

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2015 OCT -5 AM 11:31

JEFFREY P. COLWELL
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-2203
(To be supplied by the court)

BY _____ DEP. CLK

SALVADOR MAGLUTA., Plaintiff,

v.

FEDERAL BUREAU OF PRISONS

CHARLES DANIELS

THERESA NEHLS

DAVID ALLRED

LISA MCDERMOTT

FNU SANTINI

JON DO'S

_____, Defendant(s).

(List each named defendant on a separate line.)

PRISONER COMPLAINT

FOR DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF

(Rev. 1/30/07) JURY TRIAL DEMANDS

A. PARTIES

1. SALVADOR MAGLUTA. REG# 26012-037. USP ADMAX
(Plaintiff's name, prisoner identification number, and complete mailing address)
P.O. BOX 8500 FLORENCE CO. 81226

2. BUREAU OF PRISONS "BOP" 320 FIRST STREET
(Name, title, and address of first defendant)

N.W. WASHINGTON D.C. 205334

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

Federal Bureau of Prisons is responsible
for all aspects of Plaintiff's "P" custody

3. CHARLES DANIELS. WARDEN USP FLORENCE
(Name, title, and address of second defendant)

P.O. BOX 7000 FLORENCE CO. 81226

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

HE WAS THE WARDEN AT USP FLORENCE
AT ALL TIMES RELEVANT TO THIS COMPLAINT

4. THERESA NEHLS. NURSE PRACTITIONER USP
(Name, title, and address of third defendant)

FLORENCE P.O. BOX 7000 FLORENCE CO. 81226

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

NURSE NEHLS WAS ONE OF THE NURSES
RESPONSIBLE FOR 'P' HEALTH ISSUES

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

A - PARTIES (CONTINUED)

(5) DAVID ALLER: Clinical Director "C.D." F.C.C. FLORENCE
P.O. BOX 8500 FLORENCE CO. 81226. At all times
relevant to this complaint Defendant Allard was
acting under the color of State Law.

(6) LISA McDERMOTT Assistant Health Service "H.S.A."
Administrator: U.S.P. Florence, P.O. BOX 7000 Florence
CO. 81226. Defendant McDermott was acting under
the color of State Law.

(7) F.N.L. SANTINI: Clinical Director: "C.D." FCC FLORENCE
P.O. BOX 8500 FLORENCE CO. 81226. "D" Santini
was acting under color of State Law.

(8) JON DOES: Later to be identified were acting under
color of State Law.

(CAPACITIES)

(9) "D" Santini is being sued in his official capacity only.
All other Defendants are sued in their official and
individual capacities.

VENUE

(10) Venue is appropriate before this court under
28 U.S.C. § 1391(b)(e)

B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to: (check one if applicable)

28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional or alternative statutes (if any):

28 U.S.C. §§ 2201-2202, 42 U.S.C. §§ 1985, 1986

C. NATURE OF THE CASE

BRIEFLY state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled "C. NATURE OF THE CASE."

Plaintiff is classified as a chronic care inmate and is treated for numerous medical and mental health issues that remain current and chronic. Some of these include: Post Traumatic Stress Disorder, Anxiety, Depressive Disorder, Pro-Glaucoma, Diabetes Mellitus Type II, Ulcerative Colitis and most recently Kidney failure (Chronic Kidney Disease "CKD"). This case arises as a result of "P" Violations of "P" First and Eighth amendments of the U.S. Constitution as they relate to "P" Dental and Kidney care or lack of adequate health care.

D. CAUSE OF ACTION

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One: DEFENDANTS VIOLATION OF THE
Supporting Facts: PLAINTIFFS EIGHTH AMENDMENT

2 On or about March 19, 2013, while Plaintiff was in the SHU at USP Terra Haute, he began to experience severe pain on his left side. Plaintiff requested that SHU staff notify medical staff of Plaintiff's condition. Medical staff was notified and a PA came and examined Plaintiff.

3 On the morning of March 20, 2013, while still experiencing severe pain, other medical staff came to see Plaintiff. Plaintiff's kidneys were x-rayed and a 9mm calcification was found in Plaintiff's left kidney. Medical staff provided Plaintiff with Tylenol three for pain relief.

4 On March 27, 2013, Plaintiff was transferred from USP Terre Haute to USP Florence. At Plaintiff's medical intake, Plaintiff advised screening PA Thompson that he had serious dental issues, and back and kidney pain.

5 Between March 27, 2013 and April 10, 2013, Defendants Dr. Allred and PA Nehls completed Plaintiff's medical intake screening.

6 On April 10, 2013, Defendant PA Nehls acknowledged that Plaintiff had a 9mm calcification overlying the left renal fossa. Nehls' report of April 10, 2013 was reviewed by Defendant Dr. Allred.

7 As to Plaintiff's kidney pain, Defendant Dr. Allred stated that, due to the size of the kidney stone, it would have to be medically removed and that "it could be removed in-house or at another location. It would not come out on its own."

8 On June 22, 2013 Defendant PA Nehls authored a chronic care report and in part details the following

- a. Urinary Problem: Reports that Plaintiff knows that he does not have a renal calculus, reports only sporadic pain and discomfort on left kidney area.

This statement is ~~also~~ false. At this time Plaintiff reported constant (not sporadic) pain due to his untreated kidney stones and the x-rays confirmed a renal calculus which she accepted as a fact on the April 10th report.

- b. Dental Problem: Acknowledges that Plaintiff continues to have dental issues and pain. However, the report does not acknowledge that Plaintiff was summoned, but not escorted, for dental care on numerous occasions. See also section titled "Facts in Support of Plaintiff's Medical Claims Relating to Dental Care."

9 On or about July 12, 2013, Plaintiff began experiencing severe kidney pain. Plaintiff began complaining, verbally and in writing, of severe pain to the medical staff. Due to previous pattern of deliberate indifference by Defendants Nehls, Allred and McDermott in ignoring Plaintiff's previous medical and dental requests (See also the Sections titled "Facts in Support of Plaintiff's Medical Claims Relating to Medical Records" and "Facts in Support of Plaintiff's Medical Claims Relating to Dental Care"), Plaintiff began keeping a daily log of his complaints, a copy which was given to the medical staff. The log records:

- a. July 12, 2013 Back pain begins getting worse. Plaintiff gave medical staff a cop-out requesting attention.
- b. July 13, 2013 Plaintiff provided cop-out again was told to remain on Motrin.
- c. July 14, 2013 Pain was especially bad. Gave PA another cop-out.
- d. July 15, 2013 In morning, Plaintiff again requested medical attention with cop-out.
- e. July 15, 2013 Plaintiff complains of real bad pain and nausea.
- f. July 16, 2013 Plaintiff complains to PA Lindgren. She said she would see Plaintiff once she completed dispensing medication in the SHU. PA Lindgren

never returned to see Plaintiff, so Plaintiff spoke to SHU officer in charge who said that PA Lindgren had left. SHU officer in charge said that PA Lindgren said she was leaving because there "was nothing she could do, ~~and that she did not want any part in dealing with Plaintiff and his medical issues.~~"

- g. July 16, 2013, about noon time, Defendant PA Nehls came to see Plaintiff and provided Plaintiff with a cup for a urine sample and said she would be back in an hour to see Plaintiff. Defendant PA Nehls never returned to collect urine sample.
- h. July 16, 2013, A.W. Swartz came to Plaintiff's cell and Plaintiff requested medical treatment. A.W. Swartz told Officer Gaffney to request that the PA come see Plaintiff. This request was never made. Plaintiff was told that the PA was on his way to make pill line rounds, and he could address issues with him.
- i. July 16, 2013, later that same day, PA Thompson came to do pill line and Plaintiff asked PA Thompson if he was aware that Plaintiff required medical attention. PA Thompson said no. Plaintiff still had his urine cup and explained that no one had returned to see him as promised and that he could no longer take the pain. PA Thompson said all he could do was take the urine sample and examine it for blood or infection and would try to return and see Plaintiff.
- j. July 16, 2013 On or about 8:30 PM, PA Thompson returned to see Plaintiff and advised Plaintiff that there were blood and moderate white blood cells (WBCs) in his urine sample and that he was told by on-call doctor to give Plaintiff two IVs, and medication for pain, nausea and infection.
- k. July 16, 2013 Because the first IV took so long to finish, PA Thompson told Plaintiff that PA Nehls would give Plaintiff the second IV the next morning and that he was leaving it on the computer for her to follow up on.

10 On July 16, 2013, PA Thompson documented some of the events of July 16, 2013, including Plaintiff's complaints of pain, what actions Plaintiff was told to take, and what health care Plaintiff was provided.

11 On July 17, 2013, Defendant PA Nehls escorted Plaintiff to the medical department for a new x-ray of the kidney. PA Nehls examined the new x-ray and saw that the 9mm calcification had moved sideways. PA Nehls was aware that the calcification was obstructing Plaintiff's urine flow from the kidney to the bladder.

12 At the same time, Defendant PA Nehls spoke to PA Cink and another unnamed female. PA Nehls told PA Cink and the unnamed female that they needed to take Plaintiff to an outside hospital. At this time Officer Regan, who was present with the Plaintiff, said "it looks like
YOU ARE GOING TO THE HOSPITAL

13 In response to what PA Cink and the unnamed female had said, Defendant PA Nehls told Plaintiff she (PA Nehls) was going to “use the shotgun approach” and provide nausea medication, pain medication and antibiotics, etc. §), which acknowledges both the urinary tract infection and urinary stones and that the stone had shifted lower since the last exam. The report also states to “return immediately if condition worsens.” This report was reviewed by Defendant Dr. Allred.

14 Upon information and belief, Defendant PA Nehls was aware that the condition was serious. This is evidenced by the July 17, 2013, report which stated “return immediately if condition worsens”. Also, while Defendant PA Nehls was interviewing Plaintiff for the ADX transfer she told Plaintiff, "you will be gone soon, at which time you may receive more appropriate attention."

15 On July 17, 2013, Defendant PA Nehls stated on a document to “See Amendment.” However, no Amendment was provided to Plaintiff. *THOUGH REQUESTED*

16 On July 18, 2013, Plaintiff was feeling worse. This was reported to medical staff. While the report of July 17, 2013, said to “return immediately if condition worsens”, the PA’s did not return to examine Plaintiff even though Plaintiff requested medical attention using cop-out.

17 On July 18, 2013, Defendant PA Nehls wrote a report where she documents another alleged examination of the Plaintiff in the medical room. **This is false.** Plaintiff asserts that he never met with PA Nehls on July 18, 2013. The report also states falsely that Plaintiff’s pain

was due to colic in contradiction to x-ray and reports of July 17, 2013. (7). The exhibit shows what appears in the false report is a copy of the one written on July 17, 2013.

18 Between July 18, 2013 and July 24, 2013, Plaintiff continued to complain of pain and submitted several requests for medical attention to medical staff and Defendant PA Nehls, stating that the pain was unrelenting and becoming unbearable. Plaintiff also reported the same complaints of pain to Defendants McDermott, Daniels and A.W. Swartz in person and in writing. While the report of July 17, 2013, said to "return immediately if condition worsens", PA Nehls did not return to examine Plaintiff.

19 Plaintiff continued sending written requests to see the PA and was told that "you have already been signed up for sick call". On July 15 and 16, 2013, respectively. Defendant PA Nehls never came to see Plaintiff.

20 On July 21, 2013 Defendant AHSA McDermott came by to do rounds and Plaintiff provided her with a cop-out he had already sent her but had not been responded to. Plaintiff explained his medical needs and advised her that he does not want to file but that their indifference to his medical issues leaves him no alternative and asks for her help. for the July 21, 2013 cop-out. Defendant McDermott never responded.

21 On July 21, 2013, Plaintiff also sent a cop-out to Defendant PA Nehls to report the continued pain. The response states that Plaintiff was "on the sick call schedule". Even though her own report of July 17 said to "return immediately if condition worsens", no medical staff came to examine Plaintiff between July 18, and July 24. for the July 21, 2013 cop-out to nurse Nehls.

22 On July 24, 2013, Defendant PA Nehls finally came to see Plaintiff. After all of the verbal and written complaints of severe pain made by Plaintiff, including the chronology of pain events provided to PA Nehls, she wrote in her report that Plaintiff "currently denies pain." Although the report attributes Plaintiff's pain to constipation, Plaintiff had not complained of

constipation at that time, and repeatedly told PA Nehls that his excruciating pain was Kidney related.

j. The symptoms detailed in paragraph 19 are consistent with the Plaintiff's kidney related issues which were confirmed by x-rays and tests. By changing the diagnosis they could circumvent their obligations and retaliate by denying Plaintiff adequate medical care and later claiming it wasn't indifference but rather an understandable mistake.

23 i. On August 5, 2013, Plaintiff's counsel, Neil Schuster, sent a letter to Defendant AHSA McDermott putting her and all Defendants on notice for the lack of medical attention and Plaintiff's condition. 19. Defendants never responded to Mr. Schuster's letter.

24 . On August 6, 2013 Plaintiff again made an urgent request to be seen by medical staff. Medical staff responded by saying, "you are on the list to be seen." But medical staff did not otherwise respond or examine Plaintiff on August 6, 2013.

25 On August 9, 2013, Plaintiff compiled some of the details of Plaintiff's medical issues, conditions, and requests and sent it to Defendants AHSA McDermott and PA Nehls. See

The major points of this record are:

- a. Documents that the pain is on his left side
- b. The pain pulsates like a knife stabbing in the kidney area and drops down towards the testicle area.
- c. Sometimes the pain starts in the testicle area and radiates all the way to the left kidney. The pain is often accompanied by nausea.
- d. The pain sometimes worsens after defecation.
- e. Motrin is the only dispensed medication that partially helps alleviate the pain.
- f. Plaintiff takes Motrin 600 mg every 6 hours as told by Defendant PA Nehls but pain remediation rarely lasts more than 3 hours.
- g. The pain is often accompanied by fever.
- h. Pulsating headaches
- i. Urine burns on some occasions.
- j. Plaintiff claims blood in urine and infection were never followed up on to see if they had ceased.
- k. Plaintiff explains that on the few occasions that an examination was performed, blood and infection always appear, yet no follow-up is done to see if it is gone
OR REMAINS

26 On January 24, 2014 Plaintiff was finally provided a CT-Scan evaluation.

27 This was almost a year since Plaintiff first experienced significant kidney pain, almost a year since Plaintiff's x-ray first showed a 9 mm stone in his kidney and ureter, and almost 6 months since Defendant PA Nehls and Allred acknowledged that a surgical procedure was required to remove the kidney stone.

27 On January 31, 2014, Defendant Dr. Allred reviewed the CT-Scan and acknowledged the findings, the stone, the obstruction, the hydronephrosis and that a urological follow-up was indicated.

J.P. "CONTINUED TO COMPLAIN TO PAIN"

28 On March 26, 2014, Plaintiff sent a cop-out explaining burning during urination and strong urine odor and asks to be seen as soon as possible. Plaintiff's complaint was never acknowledged nor was any action taken.

29 On April 28, 2014, Plaintiff's lab work again reflects high creatine levels and a "GFR IDM estimated level of 44." Notation on lab work indicates that a "GFR IDM" level under 60 suggests chronic kidney disease when found over a three month period.

30 On May 16, 2014 Plaintiff was escorted to see the Urologist approximately 15 months after kidney problems began to cause pain and damage to the Plaintiff's kidneys. Plaintiff

31 Urologist Harrington expressed surprise that Plaintiff was able to withstand the severe pain that accompanies this condition. Plaintiff told the urologist that this all began in March, 2013, and that he had endured the pain since then. Plaintiff was provided with a pamphlet by the urologist that states in part: "The stone can get stuck in a kidney or ureter. This blocks urine from getting to the bladder causing severe pain."

32 The May 16 2014 report by Dr. Santini states that Plaintiff has an 8 mm left mid-ureteral calculus causing moderate obstruction. It also states that there is left hydronephrosis and renal cysts. These all appeared in the CT-scan from January 24, 2014.

33 On July 10, 2014 a lab report again states: Creatine-high, EGFR-low and EGFR(2)-low. All this supports chronic kidney disease. S

34 On July 11, 2014 Defendant Dr. Santini reported: "Elevated serum creatine, will discuss results, consider nephrology consultation." S . This consultation with Plaintiff was scheduled for August 11, 2014, although it never occurred.

35 On July 15, 2014, Plaintiff was take to surgery, urologist/surgeon, Dr. Christopher T. Harrington, saw Plaintiff for a couple of minutes before performing the surgery and said, "we need to go in there and prevent further kidney damage." This decision was made years after Defendants were first aware that Plaintiff's creatine serum levels were outside the normal levels and the existence of the calculus.

36 When Plaintiff returned from surgery, Plaintiff never saw the anyone from medical staff to explain what was done to him and why, the results of the procedure, or what to expect next. All Plaintiff was told by hospital nurse, that "there was a stent inserted that must subsequently be removed in two weeks". Plaintiff did not know the object of the surgery or even if the surgery was successful. Plaintiff tried to interpret what was done by reading some of the medical language in the records provided to Plaintiff. It is notable that the only reason Plaintiff has seen such records is because he has been diligent and persistent in his request for the records, despite repeated failures by BOP to provide him with those records. No-one from the medical staff explained anything to Plaintiff about his condition or the procedures performed on him.

37 The July 15, 2014, report by urologist Dr. Harrington states: "He, [Plaintiff], is instructed to strain the urine and to call me if there is pain or fever. He will be seen in the office in two weeks." Plaintiff maintains that no-one ever told him to strain his urine, nor was Plaintiff ever provided with a strainer until August 29, 2014, See Exhibit , or other tool to accomplish this task. In addition, Plaintiff continuously complained of pain and no one responded. See Exhibit

38 On July 16, 2014, Plaintiff submitted a medical request for attention.

39 A July 17, 2014 report by mid-level practitioner (MLP) Osagie states: "Patient is s/p lithotripsy and recommended for post-op evaluation by the urologist for cystoscopy and stent removal. . . . 5).

40 On July 21, 2014, Plaintiff submitted a request due to pain and for information about what was done in the surgical procedure. Warden Berkebile, HSA Cordova and Montoya were copied on all these requests. . . . i).

41 On July 28, 2014, Plaintiff sent a cop-out requesting information as to his medical needs and procedures.

42 On August 12, 2014, Plaintiff again filed an informal resolution BP-8 addressing kidney issues and complaining of continuous and severe pain to his left side, that Plaintiff must lean on a wall when he is standing up because he feels dizzy and at times has fallen over, and asking to be informed of what was done at his surgery. . . .

43 On August 16, 2014, Plaintiff provided copies of the BP-8 to PA Camacho to provide to medical staff with additional information. . . .

44 On August 14, August 24, August 27, September 1, 2014, Plaintiff made repeated requests for medical assistance

45 During that time, Plaintiff was not told what was done during his surgery, what steps must be taken to remove the kidney obstruction, the significance of the renal cysts appearing on the CT-Scan, or what any of that meant in terms of Plaintiff's long term health.

46 On September 3, 2014, Plaintiff was taken to see the Urologist between 9 a.m. and 12:30 p.m. This was the July 30, 2014 appointment that was not performed. Plaintiff provided a list of issues to the escort, Lt. Holcomb, who provided them to Dr. Harrigan.

- a. Holdcomb was asked if he brought the x-ray that was required for the visit. He did not.

- b. Was asked if the x-ray was done and responded yes, around July 28, 2014.
- c. Holcomb gave them the number so they could have x-ray faxed but the only thing that could be faxed was the report.
- d. As a result of not having the actual x-ray, Dr. Harrigan told Plaintiff that he didn't like to go on reports but rather wants to personally see the x-ray, so that Plaintiff had two options, either leave the stent and re-set the appointment for another date because he prefers to see the actual x-ray, or remove the stent and hope the report was accurate.

Plaintiff's response was that he was the doctor and was the one who must decide because Plaintiff is not a doctor.

- e. The doctor said he was going to remove it because he knew Plaintiff has had the stent in for almost seven weeks and knows this causes a lot of pain and discomfort and should have already been removed. He also advised Plaintiff that if he felt any pain to make sure medical staff is told and have them call him.
- f. The doctor asked Plaintiff if Plaintiff had strained the urine. Plaintiff responded that he was not told to do so nor did anyone at ADX provide him a urinal or a strainer. Plaintiff stated that the first time he knew about that was when Plaintiff was reviewing his medical file and brought it to the attention of ADX medical staff, who provided the strainer six weeks after they were supposed to have done so and three days prior to this appointment. Plaintiff also said that he saw nothing come out. The doctor then proceeded to remove the stent and again stated that Plaintiff needed to advise ADX medical staff if pain returns.
- g. Plaintiff asked Dr. Harrigan if he knew that the stones were broken up and drained out. The doctor said no, and that concerned him.
- h. Plaintiff asked if the only way the stones would come out were with the performance of a medical procedure and the doctor replied "yes, because of the size."
- i. Plaintiff asked that if the retention of the stone caused and /or could cause kidney damage and the doctor replied, "absolutely."
- j. Plaintiff asked that if the procedure had been done as soon as they became aware of the stone and its size, would it have made a difference? The doctor replied, "absolutely,"

47 . According to the x-ray report, performed at the end of July, that Dr. Harrigan was provided for the September 3, 2014 appointment, it states that the stone did not appear the statement ended up being inaccurate.

That same night of September 3, 2014 'P' passed five black stones contradicting the "B.O.P" report and on the morning of September 4, 2014, "P" passed three more stones.

C. Kidney Stones

University of Maryland Medical Center

48 If a stone (even a small one) blocks the flow of urine, excruciating pain may result and prompt medical treatment may be needed. Painful kidney stones require treatment.

49 A CT scan is usually the best way to diagnose kidney stones, pinpoint their location, size and number.

50 Small stones, less than 5 mm usually pass on their own. In larger stone, stones that are causing damage to the kidneys or stones that do not pass on their own, can get stuck in a kidney or ureter causing severe pain. Plaintiff's was in the range of 9 or 10 mm per x-rays and CT scans.

D. Hydronephroses

51 Hydronephroses is a result of a blockage or obstruction in the urinary tract. A blocked ureter can cause urine to back up into the kidney, which causes swelling. If left untreated for too long, this pressure can cause you kidneys to lose function permanently.

52 Symptoms can include increase in the urge to urinate, pain in the abdomen or _____, nausea and vomiting, pain when urinating, frequency of urination, urgency of urination, urinary tract infection, fever, all which Plaintiff has experienced. and made "D" aware of personally and in writing.

C. GLOMERULAR FILTRATION RATE "GFR"

53. "GFR" is the best test to measure your level of kidney function and the stage of kidney disease "Chronic Kidney Disease" "C.K.D."

54. "C.K.D" has a five stage level dependant on the results of the patients "GFR" levels. The stages are rated in five levels, five being the most severe requiring dialysis or kidney transplant. During the period of March 2013 up to September 2015 "P" kidney levels went from a level two to a level four, which rates as severely reduced kidney function. Upon information and belief this was a result of the "D.B." deliberate indifference in the medical care of the "P."

55. The delay in obtaining any medical care for "P" kidney issues caused the "P" unnecessary degradation of his urological and general physical health, unnecessary mental stress from worries about his physical health, and unnecessary severe pain for over 24 months. As of the current date "P" kidney function levels have not been tested since December 2014 even though they had tested worst in the December 2014 tests.

Facts in Support of Plaintiff's Medical Claims Relating to Dental Care

55b Plaintiff adopts and incorporates paragraphs 1 through 91 as if fully set forth herein.

56 On March 27, 2013, Plaintiff was transferred from USP Terre Haute to USP Florence. At Plaintiff's medical intake, Plaintiff advised screening PA Thompson that he had serious dental issues, and back and kidney pain.

57 Between March 27, 2013 and April 10, 2013, Defendants Dr. Allred and PA Nehls completed Plaintiff's medical intake screening.

58 As to Plaintiff's dental pain and issues, Defendant PA Nehls stated that Plaintiff would be placed on the dental appointment list and that it would take 3 months. Plaintiff asked what he could do if the pain and infection intensified. PA Nehls replied, "You keep asking and I'll keep saying 3 months. You will not die of pain."

59 On April 7, 2013, due to pain caused by a broken and infected tooth, Plaintiff requested verbally and in writing a dental appointment. Plaintiff also made these requests personally to Defendants Daniels, Snyder, Swartz, Allred, Nehls and McDermott during their weekly rounds in the SHU.

60 Between April 7, 2013 and April 19, 2013, Plaintiff continued making requests for a dental appointment. Defendants Nehls, McDermott, and Daniels continued to tell Plaintiff that he must wait.

61 On April 19, 2013, Plaintiff drafted a temporary restraining order for dental, medical and other issues and provided a copy to Defendant Daniels. Later that same day, Defendant BOP's medical staff finally responded to one of Plaintiff's requests for a dental appointment. However, the response presented to Plaintiff on April 19, 2013 stated that Plaintiff would be seen on April 17, 2013, two days before the response was received.

62 On April 19, 2013, Medical staff apparently summoned Plaintiff for a dental appointment. However, Plaintiff was never told of the appointment and he was not escorted to dental. (2) which states, "Inmate not able to be escorted to dental for sick call." Because Plaintiff was in the SHU at the time, it is staff who must escort Plaintiff to any place outside his cell. Upon information and belief, Defendants Daniels, Captain Snyder, A.W. Swartz and John Does ordered that Plaintiff was not to be escorted anywhere, including the medical department, thus preventing Plaintiff from receiving any medical attention prescribed by the medical staff.

63 Again on May 3, 2013, Medical staff summoned Plaintiff for a dental appointment. Again, Defendants Daniels, and John Does refused to escort Plaintiff to dental. See Plaintiff was later told that he "would not get any medical attention until he was sent to ADX, which would be shortly since the transfer request was being expedited."

64 On June 19, 2013, Plaintiff requested antibiotics due to his untreated dental infection. Plaintiff received the response on June 24, 2013 which stated, "will provide meds, still on list to be seen." No dental care was provided.

65 On July 19, 2013, the medical staff made another request to have Plaintiff escorted to the medical department for dental care. Again staff at the SHU refused to escort Plaintiff to the medical department.) dated July 23, 2013 stating that dental had requested that Plaintiff be escorted to medical department.

66 On October 20, 2013, Plaintiff continued to have dental issues and sent cop-outs to dental acknowledging that he is on the list but requesting immediate care.

67 On October 31, 2013, Plaintiff again requested emergency dental care and again was told, "you are on the list.").

68 A January 23, 2014 dental report () acknowledges that Plaintiff

required the following dental work:

General	Panorex	Not Started
#1	Extraction, Residual, Root	Not Started
#16	Extraction, Residual, Root	Not Started
#13	Extraction, Residual, Root	Not Started
#2-M	Composite Restoration	Not Started
#4-B	Composite Restoration	Not Started
#5-B	Composite Restoration	Not Started
#20-B	Composite Restoration	Not Started
#21-B	Composite Restoration	Not Started
#28-B	Composite Restoration	Not Started
#29-B	Composite Restoration	Not Started
Maxillary	Cast RPD-Maxillary	Not Started
Mandibular	Cast RPD-Maxillary	Not Started

Disposition: Will be placed on call out

Other: Patient to be called out for extractions of #s 1, 13 and 16 as well as restoration of #2,4,5,20,21,28 and 29 on next appointment.

69

By July 28, 2014, Plaintiff still had not been called out for dental care, 1 and ½ years later

70

On July 28, 2014, Plaintiff filed a cop-out requesting dental work because Plaintiff had a lot of dental pain, teeth were breaking, and it was sometimes difficult to eat.

where Plaintiff details all occurrences where possible dental care was inadequate or denied because Defendants refused to escort Plaintiff to medical department:

- a. March 27, 2013: Inmate has multiple dental issues.
- b. April 19, 2013: Sick call unavailable: Inmate not able to be escorted to dental for sick call.
- c. May 3, 2013: Sick call unavailable: Inmate was on call out but never escorted.

- d. May 9, 2013: Sick call: Penicillin was prescribed for dental issues.
- e. June 22, 2014: Dental pain in two locations in his mouth.
- f. June 24, 2013: Administrative note: Patient was not seen at the dental clinic today but complained to medical staff of tooth pain. Patient indicated presence of pain from the top molar therefore medication is requested until patient can be escorted to the clinic. Penicillin again prescribed.
- g. July 23, 2013: Unavailable: Was on list to be seen on July 19, 2013 by dental but was unavailable to be escorted.

71

August 2, 2013: States Plaintiff refused to be escorted.

On August 5th and 6th, 2014, Plaintiff's counsel, Ms. Cherry sent emails to Defendants Berkebile, Montoya and Synsvoll raising medical issues and putting them on notice of the lack of medical attention of the Plaintiff. She specifically addressed the dental and kidney concerns.

72

On or about August 7, 2014, Plaintiff was taken to dental at which time dental work was finally begun. Plaintiff notes that this occurred only after counsel sent a letter to the legal department, and 17 months after his first complaints of pain. As of the current date of the filing of this Complaint, Plaintiff's dental issues have not been completed.

73

The delay in obtaining dental care has caused the Plaintiff to unnecessarily lose several teeth that could have been saved with earlier treatment, has caused the Plaintiff to unnecessarily take antibiotics for infection when the cause of infection could have been treated, and has caused unnecessary severe pain for over 25 months.

74

Defendants Daniels and Jon Does created specific individual policies on how Plaintiff was to be housed, when and where Plaintiff could or could not be escorted. AS a result of these specifically created policies, Defendants denied or interfered with the Plaintiff's medical and dental care and did so intent ally to retaliate against the Plaintiff. There wasn't any other possible justification to deny Plaintiff to be escorted for dental care as alleged in this Complaint.

75

The Eighth Amendment to the United States Constitution gives convicted inmates

as the Plaintiff, the right to adequate medical care.

76 Improper denial or delay of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

Prison officials violate the Constitution when they act with deliberate indifference to an inmate's serious medical needs.

77 All Defendant were aware of Plaintiff's medical needs by one or more of the following ways:

- a. Sick call slip submission called "cop-outs";
- b. Direct letters from the Plaintiff as previously described;
- c. Verbal communications directly from Plaintiff;
- d. Information contained in the Plaintiff's medical file and reviewed information;
- e. Information that was provided by the Plaintiff during medical examinations;
- f. Information from other medical personnel within the administration and from outside sources;
- g. Emails from Plaintiff's counsel placing them on notice of Plaintiff's medical needs and lack of medical attention;
- h. Letters from Plaintiff's counsel; and
- i. By the Administrative Remedy Process.

78 All Defendants knowingly and upon information and belief, intentionally denied and/or delayed Plaintiff access to medical care. Provided grossly inadequate treatment and/or intentionally interfered with what the appropriate prescribed medical treatment was or should have been for Plaintiff's serious medical needs as described in this Complaint and as a result of Defendants' action and inactions Plaintiff's rights protected by the Constitution were violated.

79 As of the filing of this Complaint "P" dental issues continued to remain unfinished and as a result of some of the treatment choices "P" dental condition have deteriorated further

2. Claim Two: DEFENDANTS DANIELS NEHLS
Supporting Facts: MCDERMOT ALLRED, SAUTINI AND JON
DOS VIOLATED THE PLAINTIFFS FIRST
AMENDMENT BY RETALIATING AGAINST THE "P"
FOR HIS EXTENSIVE LITIGATION WITH THE "BOP"
AND AVAILING HIMSELF OF THE ADMINISTRATIVE
REMEDY PROCEDURES.

80 . Plaintiff adopts and incorporates paragraph 1 through 116, as if fully set forth herein.

81 Defendants BOP, Nehls, McDermot, Allred, and Jon Does violated the Plaintiff's First Amendment right by retaliating against Plaintiff for exercising his right to petition the government for a redress of grievances and for availing himself of the BOP policy that affords Plaintiff to address prison issues through the Administrative Remedy Procedure Process.

82 . The First Amendment forbids prison officials from retaliating against prisoners for exercising their constitutional and statutory rights.

83 . This Complaint has alleged a chronology of events and violations by the Defendants that support Plaintiff's claims of retaliation. Plaintiff maintains that there was no legitimate correctional purpose for the grievances set forth in this Complaint, and none have been provided by BOP staff.

84 As direct and proximate cause of the Defendants retaliatory actions in denying, delaying, interfering and/or providing inadequate medical treatment Plaintiff has been seriously and permanently injured and damaged.

(Rev. 1/30/07)

THIRD CAUSE OF ACTION

3. Claim Three:

CONSPIRACY TO DENY PLAINTIFF HIS CONSTITUTIONAL AND REGULATORY RIGHTS IN VIOLATION OF 42 U.S.C. § 1985

85 . Plaintiff adopts and reiterates paragraphs 1 through 122 as if fully set forth herein.

86 In order to provide existence of a civil conspiracy, Plaintiff is not required to provide direct evidence of agreement between conspirators.

87 When a Plaintiff alleges a conspiracy to violate his civil rights, existence or non-existence of conspiracy is essentially a fact that a jury should decide.

88 A Plaintiff seeking redress in a civil conspiracy case, need not prove that each participant in a conspiracy know exact limits of its legal plan or the identity of all participants therein.

89 Participants in a civil conspiracy need not know all the details to a plan designed to achieve objective or possess same motives for desiring intended conspiratorial result.

90 Defendants and others conspired amongst themselves and other not presently named in this Complaint to deprive Plaintiff proper and adequate medical care, as alleged in this Complaint and in violation of Plaintiff's Eighth Amendment Right.

91 Beginning on March 27, 2013 and continuing thereafter, the Defendants and others not named in this Complaint entered into an agreement and or reached a decision to violate Plaintiff's constitutional and regulatory rights, by permitting, encouraging, facilitating and assisting each other in perpetrating the unlawful acts described in this Complaint.

92 Defendants acted with personal malice towards the Plaintiff.

93 It is well established that a tacit understanding is sufficient to constitute a conspiracy and the assistance in the concealment of evidence favorable to the Plaintiff is sufficient to support interference that a Defendant joined the conspiracy while it was still in operation.

(Rev. 1/30/07)

94 It is well established that if a party has the potential to stop illegal activity but fails to do so, and sits idly by, that party may be said to have impliedly conspired in such illegalities.

95 Conspiracy liability can be imposed based purely on circumstantial evidence indicating an understanding among Defendants to violate constitutional rights.

96 As a direct and proximate cause of Defendants' actions, Plaintiff has been injured and permanently damaged.

FOURTH CAUSE OF ACTION

FAILURE TO PREVENT OR TO AID IN PREVENTING THE WRONGS MENTIONED IN THE
(CLAIM 4) CONSPIRACY CLAIM IN VIOLATION OF 42 U.S.C. §1986.

98 Plaintiff has the right under 42 U.S.C §1986 to recover damages from any person who fails to prevent or aids in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge or were about to occur and power to correct, prevent or the power to aid in preventing.

98 It is well established that U.S.C. §1986 does not require that a Defendant be involved in the conspiracy nor requires that he had first-hand knowledge of the wrongs conspired to be done against the Plaintiff to be held liable under this section.

99 Section 1986's liability could be predicated upon neglect to prevent any of the acts of concealment of evidence in favor of the Plaintiff.

100 All Defendants are responsible for failing to prevent or to aid in preventing any wrong mentioned in this complaint.

101 All Defendants knew about the wrongs and they facilitated them and or turned a blind eye to them.

102 All Defendants were on actual notice of the foreseeable results of their failure to prevent or to aid in preventing the wrongs mentioned in the conspiracy claim.

103 Plaintiff's repeated verbal and written complaints and requests to Defendants and others filing should have caused them to take immediate action to prevent or to aid in preventing the wrongs mentioned in the conspiracy claim but failed and refused to do so.

104 As a direct and proximate cause of the Defendants' failure to prevent or aid in preventing the wrongs mentioned in the conspiracy claim. Plaintiff has been seriously and permanently injured and damaged.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes No (CHECK ONE). If your answer is "Yes," complete this section of the form. If you have filed more than one lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

- 1. Name(s) of defendant(s) in prior lawsuit: BOP ET AL.
- 2. Docket number and court name: 1:15-CV-00318
- 3. Claims raised in prior lawsuit: NUMEROUS
- 4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?): DISMISSED VOLUNTARILY WITHOUT PREJUDICE
- 5. If the prior lawsuit was dismissed, when was it dismissed and why? ON OR ABOUT MAY 2015 VOLUNTARILY.
- 6. Result(s) of any appeal in the prior lawsuit: NA.

F. ADMINISTRATIVE RELIEF

- 1. Is there a formal grievance procedure at the institution in which you are confined? Yes No (CHECK ONE).
- 2. Did you exhaust available administrative remedies? Yes No (CHECK ONE).

AS TO THE STATUS OF PREVIOUS LAWSUITS- THEY WERE ALL FILED BY COUNSEL BUT I DON'T HAVE THE DATES AND RESULTS OF EACH. DUE TO HAVING MY LEGAL AND PERSONAL PROPERTY WITHHELD

Previous Lawsuits

Southern District of Florida TO THE BEST OF MY RECOLLECTION

Magluta v. Warden, 02-cv-21335 RESOLVED INFORMALLY

Magluta v. Warden, 03-cv-21055 RESOLVED INFORMALLY

Magluta v. 11th Circuit, 83-cv-1189 MAY HAVE BEEN ONE THAT WAS LOST IN APPEAL

Magluta v. U.S. Bureau of Prisons, 92-cv-1937 RESOLVED INFORMALLY

Magluta v. Fitzpatrick, 93-cv-1438 ? RESOLVED INFORMALLY

Magluta v. Knowles, et. al., 95-cv-1110 RESOLVED INFORMALLY

Magluta v. United States, 96-cv-1668 NOT SURE IT WAS BOP LAWSUIT

Magluta v. Whalen, 97-cv-1490 RESOLVED IN SOME FASSION

Magluta v. Haro, 99-cv-900 INFORMALLY SETTLED

Texas

Magluta v. Chandler, 99-cv-497 DISMISSED WHEN TRANSFERRED TO MIAMI

Colorado

Magluta v. U.S. Bureau of Prisons, 08-cv-404 SETTLED

Magluta v. U.S. Bureau of Prisons, 11-cv-2381 VOLUNTARILLY DISMISSED

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. Trial by jury on all issues triable.

G. REQUEST FOR RELIEF

State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

① Trial by jury ② Compensatory damages as deemed just by the jury ③ Punitive damages to be determined by a jury ④ Reasonable attorney fees if an attorney files a notice of appearance ⑤ All costs related to litigation ⑥ Leave to amend the complaint once discovery is completed ⑦ Order from the court where the complaint is deficient and how to correct it ⑧ A declaratory that the "D" actions alleged herein are illegal and violate "P" constitutional, statutory and regulatory rights ⑨ Remedy all violations alleged ⑩ A permanent injunctive relief ⑪ Order prohibiting further retaliation ⑫ Order such relief as the court deems proper.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on 9-16-2015
(Date)

Salvador Magueto
(Prisoner's Original Signature)