

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY LEE,

Plaintiff,

vs.

WASHTENAW COUNTY *et al.*

Defendants.

Case No. 09-12471

Hon. Arthur J. Tarnow
Mag. Michael Hluchaniuk

JURY DEMANDED

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PLAINTIFF'S BRIEF IN RESPONSE TO
DEFENDANTS PARKER AND SECURECARE'S MOTION TO DISMISS

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Dated: January 29, 2010

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STATEMENT OF ISSUES PRESENTED

1. Should the Court deny defendants Daryl Parker and SecureCare, Inc.'s motion to dismiss where Mr. Lee has plead sufficient factual matter to state a claim of deliberate indifference to a serious medical need against each defendant?

Mr. Lee says yes.

2. Should the Court deny defendants Daryl Parker and SecureCare, Inc.'s motion to dismiss where Mr. Lee had no obligation under federal or state law to comply with The Michigan Medical Malpractice Tort Reform Act, MCL § 600.2912, et seq?

Mr. Lee says yes.

3. Should the Court compel Mr. Lee to set forth a more definite statement of the claims against defendants when defendants have already filed a responsive pleading?

Mr. Lee says no.

LEGAL STANDARD AND CONTROLLING AUTHORITIES

1. Deliberate Indifference to a Serious Medical Need

The Eighth Amendment proscribes deliberate indifference to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To state a claim of deliberate indifference to a serious medical need, “a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference.” *Id.* at 106. The deliberate indifference standard was further refined by the Supreme Court in *Farmer v. Brennan*. In *Farmer*, the Court stated that deliberate indifference claims are comprised of an objective and subjective component. *Farmer*, 511 U.S. 825, 834 (1994). The objective component requires that the plaintiff allege a “sufficiently serious” medical need. *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004). “A medical need is objectively serious if it is one that has been diagnosed by a physician as mandating treatment *or* one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Id.* (citations and internal quotation marks omitted).

The second, subjective component requires that the plaintiff allege that the prison official “knows of and disregards an excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. As to the second component, the plaintiff “need not show that that prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at 842.

2. Compliance with The Michigan Medical Malpractice Tort Reform Act

The requisite statutory provisions of The Michigan Medical Malpractice Tort Reform Act, MCL § 600.2912, et seq, apply to state-law medical malpractice claims and not Eighth Amendment deliberate indifference claims. Federal practice illustrates that when a plaintiff files

a state-law medical malpractice claim *and* a constitutional deliberate indifference claim in federal court, the courts can and will dismiss the pendent state-law medical malpractice claim for failing to comply with the state's requisite statutory provisions. *See Bonds v. Williamson*, No. 1:08CV78, 2008 WL 4700703, at *4-6 (N.D. W.Va. Oct. 21, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Bond v. Rhodes*, No. 2:06cv1515, 2008 WL 763737, at *3 (W.D. Pa. March 20, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Mohammed v. Donate*, No. 4:07-CV-1048, 2008 WL 275724, at *2 (M.D. Pa. Jan. 30, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Chapman v. Chandra*, No. 06-cv-0651-MJR, 2007 WL 1655799, at *4-6 (S.D. Ill. June 5, 2007) (dismissing plaintiff's medical malpractice claim for failure to comply with the state's requisite statutory provisions while allowing deliberate indifference claims to proceed); *Bellecourt v. U.S.*, 784 F.Supp. 623, 633-37 (D. Minn. 1992) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while dismissing deliberate indifference claims on *federal law grounds*).

3. Motion for a More Definite Statement

Federal Rule of Civil Procedure 12(e) provides that "a party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." FED. R. CIV. P. 12(e).

Accordingly, Rule 12(e) requires that a “motion be made before filing a responsive pleading . . .” *Id.*

INTRODUCTION

In their Rule 12(b)(6) motion to dismiss, defendants Daryl Parker and SecureCare, Inc. argue that plaintiff, Larry Lee, has failed to plead *any* factual allegations in support of his claims of deliberate indifference.¹ Defendants' argument fails because it relies only upon the legal claims alleged against them in paragraphs 70 to 73 of the First Amended Complaint (hereinafter "Complaint"). Defendants completely ignore the multiple, substantive factual allegations pled earlier in the complaint *upon which* the legal claims expressly rest. These substantive factual allegations plainly support Mr. Lee's legal claims of deliberate indifference against defendants Parker and SecureCare.

Defendants also argue that Mr. Lee's deliberate indifference claims should be dismissed because he failed to comply with provisions of The Michigan Medical Malpractice Tort Reform Act, MCL § 600.2912, et seq. This argument fails because the law does not require a prisoner to comply with the provisions of a state-law malpractice act when filing a federal constitutional health care claim under 42 U.S.C. § 1983 in federal court.

BRIEF STATEMENT OF FACTS

Mr. Lee alleges that the defendants, motivated by animus towards homosexuals, violated his constitutional rights while he was incarcerated in Washtenaw County Jail (the "Jail"). (Compl. ¶ 2.) Mr. Lee alleges that the defendants turned a blind-eye to sexual assaults against him by inmates (*Id.* at ¶ 69), sexual assaults against him by a correctional officer (*Id.* at ¶¶ 59-62), physical assaults against him by inmates (*Id.* at ¶ 66-9), and sexual harassment against him by inmates and correctional officers alike (*Id.*). The degree and variety of harassment and abuse allegedly suffered by Mr. Lee was significant: he endured eating food polluted with human feces

¹ Defendants failed to comply with E.D. Mich. 7.1(a) by filing this motion to dismiss without ascertaining whether Mr. Lee would concur or oppose any or all aspects of the motion.

(*Id.* at ¶¶ 40, 43-5, & 47), being doused with urine (*Id.* at ¶ 29), being subjected to physical threats (*Id.* at ¶¶ 31 & 37), and being regularly called derogatory, anti-homosexual names (*Id.* at ¶ 35).

As to defendants Daryl Parker and SecureCare, Inc. (hereinafter “SecureCare”), in the Complaint under the heading of “**Legal Claims**,” Mr. Lee alleges that the defendants were deliberately indifferent to his serious medical needs thus subjecting him to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution. (*Id.* at ¶¶ 70-3.) He supports these *legal claims* with *factual allegations* pled against these defendants earlier in the Complaint under the heading “**Factual Allegations**.¹” These allegations begin by defining Dr. Parker’s and SecureCare’s obligations to deliver – and role in delivering – health care to Mr. Lee while in the Jail. Specifically, Mr. Lee alleges that:

- defendant SecureCare is a for-profit Michigan corporation that, at all relevant times, was under contract to provide medical services to the inmates incarcerated at the Jail (*Id.* at ¶ 9);
- defendant SecureCare helped to formulate and implement the customs, policies, practices, procedures, and protocols related to the delivery of medical services in the Jail (*Id.*);
- defendant Parker was a physician providing medical services to inmates at the Jail, including Mr. Lee (*Id.* at ¶ 10); and
- defendant Parker contracted with or was employed by defendant SecureCare to provide healthcare, and to design and implement defendant SecureCare’s customs, policies, practices, procedures, and protocols related to the provision of medical services in the Jail (*Id.*).

Mr. Lee further alleges that, approximately one month after he entered the Jail, he struck his head against a utility box mounted against the wall. (*Id.* at ¶ 25.) Upon striking his head, Mr. Lee fell and further injured his head against the wall and the floor. (*Id.*) Despite requesting medical attention, he was moved to a holding cell where he began to bleed from his ear and nose and vomit. (*Id.* at ¶ 26.) As a result of the head trauma, he also suffered blurred vision and headaches, symptoms that persisted *long after* the injury. (*Id.* at ¶ 27.) Despite these symptoms,

defendant Parker did not examine Mr. Lee until three days after the injury, and “defendant Parker failed to properly diagnose and treat Mr. Lee [for this injury] at that time or at any time in the future.” (*Id.*)

Mr. Lee also makes clear in his complaint that, “*throughout his incarceration,*” he complained to defendant Parker and other medical staff about headaches, in addition to panic attacks brought on by the abuse he endured while at the Jail. (*Id.* at ¶ 55, emphasis added.) On several occasions, Mr. Lee requested that defendant Parker place him in the medical unit. (*Id.*) These requests were denied. (*Id.*)

In addition to the headaches and panic attacks, Mr. Lee complained of sleep deprivation, hallucinations, and depression on several occasions. (*Id.* at ¶ 56.) Because of these symptoms, Mr. Lee alleges he made requests to defendant Parker to see a psychiatrist and a neurologist. (*Id.*) Despite Mr. Lee’s ongoing complaints of panic attacks and depression, these requests were continually denied. (*Id.*) Finally, in or around late February early March of 2007, some eight months after this all began, Mr. Lee was treated and diagnosed with Post Traumatic Stress Disorder stemming from the abuse suffered while incarcerated at the Jail. (*Id.* at ¶ 57.) Mr. Lee had no history of mental illness prior to his incarceration. (*Id.* at ¶ 56.) As to all of these specific allegations of health failures, Mr. Lee also alleges that defendant SecureCare failed to train and supervise its employees and “effectuated a custom, policy and practice of inaction with respect to responding to, diagnosing, and treating serious medical needs.” (*Id.* at ¶ 73.)

STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) states that a plaintiff must provide no more than “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Though Rule 8 requires more than vague legal conclusions, it does not require

“detailed factual allegations.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) (noting that “Rule 8 marks a notable and generous departure from the hyper-technical, code pleading regime of a prior era . . . ”). A complaint will survive a motion to dismiss pursuant to Rule 12(b)(6) if it contains sufficient factual matter to “state a claim to relief that is plausible on its face.” *Id.* (citation and internal quotation marks omitted). All factual allegations contained within a complaint, distinct from legal conclusions, are entitled to an assumption of truth. *Id.* When reviewing a motion to dismiss, the court shall “construe the complaint in the light most favorable to the plaintiff . . . [and] draw all reasonable inferences in favor of the plaintiff.” *DirecTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007).

ARGUMENT

I. Response to Defendants’ Point I:

Mr. Lee has Plead Sufficient Facts to State a Claim of Deliberate Indifference Against Defendants Parker and SecureCare

Defendants Parker and SecureCare argue that Mr. Lee has failed to plead *any* factual allegations in support of his deliberate indifference claims against them. Defendants’ argument is simply wrong because it ignores the substantive, factual allegations pled in the first 58 paragraphs of the Complaint and relies only on paragraphs 70 to 73, the summary legal claims against them. Had defendants considered the first 58 paragraphs of the Complaint, they would have seen that Mr. Lee not only pled factual allegations against each of them, but that those allegations are plainly sufficient to state a claim for deliberate indifference to serious medical needs under the Eighth Amendment of the Constitution.

A. Defendant Parker

To make out a claim of deliberate indifference against defendant Parker, Mr. Lee need only allege: (i) that he had a sufficiently serious medical need; (ii) that defendant Parker knew of

this medical need; and (iii) that defendant Parker disregarded this medical need. *Farmer v. Brennan*, 511 U.S. 824, 834, 837 (1994); *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004). Mr. Lee has met and exceeded this standard.

First, Mr. Lee alleges that he exhibited a sufficiently serious medical need – a head trauma that resulted in persistent, blurred vision and chronic headaches. (Compl. ¶¶ 25-7.) See *Rivers v. Roszko*, No. Civ S-04-2524 GEB EFB P, 2008 WL 3932446, at *10 (E.D. Cal. Aug. 26, 2008) (finding that a severe head injury is a serious medical need); *Haywood v. Marathon County Sheriff Dept.*, No. 07-C-341-C, 2007 WL 5633391, at *4 (W.D. Wis. Aug. 03, 2007) (concluding that the head injury which resulted from plaintiff receiving a blow to the head and then subsequently hitting his head on the floor could constitute a serious medical need).²

Next, Mr. Lee alleges that defendant Parker *knew of* and *disregarded* Mr. Lee's closed head injury, blurred vision, and chronic headaches. (Compl. ¶¶ 27 & 55.) Specifically, Mr. Lee alleges that, despite bleeding from his nose and ear, vomiting, blurred vision, and persistent headaches, defendant Parker did not examine him until three days after he struck his head (*Id.* at ¶ 27); that he complained to defendant Parker and other medical staff about the resulting chronic headaches "throughout his incarceration" (*Id.* at ¶ 55); and that, at the time of the initial examination for the injury and "at any time in the future," defendant Parker "failed to properly diagnose or treat" Mr. Lee for this condition. (*Id.* at ¶ 27).

Mr. Lee's allegations against Defendant Parker are striking similar to those plead by the plaintiff in *Burton v. Kakani* where the district court denied the defendants' Rule 12(b)(6) motion to dismiss. See No. 09-10893, 2009 WL 3101046, at *3-4 (E.D. Mich. Sept. 23, 2009)

² Mr. Lee alleges that his closed head injury resulted from striking his head against the mounted utility box and then further injuring his head as he fell against the wall and then the floor. (Compl. ¶ 25.)

(concluding that the plaintiff had made out a claim of deliberate indifference against treating physicians by alleging that he had a sufficiently serious medical need, pain from a swollen testicle, that defendants received complaints of plaintiff's pain and examined plaintiff, and that it took defendants a month to provide medication for the pain).

Mr. Lee also complains that defendant Parker was deliberately indifferent to a second, sufficiently serious medical need – mental illness. (Compl. ¶¶ 55-6.) *See Gay v. Chandra*, 652 F.Supp.2d 959, 974 (S.D. Ill. 2009) (finding that “mental illnesses that require treatment are ‘serious medical needs’ within the meaning of the Eighth Amendment” (citation omitted)); *Reyes v. City of Trenton*, No. 05-1882 (MLC), 2007 WL 1038482, at *8 (D.N.J. March 30, 2007) (finding that panic attacks “constitute a serious medical need”). Mr. Lee alleges that defendant Parker both *knew of* and *disregarded* this serious medical need. In particular, he alleges that he repeatedly complained to defendant Parker and other medical staff about panic attacks, sleep deprivation, hallucinations, and depression (Compl. ¶¶ 55-6); that he made requests to defendant Parker to see a psychiatrist and a neurologist (*Id.*); that he made requests to be placed in the medical unit (*Id.*); that defendant Parker denied his requests to be placed in the medical unit (*Id.* at ¶ 55); that defendant Parker denied his requests for mental and neurological health care until almost *eight* months into his incarceration (*Id.* at ¶ 56); and that Mr. Lee suffered Post Traumatic Stress Disorder as a result of the Jail conditions and the failure of medical care (*Id.* at ¶ 57). These facts are more than sufficient to support Mr. Lee’s claim of deliberate indifference. *See Scott v. Ambani*, 577 F.3d 642, 648 (6th Cir. 2009) (reversing district court’s dismissal of deliberate indifference claim as erroneous where the plaintiff alleged a serious medical need, that defendant had received complaints about the need, and that defendant disregarded the need by waiting six months to address it).

B. Defendant SecureCare

In order to make out a claim of deliberate indifference against defendant SecureCare, Mr. Lee need only allege: (i) that SecureCare contracts with Washtenaw County to perform traditional state functions; and (ii) that SecureCare’s custom, policy, or practice caused the constitutional violation complained of by Mr. Lee. *See Johnson v. Karnes*, 398 F.3d 868, 877 (6th Cir. 2005). Mr. Lee has done just that.

Specifically, Mr. Lee alleges that defendant SecureCare contracted with the Jail to perform a traditional state function, providing healthcare to inmates. (Compl. ¶ 6.) *See Hicks v. Frey*, 992 F.2d 1450, 1458 (6th Cir. 1993) (concluding that a private contractor dispensing healthcare to inmates performs a traditional state function). Mr. Lee further alleges that defendant SecureCare “effectuated a custom, policy and practice of *inaction* with respect to responding to, diagnosing, and treating serious medical needs,” and that their policy of inaction directly and proximately caused the deprivation of his fundamental rights under the Eighth and Fourteenth Amendments. (Compl. ¶¶ 72-3, emphasis added.) As evidence of this policy of inaction, Mr. Lee alleges that defendant Parker, who was charged with implementing SecureCare’s customs and practices (*Id.* at ¶ 10), carried out defendant SecureCare’s policy of inaction by exhibiting deliberate indifferent to Mr. Lee’s serious medical needs, namely the head trauma resulting in blurred vision and chronic headaches and his mental illness. In this manner, the factual allegations underpinning the claim of deliberate indifference against defendant Parker are the same factual allegations that support the claim of deliberate indifference against defendant SecureCare. These facts are sufficient to support Mr. Lee’s deliberate indifference claim against defendant SecureCare. *See Garrison v. Davis*, No. 06-13258, 2009 WL 1508293,

at *3 (E.D. Mich. May 29, 2009) (denying private medical services provider's motion to dismiss and concluding that the plaintiff had plead sufficient facts against defendant medical services provider by merely alleging that the provider had an unwritten policy of denying medications to cut costs for profit and by alleging that a nurse had informed plaintiff that staff were not authorized to prescribe certain expensive medications).

II. Response to Defendants' Point II:

Mr. Lee is Not Required to Adhere to The Michigan Medical Malpractice Tort Reform Act When Alleging a Federal Constitutional Health Care Claim

Defendants next assert that Mr. Lee's claims against them properly sound in medical malpractice, and as such, they should be dismissed for failing to comply with the requisite statutory provisions of The Michigan Medical Malpractice Tort Reform Act, MCL § 600.2912, et seq (hereinafter "Michigan Malpractice Act"). Defendants' attempt to graft *state-law* medical malpractice filing requirements onto *federal* constitutional health care claims is not supported by any law plaintiff could locate or that defendants cite. Simply put, Mr. Lee's Eighth Amendment claim stands or falls on Eighth Amendment jurisprudence. As the master of his complaint, Mr. Lee chose to file a deliberate indifference claim, not a state-law medical malpractice claim. As such, state-law medical malpractice filing requirements have no bearing on his Eighth Amendment claim.

While a deliberate indifference claim can be accompanied by a pendent state-law claim, the two are based on independent legal grounds – one state and one federal – and are regularly treated as such. Thus, when a plaintiff files both a state-law medical malpractice claim and a constitutional deliberate indifference claim in federal court, courts can and will dismiss the pendent state-law medical malpractice claim for failing to comply with the state's requisite statutory provisions while permitting the Eighth Amendment deliberate indifference claim to

proceed irrespective of compliance with the state-law provisions. *See Bonds v. Williamson*, No. 1:08CV78, 2008 WL 4700703, at *4-6 (N.D. W.Va. Oct. 21, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Bond v. Rhodes*, No. 2:06cv1515, 2008 WL 763737, at *3 (W.D. Pa. March 20, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Mohammed v. Donate*, No. 4:07-CV-1048, 2008 WL 275724, at *2 (M.D. Pa. Jan. 30, 2008) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while allowing plaintiff's deliberate indifference claim to proceed); *Chapman v. Chandra*, No. 06-cv-0651-MJR, 2007 WL 1655799, at *4-6 (S.D. Ill. June 5, 2007) (dismissing plaintiff's medical malpractice claim for failure to comply with the state's requisite statutory provisions while allowing deliberate indifference claims to proceed); *Bellecourt v. U.S.*, 784 F.Supp. 623, 633-37 (D. Minn. 1992) (dismissing a medical malpractice claim for failure to comply with the requisite statutory provisions while dismissing deliberate indifference claims on *federal law* grounds).

The cases defendants rely upon do not support grafting the procedural requirements of the Michigan Malpractice Act onto Mr. Lee's Eighth Amendment claims. The case defendants most heavily rely on, *Bryant v. Oakpointe Villa Nursing Centre, Inc.*, stands only for the proposition that when a plaintiff files a *state-law* negligence claim that arises out of a professional relationship and raises questions of medical judgment requiring expert testimony, the claim should be plead as medical malpractice and the claim should comply with the Michigan Malpractice Act. 471 Mich. 411 (2004). Essentially, *Bryant* stands for the proposition that a plaintiff may not escape complying with the requisite statutory provisions applicable to

state-law medical malpractice claims by disguising medical malpractice as ordinary negligence.

Id. *Bryant* cannot be read to stand for the proposition that requisite statutory provisions of state law govern the pleading requirements of *federal* constitutional claims.³

The defendants have not cited a single federal case wherein a plaintiff in Michigan, or some other state with comparable statutory scheme, was required to comply with the state's requisite statutory scheme when pleading a federal constitutional deliberate indifference claim. There is simply no legal justification for defendants' argument and it should be denied.

III. Response to Defendants' Point III:

A More Definite Statement of Mr. Lee's Claims is Not Warranted

Alternatively, the defendants request that Mr. Lee be compelled to amend his Complaint to set forth a more "definitive [sic] statement of the claims" against defendants Parker and SecureCare. Federal Rule of Civil Procedure 12(e) provides that a party may move for a more *definite* statement where a pleading is so "vague or ambiguous that the party cannot reasonably prepare a response." FED. R. CIV. P. 12(e). The rule, on its face, requires that "[t]he motion must be made *before filing a responsive pleading . . .*" *Id.* (emphasis added). The purpose of a Rule 12(e) motion, as derived from its plain language, is to compel a more definite statement of the

³ The other cases which the defendants cite stand for similar propositions, and none stand for the proposition that a plaintiff filing a deliberate indifference claim must comply with the requisite statutory provisions pertaining to state-law medical malpractice claims. See *McLeod v. Plymouth Court Nursing Home*, 957 F.Supp. 113 (E.D. Mich. 1997) (holding that where plaintiff may pursue either an ordinary negligence claim or medical malpractice claim, the plaintiff may proceed on the ordinary negligence claim so long as the plaintiff is not simply couching medical malpractice as ordinary negligence and deriving some benefit by doing so); *Tipton v. William Beaumont Hosp.*, 266 Mich.App. 27 (Mich. Ct. App. 2005) (applying *Bryant* and concluding that plaintiff's claims under the Michigan Consumer Protection Act properly sound in medical malpractice); *MacDonald v. Barbarotto*, 161 Mich.App. 542 (Mich. Ct. App. 1987) (holding that plaintiff cannot avoid having the medical malpractice period of limitation apply simply by disguising medical malpractice as fraud, misrepresentation, or ordinary negligence).

claims against defendant so that he is able to file a responsive pleading. The purpose of the Rule is undermined once the defendant has filed his answer; a filed responsive pleading is essentially a concession that the claims are not “vague or ambiguous.”

Here, defendants filed their answer contemporaneously with their motion to dismiss. Clearly Mr. Lee’s Complaint is not so “vague or ambiguous” as to prevent them from preparing (and filing) an answer. Moreover, even assuming *arguendo* that Mr. Lee’s claims were too vague, defendants are well aware of the nature of the claims against them: their own initial disclosures are replete with Mr. Lee’s inmate medical kites requesting treatment for chronic headaches, poor vision, and the various symptoms of his mental illness.

CONCLUSION

For the foregoing reasons, plaintiff Larry Lee respectfully requests that the Court deny defendants Parker and SecureCare’s Rule 12(b)(6) motion to dismiss and give Mr. Lee his costs of defending this motion, together with any other further and different relief that the Court deems just and proper.

Respectfully submitted,

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Dated: January 29, 2010

Proof of Service

The above brief in opposition to defendants Daryl Parker and SecureCare, Inc.'s motion to dismiss was filed using the Court's ECF system, which will send same-day email notice to all counsel of record.

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Dated: January 29, 2010