;
5. Entry of an order of declaratory judgment that defendants' unconstitutional actions as set forth herein are unlawful and violated Plaintiff's constitutional, statutory, and regulatory rights.
6. The grant of a preliminary and permanent injunction against Defendants requiring the proper and timely delivery of all medically necessary health care, dental care, and mental health treatments to Plaintiff;
7. The grant of an order prohibiting Defendants, their agents, employees, and successors in interest from retaliating against Plaintiff for the exercise of his legal rights;
8. A Writ of Mandamus directing Defendants to perform their non-ministerial legal duties owed plaintiff who has a clear right to the requested relief and no other adequate remedy at law; and
9. An order granting such other and further relief as the Court deems just and proper.

Respectfully submitted, September 7, 2016.

FRANK & SALAHUDDIN LLC

s/ Adam Frank

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I further certify that a copy of the foregoing was served via electronic mail through the CM/ECF system, addressed to the following:

Mark Pestal, Esq.
Mark.pestal@usdoj.gov

Paul D. Petruzzi, Esq.
Petruzzi-law@msn.com

s/ Adam Frank

FRANK & SALAHUDDIN LLC