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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
WESTERN DIVISION

Chad Bumgarner, Edmund Gaud,)
Raymond Hall, Roger Howell,)
Randy Johnson, and Wayne Payne,)

Plaintiffs, on behalf of themselves)
and all others similarly situated,)

vs.)

CLASS ACTION COMPLAINT

North Carolina Department of Correction,)
Alvin W. Keller, Robert Lewis,)
Laura Yates, and Paula Y. Smith,)

Defendants.)

Plaintiffs, inmates with disabilities within the custody and control of the North Carolina Department of Correction, bring this complaint against Defendants and allege as follows:

INTRODUCTION

1. This is a class action for declaratory and injunctive relief brought under Title II of the Americans with Disabilities Act of 1990 (“ADA”) and Section 504 of the Rehabilitation Act (“Rehabilitation Act”) of 1973. Plaintiffs are disabled individuals presently under the custody and control of the North Carolina Department of Correction (“DOC”). They seek to represent a class of all present and future disabled inmates within the DOC who may be subjected to the unlawful policies and practices described herein. Defendants discriminate against Plaintiffs, exclude Plaintiffs from participation in, and deny Plaintiffs the benefits of the DOC’s sentence reduction credit programs by reason of Plaintiffs’ disabilities. Consequently, by reason of their disabilities, all Plaintiffs are serving longer prison sentences than they would serve if they were not disabled, in violation of the ADA and the Rehabilitation Act.

BACKGROUND

2. The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

3. The ADA defines individuals with disabilities as individuals who have “a physical or mental impairment that substantially limits one or more major life activities”, who have “a record of such an impairment”, or who are “regarded as having such an impairment”. 42 U.S.C. § 12102(1). Plaintiffs all qualify as “individuals with disabilities” as defined in that provision. See id.

4. Pursuant to the ADA, “[t]he term ‘qualified individual with a disability’ means an individual with a disability who . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2). In this case, the only “essential eligibility requirement[]” for participation in DOC sentence reduction credit programs is that individuals are “sentenced to the custody of the Department of Correction for confinement in its facilities [or] sentenced jail prisoners”. DOC Sentence Reduction Credit Policy, Policy and Procedures Manual (“DOC Manual”) Chapter B .0109. Plaintiffs, as sentenced inmates within the custody and control of the DOC, meet the “essential eligibility requirements” for participating in the DOC’s sentence reduction credit programs. See 42 U.S.C. § 12131(2).

5. The Rehabilitation Act similarly prohibits such discrimination by an entity receiving federal financial assistance. The Rehabilitation Act provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be

excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .” 29 U.S.C. § 794(a). The Rehabilitation Act defines program or activity to include “all of the operations of . . . a department, agency, . . . or other instrumentality of a State or of a local government” The Rehabilitation Act refers to the ADA for its definitions for “disability” and “individual with a disability”. 29 U.S.C. §§ 705(9), 705(20)(B). Hereinafter, the term “disabled inmates” is used to refer to qualified individuals with disabilities, as defined in the ADA and the Rehabilitation Act.

6. Defendants exclude Plaintiffs from participation in sentence reduction credit programs, deny Plaintiffs the benefits of sentence reduction credit programs, and subject Plaintiffs to discrimination in the administration of sentence reduction credit programs by reason of Plaintiffs’ disabilities.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1343. The matters in controversy arise under the ADA, 42 U.S.C. §§ 12101 et seq., and the Rehabilitation Act, 29 U.S.C. § 794.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b) because the Defendants are located within the Eastern District of North Carolina, and because a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred, and continue to occur, within the Eastern District of North Carolina.

PARTIES

PLAINTIFFS

9. Chad Bumgarner (a/k/a Bumgardner)

a. Mr. Bumgarner is in the custody and control of the DOC at Randolph Correctional Center (“Randolph”).

b. Mr. Bumgarner suffers from a neurodegenerative nerve disorder known as Charcot Marie Tooth Syndrome. This physical impairment affects his feet, lower legs, and hands, and substantially limits his major life activities, including but not limited to, caring for himself, performing manual tasks, such as writing, walking, standing, lifting, bending, and working. Mr. Bumgarner requires leg braces to stand and a cane to walk. In addition, Mr. Bumgarner has bipolar disorder. This mental impairment substantially limits his major life activities, including but not limited to, learning, concentrating, thinking, and working.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Bumgarner the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

10. Edmund Gaud

a. Mr. Gaud is in the custody and control of the DOC at Foothills Correctional Institution (“Foothills”).

b. Mr. Gaud is physically impaired as a result of a back condition and arthritis which substantially limit his major life activities, including but not limited to, walking, standing, lifting, bending, and working. Mr. Gaud walks with a cane.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Gaud the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

11. Raymond Hall

a. Mr. Hall is in the custody and control of the DOC at Mountain View Correctional Institution (“Mountain View”).

b. As a result of an accident in 1995, Mr. Hall’s left leg was amputated below the knee and his right leg was reconstructed. This physical impairment substantially limits his major life activities, including but not limited to, walking, working, caring for himself, performing manual tasks, standing, and sitting.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Hall the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

12. Roger Howell

a. Mr. Howell is in the custody and control of the DOC at Albemarle Correctional Center (“Albemarle”).

b. Mr. Howell is physically impaired as a result of colorectal cancer and related complications, which have left him with a colostomy, an intestinal-rectal fistula, and a bad back. These conditions substantially limit his major life activities, including but not limited to, walking and working.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Howell the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

13. Randy Johnson

a. Mr. Johnson is in the custody and control of the DOC at Warren Correctional Center (“Warren”).

b. Mr. Johnson suffers from HIV; lung cancer, for which he is currently receiving treatment; and depression. These physical and mental impairments substantially limit his major life activities, including but not limited to working, and the operation of major bodily functions, including functions of the immune system and normal cell growth.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Johnson the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

14. Wayne Payne

a. Mr. Payne is in the custody and control of the DOC at Lumberton Correctional Institution (“Lumberton”).

b. Mr. Payne is physically impaired as a result of cerebral palsy and a knee injury which substantially limit his major life activities, including but not limited to, walking, standing, lifting, bending, and working.

c. Despite his eligibility for participation in sentence reduction credit programs, Defendants have denied Mr. Payne the opportunity to participate in and the benefits of sentence reduction credit programs by reason of his disabilities.

15. Defendants have excluded all of the above-named Plaintiffs from accessing sentence reduction credit programs by reason of their disabilities.

DEFENDANTS

16. Defendant DOC is the North Carolina agency charged with operating prison facilities within North Carolina. The DOC is both a “public entity” as defined in Section 12131

of the ADA, and a “program or activity receiving Federal financial assistance” as defined in the Rehabilitation Act.

17. Defendant Alvin W. Keller, Jr. is Secretary of the DOC. As Secretary, Mr. Keller is responsible for the operation and administration of all facilities within the DOC, including the administration of sentence reduction credit programs; vocational, work and educational programs; and disability compliance. Mr. Keller is responsible for the policies and practices set forth below that have resulted in the deprivations of Plaintiffs’ rights under federal law. Mr. Keller is sued in his official capacity for declaratory and injunctive relief for his violation of Plaintiffs’ rights as set forth in the ADA and the Rehabilitation Act.

18. Defendant Robert Lewis is Director of the Division of Prisons (“DOP”) within the DOC. As Director, Mr. Lewis is responsible for the operation and administration of all facilities within the DOP, including the administration of sentence reduction credit programs; vocational, work and educational programs; and disability compliance. Mr. Lewis’s predecessor, former Director of Prisons James Boyd Bennett, authorized the DOC’s current sentence reduction credit program on October 5, 2007. Mr. Lewis is sued in his official capacity for declaratory and injunctive relief for his violation of Plaintiffs’ rights as set forth in the ADA and the Rehabilitation Act.

19. Defendant Laura Yates is the ADA Coordinator for the DOC. As ADA Coordinator, Ms. Yates is responsible for ensuring that all programs, activities, and services operated by and under the control of the DOC comply with the ADA and the Rehabilitation Act. Ms. Yates is sued in her official capacity for declaratory and injunctive relief for her violation of Plaintiffs’ rights as set forth in the ADA and the Rehabilitation Act.

20. Defendant Paula Y. Smith, M.D. is the Medical Director for the DOP. As Medical Director, Dr. Smith is responsible for overseeing the medical care and accurate medical classification of disabled inmates within the DOC. Dr. Smith authorized the DOC's policies governing patient assessment, patient placement at facilities, and treatment of patients with disabilities in the DOC's Health Care Policy and Procedure Manual ("Health Manual"). Dr. Smith is sued in her official capacity for declaratory and injunctive relief for her violation of Plaintiffs' right as set forth in the ADA and the Rehabilitation Act.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

21. The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The Rehabilitation Act prohibits the same type of exclusion, but applies only to public entities, including the DOC, that receive federal funding. 29 U.S.C. § 794.

22. Plaintiffs are disabled inmates in the custody and control of the DOC. By reason of their disabilities, Defendants exclude Plaintiffs from participation in and deny Plaintiffs the benefits of the DOC's sentence reduction credit programs in violation of the ADA and the Rehabilitation Act. Plaintiffs are disabled within the meaning of the ADA and the Rehabilitation Act because they suffer from physical impairments that substantially limit one or more of their major life activities. They are otherwise qualified to participate in the sentence reduction credit programs because, as sentenced inmates within the custody and control of the DOC, they meet the essential eligibility requirements imposed by the DOC for participation in the DOC's sentence reduction credit programs.

23. Pursuant to North Carolina law and DOC Policy and Procedures, inmates within the DOC may participate in sentence reduction credit programs through which they may earn credits that shorten their terms of incarceration. When the DOC awards sentence reduction credits to an inmate, the DOC reduces the inmate's sentence from his or her maximum term towards, but no lower than, his or her minimum term of imprisonment.

24. The DOC sets forth sentence reduction credit programs in DOC Manual Chapter B .0112(a) and .0113(a) that provide inmates an opportunity to earn up to six days per month of sentence reduction credits if they “work full-time, or participate in full-time programs which would assist their productive re-entry into the community.” The DOC refers to these sentence reduction credit programs as “gain time” for inmates who are serving sentences for offenses committed prior to October 1, 1994, and “earned time” for inmates who are serving sentences for offenses committed on or after October 1, 1994. See DOC Manual Chapter B .0112 and .0113.

25. The DOC also allows inmates to earn sentence reduction credits for meritorious service. See DOC Manual Chapter B .0114. The DOC awards these credits for exemplary performance by an inmate, typically in a job or program assignment. Throughout this Complaint, gain time, earned time, and meritorious service programs will be referred to collectively as “traditional sentence reduction credit programs”.¹

26. Defendants exclude Plaintiffs from gain and earned time programs and the associated benefits of sentence reduction credits by denying Plaintiffs access to work and program assignments by reason of their disabilities. Upon information and belief, Defendants also discriminate against disabled inmates in the award of sentence reduction credits for

¹ Note that the DOC also administers a “good time” program for inmates serving sentences for offenses committed before October 1, 1994 and for inmates serving sentences for Driving While Impaired, regardless of the offense date. However, this policy is not involved in the allegations of this Complaint, and therefore is not included within references to “traditional sentence reduction credit programs”.

meritorious service, since they are excluded from most of the activities for which inmates may earn meritorious service credits – such as working overtime, working in inclement weather and completion of apprenticeship programs – by reason of their disabilities. See DOC Manual Chapter B .0114.

27. Following the passage of N.C. Gen. Stat. § 15A-1355(d)², the DOC established a Gain and Earned Time Credit for Medically and Physically Unfit Inmates program (“medical gain time program”), which grants some disabled prisoners access to sentence reduction credits.³

² “Inmates in the custody of the Department of Correction who suffer from medical conditions or physical disabilities that prevent their assignment to work release or other rehabilitative activities may, consistent with rules of the Department of Correction, earn credit based upon good behavior or other criteria determined by the Department that may be used to reduce their maximum term of imprisonment[.]”

³ The “medical gain time program” is set forth in Chapter B .0177 of the DOC Manual and as follows: “GAIN and EARNED TIME CREDIT FOR MEDICALLY AND PHYSICALLY UNFIT INMATES

- (a) When a determination has been made by a Department of Correction medical authority that an inmate is unable to engage in any available work or programs or other assignments due to a medical/mental health condition or a physical disability, the inmate is designated as medically unfit and is granted sentence reduction credits at the rate of four (4) days per month that is awarded as Gain or Earned Time.
- (b) For the purposes of this policy, medically unfit shall be defined as inmates designated in Acuity Level 4, PULHEAT Activity Grade 4 or 5, and Mental Health Grade 4. Sentence Reduction credits will continue for identified inmates if transferred to a community hospital for treatment purposes.
- (c) Medically unfit status continues until a medical authority determines that the medical/mental health condition or physical disability no longer prevents assignment to work or other activities.
- (d) An inmate who is limited for some but not all work or program activities is given an available assignment appropriate to his or her medical/mental health condition and physical disability. The inmate is awarded sentence reduction credits based on his/her assignment, and is not designated as medically unfit.
- (e) The following inmates are not designated as medically unfit:
 - (1) An inmate who refuses to participate in work or other assignments that is appropriate for his or her medical/mental health condition and physical disability.
 - (2) An inmate whose medical/mental health condition or physical disability is the result of self-injurious behavior while in prison.
 - (3) An inmate on a control or segregation status (other than protective control).
- (f) This policy applies to eligible inmates as described above who are serving sentences under any sentencing act.”

Unfortunately, despite the creation of the medical gain time program, the DOC continues to deny disabled inmates access to and benefits of sentence reduction credits granted to non-disabled inmates, in violation of the ADA and the Rehabilitation Act.

28. Pursuant to the medical gain time policy, the DOC grants disabled inmates sentence reduction credits only if it determines that they are “medically unfit”. The DOC classifies an inmate as “medically unfit” if he or she has either an Acuity Level of 4, an Activity Grade of 4 or 5, or a Mental Health Grade of 4. DOC Manual Chapter B .0177. Broadly speaking, Acuity Levels reflect an inmate’s need for nursing care; Activity Grades concern institutional assignments and reflect an inmate’s ability to participate in activities including work, recreation and education; and Mental Health Grades reflect an inmate’s mental health status and the presence of any mental health disorders. See Health Manual Policies A-2 and A-9. The DOC’s definition of “medically unfit” bears no relation to the definition of “disabled” under the ADA and the Rehabilitation Act. Consequently, the DOC misclassifies numerous disabled inmates and excludes them from participation in the medical gain time program at the same time it excludes them from traditional sentence reduction credit programs.

29. For example, Mr. Payne is disabled under the ADA and the Rehabilitation Act as a result of a cerebral palsy and a knee injury which substantially limit his major life activities, including but not limited to, walking, standing, lifting, bending, and working. However, the DOC declines to classify Mr. Payne as “medically unfit” and therefore he cannot earn medical gain time, despite the fact that he is too disabled to perform most jobs or participate in most programs that would allow him to earn traditional sentence reduction credits. The net result of his exclusion from sentence reduction credit programs is that Mr. Payne will serve a longer term of imprisonment by reason of his disabilities.

30. Moreover, disabled inmates' access to the medical gain time program appears to be dependent on where they are housed, as many inmates are told that they cannot participate in the program because they are not at a facility that provides medical gain time. This may be, at least in part, due to a facility classification system which prohibits certain facilities with limited accommodations from housing inmates with elevated health rankings.⁴ Upon information and belief, disabled inmates housed at facilities which do not have a high level of available medical resources are denied the opportunity to participate in the medical gain time program; classifying them as "medically unfit" and granting them access to the medical gain time program would require transfer to another facility authorized to house "medically unfit" inmates.⁵

31. For example, the DOC changed Mr. Howell's status from Acuity Level and/or Activity Grade 4 ("medically unfit") to Acuity Level and/or Activity Grade 2 upon his transfer to Albemarle. The DOC reclassified Mr. Howell not based upon any change in his disability, but instead simply upon the fact that Albemarle, unlike Foothills, where he was located shortly before, apparently is not authorized to house inmates classified as Acuity Level 4. Mr. Howell was informed that "this facility does not provide medical gaintime." As a result of Mr. Howell's misclassification at Albemarle, he is currently excluded from participation in sentence reduction credit programs and will serve a longer term of incarceration by reason of his disability.

⁴ See Health Manual Policy A-2 II. ("Each facility will be evaluated and given a P-U-L-H-E-A-T-D-M-R profile based on the available accommodations, programs, and services at the facility. Inmate housing assignments should match the inmate's profile with the facility profile"); A-2 Attachment B ("These are [Activity Grade] guidelines for criteria utilized to affect housing and activity assignment"); and A-9 ("Every inmate will be placed in a prison facility, which is capable of meeting his or her medical and mental health needs. Every facility will be assigned an acuity level to assist in the proper placement of the inmate.")

⁵ See, e.g., Health Manual A-9 I. D. ("If [an inmate's] new [Acuity] rating is in conflict with the facility the inmate is backlogged to or the admitting facility, the Transfer Coordinator is to be notified immediately. The inmate should not be transferred to a facility with a conflicting acuity rating except under special circumstances as identified in this policy.")

32. In addition, disabled inmates who are not classified as “medically unfit” and are thus denied access to the medical gain time program nevertheless have restrictions placed on their activities by medical staff, and such restrictions prevent them from working or participating in other activities through which they would otherwise have the opportunity to earn gain time or earned time.

33. For example, the DOC withholds from Mr. Payne the designation of “medical unfitness” despite medical staff’s written acknowledgement that “due [to] Payne’s medical condition he can not work or go to school.” The DOC thus excludes him from participation in and denies him the benefits of sentence reduction credit programs by reason of his disabilities.

34. Moreover, the DOC also withholds the designation of “medical unfitness” from certain other classes of disabled inmates, including those who suffer from a temporary or remitting impairment, despite their inability to participate in traditional sentence reduction credit programs by reason of their disabilities. For example, when inmates are designated “medically unavailable” during the treatment of an acute medical problem, the DOC does not consider them to be “medically unfit” and therefore denies them access to medical gain time, even when their episodic or remitting impairment qualifies them as disabled under the ADA.

35. For example, Mr. Johnson had to stop working a gain time job when one of his lungs was surgically removed in April 2010. He is currently receiving treatment for his cancer and 24-hour care, and expects to remain under these conditions at least through October of 2010. Despite his current inability to participate in any traditional sentence reduction credit program, the DOC has told him that he cannot earn medical gain time because he is not classified as “medically unfit”. Mr. Johnson qualifies as disabled under the ADA and the Rehabilitation Act as he suffers from a remitting impairment that substantially limits a major life activity when

active. The DOC is denying Mr. Howell access to all sentence reduction credit programs by reason of his disability and is forcing him to serve a longer term of imprisonment as a result.

36. In addition, the medical gain time program purports to accommodate a partially disabled inmate by classifying him or her as “limited for some but not all work or program activities” and stating that he or she “is given an available assignment appropriate to his or her medical/mental health condition and physical disability.” DOC Manual Chapter B .0117. Such an inmate “is awarded sentence reduction credits based on his/her assignment, and is not designated as medically unfit.” Id. However, upon information and belief, many disabled inmates who are not classified as “medically unfit” are placed under medical restrictions which also prevent their assignment to all gain/earned time work or program activities, and thus are not given any assignment. Other disabled inmates are housed in facilities where jobs are available for non-disabled inmates, but the very few gain or earned time assignments they are permitted to perform are not available. In these circumstances, disabled inmates are denied participation in all DOC sentence reduction credit programs by reason of their disabilities.

37. For example, at Warren the DOC classified Mr. Johnson as Acuity Level 2B and ineligible for medical gain time. Pursuant to the medical gain time program, this designation indicates that he is “limited for some but not all work or program activities” and “is given an available assignment appropriate to his or her medical/mental health condition and physical disability.” DOC Manual Chapter B .0177(d). However, in practice, Warren has no available assignments appropriate to his medical condition and physical disability. Thus, the DOC denies Mr. Johnson both medical gain time and access to traditional sentence reduction credit programs while at Warren by reason of his disabilities. The DOC’s exclusion of Mr. Johnson from

sentence reduction credit programs at Warren extends his term of incarceration by reason of his disabilities.

38. In addition, upon information and belief, the DOC imposes a six-month waiting period at any facility before an inmate can be transferred to another facility. Thus, even disabled inmates who have the eventual good fortune of being transferred to a facility at which they can receive gain or earned time are arbitrarily prevented from receiving such gain or earned time for six months while waiting for a transfer.

39. For example, Mr. Gaud requested a transfer from Pender Correctional Institution (“Pender”) to a facility at which he could earn sentence reduction credits, but DOC officials informed him that he would need to be at Pender for at least six months before he could be transferred to a facility that could accommodate his participation in sentence reduction credit programs. Upon information and belief, by restricting transfers, the DOC prolongs the exclusion of disabled prisoners such as Mr. Gaud from sentence reduction credit programs.

40. In addition, even when disabled inmates are finally classified as “medically unfit” and allowed to participate in the medical gain time program, this often happens long after they became disabled, and they are only granted sentence reduction credits from that date forward.

41. For example, despite the fact that the nature and extent of Mr. Hall’s disability has remained consistent throughout his term of imprisonment, he spent two years within the DOC before the DOC classified him as Activity Level 4 and granted him access to medical gain time.

42. Finally, even when a disabled inmate is given the opportunity to earn sentence reduction credits through the medical gain time policy, the policy discriminates against disabled inmates by providing them with the opportunity to earn only four days of sentence reduction

credits per month, while non-disabled inmates participating in gain or earned time programs may earn up to six days of sentence reduction credits per month.

43. For example, Mr. Bumgarner began earning medical gain time on December 22, 2009. Pursuant to the medical gain time program, the DOC limits his sentence reduction credits to a rate of 4 days per month. If he were not disabled, the DOC would provide him the opportunity to earn a maximum of 6 days of sentence reduction credits per month pursuant to the gain and earned time programs, and provide additional opportunities to earn credits for meritorious service. By reason of his disability, the DOC restricts Mr. Bumgarner's gain time to a rate that is two-thirds the rate available to non-disabled inmates, and therefore discriminates against him in the administration of its sentence reduction credit programs.

44. In short, despite the establishment of a medical gain time program, the DOC has excluded disabled inmates from participation in and denied them the benefits of sentence reduction credit programs.

45. The net effect of these violations of the ADA and the Rehabilitation Act is that disabled inmates within the DOC are, by reason of their disabilities, serving longer prison sentences than their non-disabled counterparts.

NAMED PLAINTIFFS' EXCLUSION FROM SENTENCE REDUCTION CREDIT PROGRAMS

46. Plaintiff Chad Bumgarner

a. Mr. Bumgarner began serving his term of imprisonment in November of 2008. Mr. Bumgarner reported his evident disabilities to the DOC upon his arrival to prison in leg braces, and there has been no significant change in the nature of his disabilities since he entered prison in 2008.

b. Almost immediately, the DOC transferred Mr. Bumgarner to Mountain View but declined to designate him as “medically unfit”. At Mountain View, Mr. Bumgarner attempted to get a job, but the DOC told him that there were no jobs he could hold given his medical restrictions. He did take classes in order to obtain sentence reduction credits, but he did so with extreme difficulty. On December 22, 2009, after more than a year in prison, the DOC finally recognized Mr. Bumgarner’s disability, elevated his Activity Grade to 4, and began granting him medical gain time.

c. The DOC now awards Mr. Bumgarner medical gain time at a rate of 4 days per month, two-thirds the rate at which it makes sentence reduction credits available to non-disabled inmates, and therefore discriminates against him in the administration of its sentence reduction credit programs.

47. Plaintiff Edmund Gaud

a. Mr. Gaud began serving his term of imprisonment in February 2006. Mr. Gaud reported his disabilities upon arrival to prison, and there has been no significant change in the nature of his disabilities since he entered prison. The DOC did not classify Mr. Gaud as “medically unfit” upon arrival.

b. Mr. Gaud has sought to earn sentence reduction credits any way he can. He has requested jobs, classes, and medical gain time at every institution at which he has resided.

c. At Hoke Correctional Institution (“Hoke”), the DOC denied Mr. Gaud the opportunity to work, participate in programs, or access sentence reduction credits through the medical gain time program.

d. The DOC transferred Mr. Gaud to Mountain View, where he was able to earn sentence reduction credits by participating in the Geriatrics program.

e. The DOC transferred Mr. Gaud to Columbus Correctional Center (“Columbus”), and, as at Hoke, denied him the opportunity to work, participate in programs, or access sentence reduction credits through the medical gain time program.

f. At Lumberton, Mr. Gaud was able to convince staff to give him a job with responsibilities modified to his restrictions.

g. At Albemarle, Mr. Gaud tried to work as a janitor, but the job required him to perform additional tasks that the janitor job at Lumberton had not, and he was physically incapable of performing the more demanding janitorial job.

h. At Pender, the DOC classified Mr. Gaud as “medically unavailable” and denied him access to jobs, programs, and sentence reduction credits. Mr. Gaud requested transfer to a facility with a Geriatrics program through which he could earn sentence reduction credits, or the opportunity to earn sentence reduction credits through the medical gain time program. The DOC informed Mr. Gaud that he was not eligible for medical gain time and that, to be eligible for transfer, he would need to be at the facility for six months.

i. After more than six months at Pender, the DOC finally transferred Mr. Gaud to Foothills, a facility ranked to hold Acuity Level 4 inmates. Within days of his arrival, the DOC finally reclassified him and Mr. Gaud began receiving medical gain time. In sum, the DOC denied Mr. Gaud access to sentence reduction credits based on his disability for much of his time in prison before it recognized him as disabled and started awarding him sentence reduction credits.

j. The DOC now awards Mr. Gaud medical gain time at a rate of 4 days per month, two-thirds the rate at which it makes sentence reduction credits available to non-disabled inmates, and therefore discriminates against him in the administration of its sentence reduction credit programs.

48. Plaintiff Raymond Hall

a. Mr. Hall began serving his term of imprisonment in November of 2005. At that time, a DOC doctor at Piedmont Correctional Institution (“Piedmont”) informed Mr. Hall that, once the DOC transferred him to his assigned facility, he would begin receiving medical gain time. Mr. Hall’s severe disabilities were evident to the DOC upon his arrival to prison in 2005 in a wheelchair, and there has been no significant change in the nature of his disabilities since he entered prison in 2005.

b. The DOC transferred Mr. Hall to Lumberton around December 2005, but did not grant him the opportunity to earn medical gain time.

c. A DOC programmer at Lumberton told Mr. Hall that the DOC classified him as Activity Level 2 rather than Activity Level 4 not based on the severity of his disabilities, but simply because Lumberton does not house Activity Level 4 inmates.

d. At Lumberton, the DOC informed Mr. Hall that, by reason of his disabilities, there were no jobs or programs at Lumberton that he was capable of performing. During his first four months at Lumberton, the DOC denied Mr. Hall all access to sentence reduction credit programs. In March 2006, Mr. Hall asked for his medical restrictions to be eased so that he could take a GED class and accumulate earned time. The DOC changed documentation regarding medical restrictions on how long he could sit at one time, and he began taking the class. However, after less than a month,

Mr. Hall developed a serious sore and infection on his buttocks as a result of sitting in the classroom for too long and had to withdraw from the class.

e. After approximately seven months at Lumberton, the DOC transferred Mr. Hall to Mountain View. Because of Mr. Hall's disabilities and medical restrictions, the DOC told him that there were no jobs or programs at Mountain View available to him, and denied him access to sentence reduction credit programs for approximately the first nine months he resided there. After diligent and continued requests to participate in a sentence reduction credit program, Mr. Hall's programmer invented a job for Mr. Hall, and he earned gain time for wiping down facility tables and telephones. He maintained this assignment for seven months before transferring to Foothills. Nevertheless, for the majority of the seventeen months he was housed at Mountain View between 2006 and 2007, the DOC denied Mr. Hall all access to sentence reduction credit programs by reason of his disabilities.

f. In October 2007, the DOC transferred Mr. Hall from Mountain View to Foothills. Almost immediately after his transfer to Foothills, the DOC finally classified Mr. Hall as Activity Level 4 and began awarding him medical gain time in November 2007. Mr. Hall's change in Activity Grade was not the result of any change in disability.

g. The DOC now awards Mr. Hall medical gain time at a rate of 4 days per month, two-thirds the rate at which it makes sentence reduction credits available to non-disabled inmates, and therefore discriminates against him in the administration of its sentence reduction credit programs.

49. Roger Howell

a. Mr. Howell began serving his present term of incarceration in 2007. At that point, he suffered from undiagnosed colorectal cancer. Though he managed to work some, Mr. Howell suffered bowel problems and pain that made working nearly unbearable. Mr. Howell's cancer was diagnosed in February 2008. From May to June 2008, Mr. Howell underwent radiation for his cancer. At the end of June, 2008, Mr. Howell underwent surgery and now wears a permanent colostomy bag. Mr. Howell also suffers from an intestinal-rectal fistula which causes digestive juices to leak from his rectum and requires him to wear adult diapers despite his colostomy. Mr. Howell has been told that, given his health status, it would be hard for him to endure another surgery to correct the fistula. As a result of his colostomy and fistula, Mr. Howell is required to be close to a toilet at all times. He experiences severe irritation and pain as a result of the leakage which limits his ability to walk, sit, and work.

b. In addition, Mr. Howell suffered from a lengthy infection which destroyed two vertebrae in his back. As a result, he experiences sharp pain and limitations on his ability to walk, work, lift, sit, or bend. The DOC granted Mr. Howell medical gain time beginning in June 2008 at Alexander Correctional Institution ("Alexander") and continued to do so at Foothills, with short periods of interruption.

c. After a short stay at Piedmont, the DOC transferred Mr. Howell to Albemarle in February 2010, lowered his Acuity Level and/or Activity Grade to 2, and terminated his medical gain time. The DOC's alteration of Mr. Howell's Acuity Level and/or Activity Grade was not the result of any change in his disability. In response to his grievance about this matter, the DOC informed Mr. Howell: "The Physician deemed you an Activity Level 2. This facility does not grant medical gain time. If you wish to

transfer to another facility, you will need to submit a transfer request through the proper channels.” The DOC thus currently denies Mr. Howell access to sentence reduction credit programs.

50. Plaintiff Randy L. Johnson

a. Mr. Johnson began serving his term of imprisonment in November of 2008. At that time, he suffered from HIV and depression, along with other complicating illnesses including Hepatitis B and C. In January 2010, Mr. Johnson was further diagnosed with lung cancer.

b. On April 14, 2010, the DOC removed Mr. Johnson from his gain time job when one of his lungs was surgically removed. Mr. Johnson is currently receiving 24-hour care, and expects to be receiving medical treatment for his cancer until the fall of 2010, at the earliest. The DOC keeps Mr. Johnson in medical isolation because of his compromised immune system.

c. Mr. Johnson does not know exactly what condition he will be in when his treatment concludes, but even if the treatment is successful, the cancer might recur, and he will continue to suffer from HIV and Hepatitis B and C.

d. Mr. Johnson requested medical gain time at Warren after undergoing surgery and losing his gain time job, but the DOC told him “your PULHEAT does not reflect total inability to hold any job” and “medical gain time is not appropriate at this camp.” Mr. Johnson has tried to have the DOC change his medical restrictions so he can somehow earn sentence reduction credits. However, despite these efforts, the DOC has not assigned him a job compatible with his disability. In any event, Mr. Johnson does not feel that he is capable of working under the circumstances.

e. Since April 2010, the DOC has denied Mr. Johnson access to sentence reduction credits by reason of his disability, despite the fact that he is substantially limited in a number of major life activities by HIV and lung cancer, a disease which, even with successful treatment, is a remitting impairment. Mr. Johnson thus believes that the DOC will deny him access to all sentence reduction credit programs until the fall of 2010 at the earliest.

51. Plaintiff Wayne Payne

a. Mr. Payne began serving his term of imprisonment in April 2000. Mr. Payne's disabilities, the result of cerebral palsy and a knee injury, were reported as well as apparent upon his arrival to prison, and there has been no significant change in the nature of his disabilities since he entered prison.

b. The DOC has housed Mr. Payne at Marion Correctional Institution ("Marion"), Pender, Mountain View, Albemarle, Avery Mitchell Correctional Institution ("Avery Mitchell"), Lumberton, and Warren.

c. The DOC designated Mr. Payne as medically unfit and granted him medical gain time for some period of time at Marion, but he has not received medical gain time at any other facility.

d. Mr. Payne has attempted to receive a job or program assignment at all facilities, and has received gain time for light job assignments and classes. Out of a desire to shorten his term of imprisonment, Mr. Payne has taken assignments which were not suitable to his disability, aggravated his condition, and caused him pain and suffering. When Mr. Payne complained about the physical harm caused by unsuitable assignments and sought medical gain time, the DOC told him that he was Activity Grade 3 and thus

not eligible for medical gain time, so he should inform his instructor of his need for breaks.

e. Because he did not attend some classes when the pain was too much, the DOC charged Mr. Payne with a disciplinary infraction for “[l]eav[ing], quit[ting] without authorization, or fail[ing] to report to any facility job, work or program assignment, or scheduled appointment.” The DOC subsequently dismissed his charge “due to Nurse Supervisor Kathy Locklear stating [that] due [to] inmate Payne’s medical condition he can not work or go to school”. Nevertheless, the DOC persisted in its refusal to grant Mr. Payne medical gain time.

f. Mr. Payne requested transfer to a prison with jobs or programs suitable to his disability over a year ago, but the DOC has kept him at Lumberton without access to such jobs or programs, and without access to sentence reduction credit programs.

ADMINISTRATIVE EXHAUSTION

52. All Plaintiffs have attempted to resolve this matter without litigation, have exhausted their administrative remedies relating to this complaint, and have attached copies of grievances demonstrating their completion of the grievance process.

CLASS ACTION ALLEGATIONS

53. Plaintiffs incorporate by reference all preceding paragraphs of this complaint.

54. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all present and future disabled inmates of the DOC who have been, and may in the future be, discriminated against, excluded from participation in, and denied the benefits of the DOC’s sentence reduction credit programs by reason of their disabilities.

55. The DOC houses approximately 40,000 inmates at any given time.

56. Upon information and belief, a significant number of these inmates are qualified individuals with disabilities as defined by the ADA and the Rehabilitation Act, who are, by reason of such disabilities, excluded from participation in and denied the benefits of sentence reduction credit programs.

57. Because the size of the class is so numerous, and because membership in the class continuously changes, joinder of all members is impracticable.

58. There are questions of law and fact common to the class, including but not limited to, whether Defendants have violated the ADA and the Rehabilitation Act by denying disabled inmates the opportunity to participate in and the benefits of sentence reduction credit programs by reason of their disabilities and by subjecting disabled inmates to discrimination.

59. The claims of the Plaintiffs are typical of the claims of the entire class, and the laws, policies, conditions, practices and omissions that form the basis of this complaint are common to all members of the class.

60. The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the Defendants.

61. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications and would substantially impair and impede the ability of other members to protect their interests.

62. Defendants have acted and refused to act on grounds that apply generally to the class, so that final injunctive and declaratory relief is appropriate respecting the class as a whole.

63. Questions of law and fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

64. The named Plaintiffs are capable of fairly and adequately representing the class and protecting its interests. North Carolina Prisoner Legal Services, Inc., counsel for Plaintiffs, is a legal services organization experienced in prisoners' civil rights litigation with a proven track record of protecting inmates' civil rights and securing reform of the DOC and its facilities.

FIRST CAUSE OF ACTION

Violations of the Americans with Disabilities Act

65. Plaintiffs incorporate by reference all preceding paragraphs of this complaint.

66. Plaintiffs are qualified individuals with disabilities as defined by the ADA. They have physical impairments that substantially limit one or more major life activities; they have records of having such impairments; or they are regarded as having such impairments.

67. As state prisoners, all Plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants. 42 U.S.C. § 12102(2); 42 U.S.C. § 12131 (2).

68. Defendants are public entities, or agents or officials of public entities, as that term is defined under 42 U.S.C. § 12131(1)(B).

69. Defendants, by reason of Plaintiffs' disabilities, exclude Plaintiffs from participation in and deny them the benefits of sentence reduction credit programs. Defendants discriminate against Plaintiffs on the basis of their disabilities in violation of 42 U.S.C. § 12132.

SECOND CAUSE OF ACTION

Violations of the Rehabilitation Act

70. Plaintiffs incorporate by reference all preceding paragraphs of this complaint.

71. Plaintiffs are qualified individuals with disabilities as defined in the Rehabilitation Act. They have physical impairments that substantially limit one or more major life activities; they have records of having such impairments; or they are regarded as having such impairments.

72. As state prisoners, all Plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants.

73. Defendants are public entities or agents or officials of public entities who administer “programs or activities”, as defined in the Rehabilitation Act.

74. At all times relevant to this complaint, the DOC received and continues to receive federal financial assistance.

75. Defendants, solely by reason of Plaintiffs’ disabilities, exclude Plaintiffs from participation in and deny them the benefits of sentence reduction credit programs. Defendants discriminate against Plaintiffs on the basis of their disabilities in violation of the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant them the following relief:

76. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of the Plaintiffs and the class they seek to represent under the ADA and the Rehabilitation Act.

77. Permanently enjoin Defendants, their agents, employees and all persons acting in concert with them, from subjecting Plaintiffs and the putative class to the illegal policies, practices, omissions and conditions described above;

78. Order Defendants, their agents, employees and all persons acting in concert with them, to perform individualized assessments of all DOC inmates for disability in accordance with the ADA and the Rehabilitation Act;

79. Order Defendants, their agents, employees and all persons acting in concert with them, to provide disabled inmates with access to and the full benefits of the DOC's sentence reduction credit programs;

80. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future;

81. Pursuant to 29 U.S.C. § 794a(b) and 42 U.S.C. § 12205, award Plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses.

82. Award such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 17th day of September, 2010.

/s/ Ann Ferrari
Ann Ferrari
N.C. Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
Telephone: 919-856-2200
Fax: 919-856-2223
Email: aferrari@ncpls.org
State Bar No. 36184

/s/ Emily Coward
Emily Coward
N.C. Prisoner Legal Services, Inc.
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Raleigh, North Carolina 27611
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Fax: 919-856-2223
Email: ecoward@ncpls.org
State Bar No. 38663

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
WESTERN DIVISION

Chad Bumgarner, Edmund Gaud,)
Raymond Hall, Roger Howell,)
Randy Johnson, and Wayne Payne,)
)
Plaintiffs, on behalf of themselves)
and all others similarly situated,)
)
vs.)
)
North Carolina Department of Correction,)
Alvin W. Keller, Robert Lewis,)
Laura Yates, and Paula Y. Smith,)
)
Defendants.)
)

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Exhibit A

Chad Bumgarner's Verification Form

RECEIVED AUG 23 2010

I, Chad Bumgarner, have reviewed the factual allegations contained in this Complaint.

The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 18th day of August, 2010.

Chad Bumgarner
Chad Bumgarner

Exhibit B

Chad Bumgarner's Grievances

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: CHAD BUMGARDNER 2. Inmate OPUS No.: 04973453. Location: H-111 4. Date: 3-30-10

5. Grievance Statement: I was disabled at the time I was incarcerated 11-18-2008, but it took the D.O.C. over thirteen months to begin awarding me medical gain time. I should have been receiving medical gain time all along. Now that I receive medical gain time, I receive only 4 credits per month, while non-disabled inmates can receive at least 6 credits per month.

to receive an award of sentence reduction credits for the time I served while disabled prior to being declared medically unfit (11-18-2008 to 12-22-2009) and to receive sentence reduction credits in the future at the same rate as non-disabled inmates (at least 6 days/month).

7. Inmate Signature: Chad Bumgardner

OFFICIAL USE

8. Date received: 3/30/10

9.

Receiving Officer Signature

10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.11. Date delayed: 1/1

12.

Screening Officer Signature

13. The grievance is rejected for the following reason(s): (Enter Code) _____

A. State or Federal Court Decision
D. Action not yet taken
G. More than one incident
J. Beyond control of DOC

B. Parole Commission Decision
E. Exceeds 1 year time limit
H. ARP procedures not followed

C. Appeals disciplinary action
F. Remedy for another inmate
I. Violates Disciplinary C2

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____

15. Date rejected: 1/1

16.

Screening Officer Signature

17. Date accepted: 3/31/10

18.

Screening Officer Signature

19. Grievance No.

4555-2010-
199

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.

Distribution: White to point of final disposition; Blue for Unit record; Green to inmate.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: 4855-2010-19922. Inmate No.: #049734521. Inmate Name: Bumgarner, Chad

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in Item #17):

In response to the grievance, the following is being issued: In response to the grievance you submitted: Medical Gain time by Policy is 4 Credits a month. There is no back pay for Gain Time. I see no merit for a complaint. No Further action.

24. Date: 4-8-2010(A) ☐ Agree with grievance response27. Date: 4-8-201025. Jonathan Ruffin
Superintendent Signature(B) ☒ Appeal to Step Two (24-hour limit)28. Chad Bumgarner
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in Item #27):

Investigation into this matter has been conducted and the following has been found:

Per policy, medically unfit is defined as inmates designated in acuity level 4, PULHEAT activity grade 4 or 5, and mental health grade 4. If you are not designated in one of these levels, you are not eligible for medical earn time. Records indicate that you were not classified as activity grade 4 until 12/22/2009. On this date you were assigned as medically unfit and began receiving earn time credits at the rate of 4 days per month. Prior to this date, you did not meet the eligibility requirements for medical earn time. This is not retroactive to your admission date once classified and you are not eligible for earn time credits as medically unfit prior to 12/22/2009. You will not be credited any days prior to this per policy. No merit to this complaint is found. No further action recommended.

30. Date: 04/21/201032. (A) ☐ Agree with grievance response33. Date: 4-29-1031. M. Ruffin
Administrator Signature(B) ☒ Appeal to Secretary, DOC (24-hour limit)34. Chad Bumgarner
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: CHAD BUMGARDNER 2. Inmate No.: #0497345
 3. Location: EAST H-111 4. Date: 12-30-09
 5. Grievance Statement: I have seen DR. WHREN own 12-22-09 about getting my medical gain-time cause of my CMT leg disorder I have. I am a disabled inmate with physical impairments limiting my major life activities. I am not receiving sentence reduction credits. I should be entitled to the opportunity to earn sentence reduction credits at a rate of up to six days per month, just like a non-disabled inmate. I should have been entitled to this opportunity since my disability began.

6. What remedy would resolve your grievance?: Getting my medical gain-time

OFFICIAL USE

8. Date received: 12/30/09

9. Sgt. W. Rine
Receiving Officer Signature

10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.

11. Date delayed: 1/1

12. _____
Screening Officer Signature

13. The grievance is rejected for the following reason(s): (Enter Code) _____

- A. State or Federal Court Decision
 D. Action not yet taken
 G. More than one incident
 J. Beyond control of DCC

- B. Parole Commission Decision
 E. Exceeds 1 year time limit
 H. ARP procedures not followed

- C. Appeals disciplinary action
 F. Remedy for another inmate
 I. Violates Disciplinary No. 38

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____

15. Date rejected: 1/1

16. _____
Screening Officer Signature

17. Date accepted: 12/30/09

18. _____
Screening Officer Signature

19. Grievance No. _____

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.

Distribution: White to point of final disposition, Blue for Unit record; _____

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response

4855-2009-834

20. Grievance No.: _____

22. Inmate No.: 049734521. Inmate Name: Chad Bumgarner

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

~~In response to the grievance, the following is being issued:~~ According to medical, your record has been placed for review by the provider to address your concern for medical gain time.

No further action necessary

24. Date: 1-11-1026. (A) ☐ Agree with grievance response27. Date: 1-11-1025. [Signature]
Superintendent Signature(B) ☒ Appeal to Step Two (24-hour limit)28. [Signature]
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

Investigation into this matter has been conducted and the following has been found:

Records indicate that you received a physical on 12/22/2009. As a result of multiple restrictions and your health grade, you were assigned as medically unfit on this date. As a result of this classification, you were automatically assigned by OPUS to earn time level two (2). This was effective on 12/22/2009 and you remain assigned to this earn time rate as of this date. You were assigned to this the same date that you claim to have seen the provider and began receiving sentence reduction credits. The earn time rate for level two (2) is four (4) days per month, not six (6) as you request. This amount is specified per policy and will not be modified. This matter was adhered to prior to submission of this complaint. No merit to this complaint is found. No further action recommended.

30. Date: 01/28/201032. (A) ☒ Agree with grievance response33. Date: 1-29-1031. [Signature]
Administrator Signature(B) ☐ Appeal to Secretary, DOC (24-hour limit)34. [Signature]
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate


Exhibit C

Edmund Gaud's Verification Form

I, Edmund Gaud, have reviewed the factual allegations contained in this Complaint. The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 31 day of August, 2010.



Edmund Gaud

Exhibit D

Edmund Gaud's Grievances

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: EDMUND GAUD 2. Inmate No.: 6143068
 3. Location: P.C.T. D-2-32 4. Date: 3-16-69
 5. Grievance Statement: EVERY ^{LEG} INMATE HAS THE RIGHT TO WORK GO TO SCHOOL TAKE A TRADE TO EARN GAIN TIME IF A INMATE IS HANDYCAP OR CANT WORK HE CAN GET NO4 GAIN TIME IF HE HAS MEDICAL RESTRICTION THAT HE CANT WORK HE GETS NO4 GAIN TIME. I WAS TOLD BY MY CASE PROGRAMMER DUE TO MY MEDICAL PROBLEMS AND MY MEDICAL RESTRICTION MR. SOLOMAN STATED THAT I WOULONT GET A JOB AT PENDER C.I. SO I WILL HAVE TO GO TO MY MAX RELEASE DATE. I FEEL THAT I AM BEING DISCRIMINATED AGAINST NOT TO BE GIVEN SOME KIND OF JOB THAT I AM ABLE TO DO SO I CAN EARN GAIN TIME WITHOUT GETTING GAIN TIME HOW AM I TO MAINTAIN A POSTIVE ATTITUDE WHEN I AM NOT GETTING ANY GAIN TIME AS I WAS IN A GERIATRICS DOING SOMETHING POSTIVE NOW I DO NOTHING BUT READ. THIS CAMP P.C.I. DOES NOT HAVE JOBS FOR HANDYCAP INMATES AND OFFER ME NOTHING SO I CAN BE PRODUCTIVE
 6. What remedy would resolve your grievance?: TO BE TRANSFER TO A PRISON THAT HAS A GERIATRICS PROGRAM OR TO MCCAIN WHERE I CAN WORK TO EARN GAIN TIME OR BE GIVEN NO4 GAIN TIME UNTILL I CAN WORK
 7. Inmate Signature: Edmund Gaud

OFFICIAL USE

8. Date received: 03/16/09 9. Officer J. Thomas
 Receiving Officer Signature
 10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.
 11. Date delayed: 1/1 12. _____
 Screening Officer Signature
 13. The grievance is rejected for the following reason(s): (Enter Code) _____
 A. State or Federal Court Decision B. Parole Commission Decision C. Appeals disciplinary action
 D. Action not yet taken E. Exceeds 1 year time limit F. Remedy for another inmate
 G. More than one incident H. ARP procedures not followed I. Violates Disciplinary No. 38
 J. Beyond control of DOC

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____
 15. Date rejected: 1/1 16. _____
 Screening Officer Signature
 17. Date accepted: 3/19/09 18. S. Gaud
 Screening Officer Signature
 19. Grievance No. 4150-9-220

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.

Distribution: White to point of final disposition, Blue for Unit record; Green to inmate.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: 4150-09-22021. Inmate Name: Gaud, Edmond22. Inmate No.: #0143068**23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):**

Your grievance dated 3/16/09 has been reviewed. On 3/3/09 your case manager advised you that based on your activity grade of 3 and having numerous medical restrictions, assignment to a job may be limited.

In order to receive gain/earned time for being unable to work, you must be classified as Medically Unfit. When a determination has been made by a Department of Correction medical authority that an inmate is unable to engage in any available work or programs or other assignments due to a medical/mental health condition or a physical disability, the inmate is designated as medically unfit and is granted sentence reduction credits at the rate of four (4) days per month that is awarded as Gain or Earned Time. Medically unfit status continues until a medical authority determines that the medical/mental health condition or physical disability no longer prevents assignment to work or other activities. At the present time, you do not meet the criteria and therefore you are not designated as Medically Unfit.

Although you have medical restrictions and limitations, your case manager will continue to work with you in efforts to assign you to a job or program assignment that is compatible with your limitations.

To be eligible for a transfer, you must be housed at this facility for six months and be 90 days infraction free. At the present time you are not eligible for transfer.

24. Date: 3-31-0925. Bryant Welch
Superintendent Signature26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 3-31-0928. Edmond Gaud
Inmate Signature**Step Two - Area/Complex/Institution Response****29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):**

After a careful review of your grievance, I find that staff has adequately responded to your complaint. In addition, medical decisions are best left to the medical professionals qualified to make them. Based on this information, no further action is warranted at this time.

30. Date: 4-9-0931. Michaela Bue
Administrator Signature32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)33. Date: 4-13-0934. Edmond Gaud
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

NORTH CAROLINA DEPARTMENT OF CORRECTION

STATE OF NORTH CAROLINA
BEVERLY EAVES PERDUE
GOVERNOR

FINESSE G. COUCH
EXECUTIVE DIRECTOR

INMATE GRIEVANCE RESOLUTION BOARD
MSC 4207, Raleigh, NC 27699-4207

REV. REGINALD E. MIDGETTE, S.
CHAIRMAN

MEMBERS
LUCIEN CAPONE, II, SQ.
BRADLEY BANNON, Q.
JOHN E. GEHRING, E.
MATTHEW ROUSE, JR., L.

Administrative Remedy Procedure**Step Three**

35. Inmate Name: Gaud, Edmund

36. GRB Grievance No.: 9829

AKA:

37. Inmate # 0143068

38. Unit Grievance No.: 41509220

39. Location: Pender CI 4150

40. Date Received: 4/16/2009

41. GRIEVANCE EXAMINER: Findings and Disposition Order

Edmund Gaud filed this grievance on 3/16/09 at Pender CI #4150 requesting "To be transfer to a prison that has a geriatrics program or to McCain where I can work to earn gain time or be given No 4 gain time until I can work". The detailed, thorough and lengthy step one response by the Staff Administrator adequately addresses your concerns regarding your limitations. In summary, the Staff Investigator responded "Although you have medical restrictions and limitations, your case manager will continue to work with you in efforts to assign you to a job or program assignment that is compatible with your limitations. To be eligible for a transfer, you must be housed at this facility for six months and be 90 days infraction free. At the present time you are not eligible for transfer (as of 3/31/09).

This examiner has reviewed this grievance and the response by staff. On this record, it appears that proper action has been taken by staff to resolve this inmate's grievance concerns. Therefore, this grievance is considered resolved by DOC staff.

42. Date: 5-15-09

43. 

Inmate Grievance Examiner

DISTRIBUTION: Originals (DC-410, DC-410A & DC-410B) to location of final action.

cc: [] Unit Superintendent

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: EDMUND GAUD 2. Inmate OPUS No.: 0143048
 3. Location: P.C.I. D-112 4. Date: 7-9-09
 5. Grievance Statement: I'VE BEEN AT P.C.I. GOING ON 6 MONTHS WITH OUT A JOB OR ANYTHING TO MAKE GAIN TIME I WAS TOLD MY CASE MANAGER WILL WORK WITH ME THIS IS NOT TRUE AS MR. SPEARMAN STATED TO ME THAT I WILL NOT GET A JOB AT P.C.I. NOR IS THEIR ANY PLACEMENT THAT HE CAN PUT ME IN DUE TO HEALTH CARE AND MEDICAL RESTRICTIONS THAT I WILL HAVE TO DOE MY MAX ON MY SENTANCE BECAUSE I CANNOT MAKE GAIN TIME. EVERY INMATE HAS THE RIGHT TO MAKE GAIN TIME. I AM BEING DISCRIMINATED AGAINST DUE TO MY HANDYCAP AS P.C.I. OFFER NOTHING FOR INMATES WITH MEDICAL PROBLEMS I ALSO WAS TOLD THAT P.C.I. HAD A GERIATRIES PROGRAM AS I ASK FOR FROM BEING TRANSFER THIS WAS NOT SO. I HAVE BEEN IN THE GERIATRIES PROGRAM DUE TO MY MEDICAL RESTRICTIONS SO I COULD MAKE GAIN TIME

6. What remedy would resolve your grievance?: TO BE GIVEN MEDICAL GAIN TIME NO4 STARTING ON 2-28-09 2ND BE GIVEN SOME KIND OF JOB I CAN DO. TO BE TRANSFER TO A PLACE THAT HAS AGERIATRIES PROGRAM WITH OUT HAVING TO BE BACKLOG TO BE TRANSFER WITHIN 60 DAYS AFTER AUGUST
 7. Inmate Signature: Edmund Gaud

OFFICIAL USE

8. Date received: 7/9/09 9. M. [Signature]
 Receiving Officer Signature
 10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.
 11. Date delayed: 1/1 12. _____
 Screening Officer Signature

13. The grievance is rejected for the following reason(s): (Enter Code) _____

A. State or Federal Court Decision
 D. Action not yet taken
 G. More than one incident
 J. Beyond control of DOC

B. Parole Commission Decision
 E. Exceeds 1 year time limit
 H. ARP procedures not followed

C. Appeals disciplinary action
 F. Remedy for another inmate
 I. Violates Disciplinary C2

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____

15. Date rejected: 1/1 16. _____
 Screening Officer Signature
 17. Date accepted: 7/12/09 18. [Signature]
 Screening Officer Signature

19. Grievance No.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: 4150-09-51621. Inmate Name: Gaud, Edmund22. Inmate No.: #0143068

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

Your grievance dated 7/09/09 has been reviewed. You allege you should be receiving "medical gain time" and request to be transferred to a place that has a geriatric program.

When a determination has been made by a Department of Correction medical authority that an inmate is unable to engage in any available work or programs or other assignments due to a medical/mental health condition or a physical disability, the inmate is designated as medically unfit and is granted sentence reduction credits at the rate of four (4) days per month that is awarded as Gain or Earned Time. Medically unfit is defined as inmates designated in Acuity Level 4, PULHEAT Activity Grade 4 or 5, and Mental Health Grade 4. When a medical authority places an inmate in one or more of the above levels, assignment as medically unfit is automatic. This status continues until a medical authority determines that the medical/mental health condition or physical disability no longer prevents assignment to work or other activities and the inmate's level is changed. As this time you do not meet the criteria for Medically Unfit. *continued*

24. Date: 7/23/0925. B. K. With
Superintendent Signature26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 7/27/0928. Edmund Gaud
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

After a careful review of your grievance, I find that staff has adequately responded to your complaint. In addition, medical decisions are best left to the medical professionals qualified to make them. If you have any other medical concerns, please feel free to submit a sick call request (co-pay may be required) and report all emergencies to staff. Based on this information, no further action is warranted at this time.

30. Date: 8/6/0931. Michael B. Bue
Administrator Signature32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)33. Date: 8/10/0934. Edmund Gaud
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

An inmate who is limited for some but not all work or program activities is given an available assignment appropriate to his or her medical/mental health condition and physical disability. The inmate is awarded sentence reduction credits based on his/her assignment, and is not designated as medically unfit. You should discuss with your case manager to determine what jobs or programs may be appropriate for you as well as when you may request a transfer.

Pender does not have a geriatric program. If you believe your health grade is incorrect, you may go through the sick call process for a possible referral to the doctor for re-evaluation.

NORTH CAROLINA DEPARTMENT OF CORRECTION

STATE OF NORTH CAROLINA
BEVERLY EAVES PERDUE
GOVERNOR

FINESSE G. COUCH
EXECUTIVE DIRECTOR

INMATE GRIEVANCE RESOLUTION BOARD
MSC 4207, Raleigh, NC 27699-4207

REV. REGINALD E. MIDGETTE, SR.
CHAIRMAN

MEMBERS
LUCIEN CAPONE, III, ESQ.
JOHN E. GEHRING, ESQ.
MATTHEW ROUSE, JR., D.H.L.

Administrative Remedy Procedure**Step Three**

35. Inmate Name Gaud, Edmond

36. GRB Grievance No.: 1510

AKA:

37. Inmate # 0143068

38. Unit Grievance No. 415009516

39. Location: Pender CI 4150

40. Date Received: 8/12/2009

41. GRIEVANCE EXAMINER: Findings and Disposition Order

Edmond Gaud filed this grievance on June 9, 2009 at Pender Correctional Institution. He complained that he was not assigned to a "medical gain time" assignment.

Staff response indicated that an investigation of the inmate's complaint was conducted. Staff concluded that the inmate has not been treated unfair or outside the scope of correctional policies and procedures.

This examiner has carefully reviewed the grievance and the response given by staff in the DC-410A response. From this review, I am convinced that staff has adequately addressed this inmate's grievance concerns. I adopt the facts found by the staff investigator.

On this record, this inmate's allegations are insufficiently supported. Thus, this grievance is dismissed for lack of supporting evidence.

42. Date:

8-19-09

43.



Inmate Grievance Examiner

DISTRIBUTION: Originals (DC-410, DC-410A & DC-410B) to location of final action.

cc: [] Unit Superintendent

Exhibit E

Raymond Hall's Verification Form

I, Raymond Hall, have reviewed the factual allegations contained in this Complaint. The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 20 day of August, 2010.

Raymond D. Hall
Raymond Hall

Exhibit F

Raymond Hall's Grievances

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: Raymond D. Hall 2. Inmate OPUS No.: 0162701
 3. Location: FMCU 4. Date: 11-7-09
 5. Grievance Statement: I am a disabled inmate with physical impairments limiting the major life activities of walking and standing. I am currently earning medical gain time at a rate of 4 days per month. Other inmates without disabilities have the opportunity to earn up to 6 days of gain time per month. I believe that I should have the opportunity to earn 6 days of Medical gain time per month.

6. What remedy would resolve your grievance?: To be given 6 days per month and make it retroactive back to when I entered prison.

7. Inmate Signature: Raymond D. Hall

OFFICIAL USE

8. Date received: 11/7/09

9. B. Gillett
Receiving Officer Signature

10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.

11. Date delayed: / /

12. _____
Screening Officer Signature

13. The grievance is rejected for the following reason(s): (Enter Code) _____

A. State or Federal Court Decision
 D. Action not yet taken
 G. More than one incident
 J. Beyond control of DOC

B. Parole Commission Decision
 E. Exceeds 1 year time limit
 H. ARP procedures not followed

C. Appeals disciplinary action
 F. Remedy for another inmate
 I. Violates Disciplinary C2

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____

15. Date rejected: / /

16. _____
Screening Officer Signature

17. Date accepted: / /

18. _____
Screening Officer Signature

19. Grievance No.

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.

Distribution: White to prison or Division of Prisons, Green to Unit, Yellow to Inmate. Filed 09/17/10 Page 2 of 5

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: FMCU 3720 198-0921. Inmate Name: Raymond D. Hall22. Inmate No.: #0126701

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

Your grievance has been accepted and reviewed for a Step One -- Unit Response. Your concerns have been investigated. The current Division of Prisons policy regarding sentence reduction credits for medically unfit inmates authorizes four days of earn time per month. This policy is approved by the Director of Prisons. Based on applicable & current policies you are receiving the appropriate sentence reduction credits. Your concerns appear to have been adequately addressed by this review. No further action recommended.

24. Date: 11-23-200925. [Signature]
Superintendent Signature26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 11/23/0928. [Signature]
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

Your complaint in reference to gain time for being medically unfit has been thoroughly reviewed. As stated in the Step 1 response, Division of Prisons Policy and Procedure states that medically unfit inmates will earn four (4) days per month earn time. You are currently assigned to medically unfit status and receiving the appropriate amount of gain time according to the Division policy. No further action recommended.

30. Date: 12/13/0931. [Signature]
Administrator Signature32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)33. Date: 12/16/0934. [Signature]
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

5. Grievance Statement: I am a disabled inmate with physical impairments limiting the major life activities of walking and standing. I was misclassified as activity level 2 while at Lumberton Corr. Institution. I should have been classified as activity level 4 and Medically unfit, and I should have earned medical gain time. Because I was wrongfully excluded from participation in the medical gain time program, I believe that I am entitled to retroactive medical gain time for the months spent at Lumberton Corr. and up to I was put on Medical 4.

6. What remedy would resolve your grievance?: To be given the retroactive medical & gain time.

7. Inmate Signature: Raymond Hall

9. 12.1.1.1

10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.

12. _____

13. The grievance is rejected for the following reason(s): (Enter Code)

- C. Appeals disciplinary action**
F. Remedy for another inmate
I. Violates Disciplinary C2

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification:

16.

18.

Screening Officer Signature

19. Grievance No.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: EMCU 3720 011-1021. Inmate Name: Raymond Hall22. Inmate No.: #0162701

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

Your grievance has been accepted and reviewed for a Step One – Unit Response. Your concerns have been investigated. Records indicate you were declared medically unfit 11/19/2007. Prior to this date you were not considered medically unfit. Division of Prisons policy requires that a Dept. of Correction medical authority deem an inmate unable to engage in any available work or programs or other assignments due to a medical/mental health condition or a physical disability to receive the sentence reduction credits you reference in your grievance. There are no remedies in place to award you with sentence reduction credits for the time period in question as you were not considered medically unfit in accordance with established policies. Your concerns appear to have been adequately addressed by this review. No further action recommended.

24. Date: 1-30-2010

25. B. M. Ansley
Superintendent Signature

26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 1, 31, 10

28. Raymond Hall
Inmate Signature

Step Two - Area/Complex/Institution Response

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

Your complaint in reference to being considered "medically unfit" and getting the appropriate earned time has been thoroughly reviewed. Records reveal that you were placed in "medically unfit" status on November 19, 2007. This status is determined by Medical Authorities based on your medical/mental health condition and your ability to perform work assignments. Prior to November 2007 you were not deemed "medically unfit" so you are not entitled to any additional earned time. You have received the appropriate amount of earned time based on your status. No further action recommended.

30. Date: 2/18/10

31. KADONNA BROWNING
Administrator Signature

32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)33. Date: 2, 23, 10

34. Raymond Hall
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

Exhibit G

Roger Howell's Verification Form

57 rfe
3/17/11

RECEIVED AUG 25 2010

I, Roger Howell, have reviewed the factual allegations contained in this Complaint. The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 23 day of August, 2010.

Roger Howell
Roger Howell

Exhibit H

Roger Howell's Grievances

OFFICIAL USE

Item #13, 15, or 17 to be completed within 3 calendar days of its filing.
Distribution: White to point of final disposition; blue for unit records; green to unit.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: ACI-4580-10-33521. Inmate Name: Roger Howell22. Inmate No.: 0886194

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

Review of your medical jacket shows your last physical exam was on 2/23/10. The Physician deemed you an Activity Level 2. This facility does not provide medical gaintime. If you wish to transfer to another facility, you will need to submit a transfer request through the proper channels.

No further action necessary.

24. Date: 05-07-1025. [Signature]
Superintendent Signature26. (A) I would like my grievance resolved Agree with grievance response(B) [X] Appeal to Step Two (24-hour limit)27. Date: 05-17-1028. [Signature]
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

In response to this grievance, the following has been found: The step 1 response adequately addresses this grievance. No further action is needed.

30. Date: 5-20-1031. [Signature]
Administrator Signature32. (A) [X] Agree with grievance response(B) [X] Appeal to Secretary, DOC (24-hour limit)33. Date: 5-21-1034. [Signature]
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

NORTH CAROLINA DEPARTMENT OF CORRECTION

STATE OF NORTH CAROLINA
BEVERLY EAVES PERDUE
GOVERNOR

FINESSE G. COUCH
EXECUTIVE DIRECTOR

INMATE GRIEVANCE RESOLUTION BOARD
MSC 4207, Raleigh, NC 27699-4207

Administrative Remedy Procedure

REV. REGINALD E. MIDGETTE, SR.
CHAIRMAN

MEMBERS
LUCIEN CAPONE, III, ESQ.
HAROLD L. POLLOCK, ESQ.
MATTHEW ROUSE, JR., D.H.L.
ROGER SMITH, JR., ESQ.

Step Three

35. Inmate Name Howell, Roger

AKA:

37. Inmate # 0886194

39. Location: Albemarle CI 4580

36. GRB Grievance No.: 11712

38. Unit Grievance No. 4580ACI10335

40. Date Received: 5/24/2010

41. GRIEVANCE EXAMINER: Findings and Disposition Order

Roger Howell filed this grievance on 04/30/10 at Albemarle Correctional Institution. He stated that he was robbed of his medical gain time when his acuity level was changed from a 4 to a 2.

This examiner has carefully reviewed the grievance and the response given by staff in the DC-410A response. From this review, it appears that staff has adequately addressed this inmate's grievance concerns. I adopt the facts found by the staff investigator.

On this record, it appears that proper action has been taken by staff to resolve this inmate's grievance concerns. Therefore, this grievance is considered resolved by DOC staff.

42. Date: 6.9.10

43. 
Inmate Grievance Examiner

DISTRIBUTION: Originals (DC-410, DC-410A & DC-410B) to location of final action.

cc: [] Unit Superintendent

Exhibit I

Randy Johnson's Verification Form

I, Randy Johnson, have reviewed the factual allegations contained in this Complaint. The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 19 day of August, 2010.


Randy Johnson

Exhibit J

Randy Johnson's Grievances

MWF-006

NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE

1. Inmate Name: RANDY LYNN JOHNSON 2. Inmate OPUS No.: #0212178
3. Location: WARREN CORRECTIONAL INST. #4290 4. Date: 6/6/10
5. Grievance Statement: ON 5/4/10 I spoke with Mrs. Colson (Head Nurse) about getting MEDICAL GAIN TIME SINCE ON 4/9/10 I HAD my left lung REMOVED DUE TO LUNG CANCER. I HAVE BEEN IN THE MEDICAL WARD SINCE 4/9/10 WHEN I WAS RELEASED FROM UNC HOSPITAL AFTER MY SURGERY. IVE BEEN TOLD ILL BE HOUSED HERE IN MEDICAL WARD UNTIL NOV. 2010 BY MEDICAL STAFF WHEN MY TREATMENT FOR CANCER IS COMPLETE. DR. DAVIS HERE AT WARREN CORRECTIONAL INST. #4290 TOLD ME AT MY LAST VISIT WITH HIM THAT I COULDN'T RECEIVE MEDICAL GAIN TIME. I FELT THAT IM NOT BEING TREATED FAIRLY. K. VEERARACHANENI WHO DID MY SURGERY AT UNC SCHOOL OF MEDICINE WROTE MY MEDICAL FILE THAT I WAS UNABLE TO DO ANY WORK. AS BEING HOUSED IN THE MEDICAL WARD AT WARREN CORR. INST. #4290 IM NOW UNDER 24 HOURS NURSING CARE AND NOT ABLE TO WORK OR GO TO SCHOOL DUE TO MY HEALTH CARE. I FEEL I SHOULD RECEIVE EARNED TIME MEDICALLY AND PHYSICALLY UNIT INMATES (N.C. GEN. STAT. § 15A-1355.1) ->
6. What remedy would resolve your grievance?: TO RECEIVE MEDICAL GAIN TIME FROM 4/9/10 WHEN I WAS TAKEN OF MY JOB TO HAVE SURGERY UNTIL I GET RELEASED FROM MY CARES AT UNC SCHOOL OF MEDICINE TAKING CANCER TREATMENT, IF HEALTH IMPROVED.
7. Inmate Signature: Randy Lynn Johnson

OFFICIAL USE

8. Date received: 6/6/10 9. D. Campbell
Receiving Officer Signature
10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.
11. Date delayed: 1/1/11 12. _____
Screening Officer Signature
13. The grievance is rejected for the following reason(s): (Enter Code) _____
A. State or Federal Court Decision B. Parole Commission Decision C. Appeals disciplinary action
D. Action not yet taken E. Exceeds 1 year time limit F. Remedy for another inmate
G. More than one incident H. ARP procedures not followed I. Violates Disciplinary C2
J. Beyond control of DOC

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____
15. Date rejected: 1/1/11 16. _____
Screening Officer Signature
17. Date accepted: 6/9/10 18. M. Avalos
Screening Officer Signature
19. Grievance
4290-10-01-10

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.

Distribution: White to point of final disposition; Blue for Unit record; Green to inmate.

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: 4290-10-01-39621. Inmate Name: Randy Johnson22. Inmate No.: 0212178

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in Item #17):

Investigation into your complaint revealed that your PULHEAT does not reflect total inability to hold any job. This would be required for medical gain time, per Mrs. Coldsmith, Nurse Supervisor.

No further action is necessary at this time.

24. Date: 06/15/1025. M. Kimble, PDI
Superintendent Signature26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 6/17/1028. Randy L. Johnson
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in Item #27):

Additional investigation reveals that staff has addressed inmate's complaint appropriately. No further action is needed.

30. Date: 6/21/1031. D. M. Murrell
Administrator Signature32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)

33. Date: _____

34. Randy L. Johnson
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

NORTH CAROLINA DEPARTMENT OF CORRECTION

STATE OF NORTH CAROLINA
BEVERLY EAVES PERDUE
GOVERNOR

FINESSE G. COUCH
EXECUTIVE DIRECTOR

INMATE GRIEVANCE RESOLUTION BOARD
MSC 4207, Raleigh, NC 27699-4207

Administrative Remedy Procedure

REV. REGINALD E. MIDGETTE, SR.
CHAIRMAN

MEMBERS
LUCIEN CAPONE, III, ESQ.
HAROLD L. POLLOCK, ESQ.
MATTHEW ROUSE, JR., D.H.L.
ROGER SMITH, JR., ESQ.

Step Three

35. Inmate Name Johnson, Randy

AKA:

37. Inmate # 0212178

39. Location: Warren CI 4290

36. GRE Grievance No.: 138

38. Unit Grievance No. 42901001396

40. Date Received: 7/2/2010

41. GRIEVANCE EXAMINER: Findings and Disposition Order

Randy Johnson filed his grievance on 06/06/10 at Warren Correctional Institution. He stated that he was taken off his job to have surgery and wants to be placed on medical gain time.

This examiner has carefully reviewed the grievance and the response given by staff in the DC-410A response. From this review, it appears that staff has adequately addressed this inmate's grievance concerns. I adopt the facts found by the staff investigator.

On this record, it appears that proper action has been taken by staff to resolve this inmate's grievance concerns. Therefore, this grievance is considered resolved by DOC staff.

42. Date: 7/26/10

43.

E. W. Wallace
Inmate Grievance Examiner

DISTRIBUTION: Originals (DC-410, DC-410A & DC-410B) to location of final action.

cc: [] Unit Superintendent

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: RANDY LYNN JOHNSON 2. Inmate OPUS No.: #0212178
 3. Location: WILKINSON CORRECTIONAL INST. # 4290 4. Date: 7-27-10
 5. Grievance Statement: ON 4/9/10 I WAS TAKEN TO CHAPEL HILL, NC. WHERE DR. NIRMAL K. VEERAMACHANENI DID SURGERY ON ME FOR LUNG CANCER AND REMOVED MY LEFT LUNG DUE TO MY LUNG CANCER. I AM NOW TAKING CHEMO-TREATMENT FOR 6 MOS. WHICH STARTED IN MAY 2010 AND WILL LAST UNTIL THE END OF 2010 OR NOV. 2010. I HAVE BEEN HOUSED IN MEDICAL-WARD SINCE I WAS RELEASED FROM UNC HOSPITAL AFTER MY SURGERY ON 4/14/2010. DR. NIRMAL K. VEERAMACHANENI WROTE IN MY HEALTH FILE THAT I WAS UNABLE TO DO ANY WORK. THE CHEMO TREATMENT MAKES ME WEAK AND ALSO STAGNATE. I ALSO HAVE A LOT OF PAIN IN MY JOINTS AND HEAD ACHES ALSO. I HAVE TWO (2) CHRONIC DISEASES CANCER AND HIV AND SOME DAYS I FEEL SO WEAK AND NAUSEA I CAN'T DO ANYTHING BUT REST AND SLEEP DUE TO MY HEALTH PROBLEMS. I FEEL I SHOULD RECEIVE EARNED TIME (CREDIT FOR MEDICALLY AND PHYSICALLY UNFIT INMATES (N.C. GEN. STAT. § 15A-1355(10)) I WAS TOLD BY HENRI HORSE (CLOCKSMITH) I WOULDN'T GET MEDICAL GRANTIME AS LONG AS I WAS IN WILKINSON CORRECTIONAL INSTITUTION #4290.
 6. What remedy would resolve your grievance?: TO GET MY MEDICAL GRANTIME FROM 4/9/2010 UNTIL I GET RELEASED FROM MY DOCTOR'S A UNC SCHOOL OF MEDICINE IF I'M ABLE TO DO ANY TYPE OF WORK DUE TO MY POOR HEALTH THAT HAS GOTTEN WORST NOW.
 7. Inmate Signature: Randy Lynn Johnson

OFFICIAL USE

8. Date received: 12/1/10 9. [Signature]
 Receiving Officer Signature
 10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.
 11. Date delayed: 1/1 12. _____
 Screening Officer Signature
 13. The grievance is rejected for the following reason(s): (Enter Code) _____
 A. State or Federal Court Decision B. Parole Commission Decision C. Appeals disciplinary action
 D. Action not yet taken E. Exceeds 1 year time limit F. Remedy for another inmate
 G. More than one incident H. ARP procedures not followed I. Violates Disciplinary C2
 J. Beyond control of DOC

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____
 15. Date rejected: 1/1 16. _____
 Screening Officer Signature
 17. Date accepted: 7/28/10 18. [Signature]
 Screening Officer Signature
 19. Grievance No. 11290-10-01-538

Item #13, 15, or 17 to be completed within 3 calendar days of item #8.
 Distribution: White to point of final disposition; Blue for Unit record; Green to inmate.

20. Grievance No.: 4290-10-01-532
22. Inmate No.: 0212178

23. Grievance Response (Item #25 to be completed within 15 calendar days of date of item #17):

No further action is necessary at this time.

Case 5:10-cr-03166-BO Document 1-11 Filed 09/17/10 Page 6 of 6

Exhibit K

Wayne Payne's Verification Form

SEP 01 2010

I, Wayne Payne, have reviewed the factual allegations contained in this Complaint. The factual allegations which pertain to me are true to the best of my knowledge and belief. I have exhausted my administrative remedies relating to this Complaint and have attached copies of grievances demonstrating completions.

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

Executed this the 20 day of August, 2010.

Wayne Payne
Wayne Payne

Exhibit L

Wayne Payne's Grievances

D3-16

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

1. Inmate Name: WAYNE PAYNE 2. Inmate OPUS No.: 0316033
 3. Location: D 3-16 LUMBERTON C.I. 4. Date: 7-8-09
 5. Grievance Statement: I HAVE CEREBRAL PALSEY IN BOTH LEGS. I DO QUALIFY FOR MEDICAL GAIN TIME BUT HAVE NOT BEEN GRANTED IT. LUMBERTON C.I. DOES NOT HAVE JOBS OR PROGRAMS FOR DISABLED INMATES. I AM NOT ABLE TO TAKE THE CLASSES HERE BECAUSE OF PAIN AND SUFFERING.

6. What remedy would resolve your grievance?: PLACE ME ON MEDICAL GAIN TIME, OR TRANSFER ME TO SOMEWHERE THAT HAS JOBS AND PROGRAMS AND MEDICAL GAIN TIME FOR DISABLED INMATES.
 7. Inmate Signature: Wayne Payne

OFFICIAL USE

8. Date received: 7/19/09 9. [Signature]
 Receiving Officer Signature
 10. ☐ This grievance is returned and can only be accepted when your current grievance completes step two.
 11. Date delayed: 1/1 12. _____
 Screening Officer Signature
 13. The grievance is rejected for the following reason(s): (Enter Code) _____

A. State or Federal Court Decision
 D. Action not yet taken
 G. More than one incident
 J. Beyond control of DOC

B. Parole Commission Decision
 E. Exceeds 1 year time limit
 H. ARP procedures not followed

C. Appeals disciplinary action
 F. Remedy for another inmate
 I. Violates Disciplinary C2

If grievance is rejected, # 13, # 14, # 15, and # 16 are completed by the Screening Officer, a photocopy of grievance is forwarded to Superintendent for review, and the original grievance is returned to inmate.

14. Rejection Justification: _____

15. Date rejected: 1/1 16. _____
 Screening Officer Signature
 17. Date accepted: 7/19/09 18. [Signature]
 Screening Officer Signature
 19. Grievance No. 4365-69-DE03

**NORTH CAROLINA DEPARTMENT OF CORRECTION
DIVISION OF PRISONS
ADMINISTRATIVE REMEDY PROCEDURE**

Step One - Unit Response20. Grievance No.: 4365-09-050321. Inmate Name: Wayne Payne22. Inmate No.: 0316033

23. Grievance Response (Item #25 to be completed within 15 calendar days of date in item #17):

Wayne, according to Policy and Procedure; Medically Unfit shall be defined as inmates designated in Acuity Level 4 or PULHEAT activity grade 4 or 5. You are listed in activity grade 3 and therefore are not eligible for placement on medical gain time. You may discuss your need for regular breaks with your instructor of the Carpentry Vocational Program.

24. Date: 05-13-0925. Sharon Frazer
Sharon Frazer, Program Supervisor
Superintendent Signature26. (A) ☐ Agree with grievance response(B) ☒ Appeal to Step Two (24-hour limit)27. Date: 7-14-0928. Wayne Payne
Inmate Signature**Step Two - Area/Complex/Institution Response**

29. Step two response (Item #31 to be completed within 20 calendar days of date in item #27):

Your grievance was adequately responded to in Step One above. No further action is recommended.

30. Date: 7-31-0931. John E. [Signature]
Administrator Signature32. (A) ☐ Agree with grievance response(B) ☒ Appeal to Secretary, DOC (24-hour limit)33. Date: 7-31-0934. Wayne Payne
Inmate Signature

DISTRIBUTION: White to point of final disposition; Blue for Unit Record; Green to Inmate

NORTH CAROLINA DEPARTMENT OF CORRECTION

STATE OF NORTH CAROLINA
BEVERLY EAVES PERDUE
GOVERNOR

FINESSE G. COUCH
EXECUTIVE DIRECTOR

INMATE GRIEVANCE RESOLUTION BOARD
MSC 4207, Raleigh, NC 27699-4207

REV. REGINALD E. MIDGETTE, SR.
CHAIRMAN

MEMBERS
LUCIEN CAPONE, III, ESQ.
JOHN E. GEHRING, ESQ.
MATTHEW ROUSE, JR., D.H.L.

Administrative Remedy Procedure

Step Three

35. Inmate Name Payne, Wayne
AKA:

36. GRB Grievance No.: 1183

37. Inmate # 0316033

38. Unit Grievance No. 4365090503

39. Location: Lumberton CI 4365

40. Date Received: 8/4/2009

41. GRIEVANCE EXAMINER: Findings and Disposition Order

Wayne Payne filed this grievance on 07/08/09 at Lumberton Correctional Institution. He stated that he has Cerebral Palsy in both legs and qualify for medical gain time. He says he wants to be put on medical gain time or transferred.

This examiner has carefully reviewed the grievance and the response given by staff in the DC-410A response. From this review, it appears that staff has adequately addressed this inmate's grievance concerns. I adopt the facts found by the staff investigator.

My examination of this grievance reveals no violation of applicable Division of Prisons policy nor does it show any evidence of staff indifference. Thus, this grievance is dismissed.

ate:

8/20/09

43.

[Signature]

Inmate Grievance Examiner

APPROVAL: Originals (DC-410, DC-410A & DC-410B) to location of final action.

FACILITYintendent

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Chad Bumgarner, et al.

Plaintiff

v.

North Carolina Department of Correction, et al.

Defendant

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Civil Action No. 5:10-ct-3166

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* North Carolina Department of Correction
c/o Alvin W. Keller, Secretary of Correction
831 West Morgan Street
4201 Mail Service Center
Raleigh, NC 27699-4201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ann Ferrari, Staff Attorney
Emily Coward, Staff Attorney
North Carolina Prisoner Legal Services
1110 Wake Forest Road
Raleigh, NC 27604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-ct-3166

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Chad Bumgarner, et al.

Plaintiff

v.

North Carolina Department of Correction, et al.

Defendant

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Civil Action No. 5:10-ct-3166

SUMMONS IN A CIVIL ACTION

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Raleigh, NC 27699-4201

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-ct-3166

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_____ on *(date)* _____; or

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☐ Other *(specify)*: _____.

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Chad Bumgarner, et al.

Plaintiff

v.

North Carolina Department of Correction, et al.

Defendant

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Civil Action No. 5:10-ct-3166

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Robert Lewis
Director, Division of Prisons
831 West Morgan Street
4260 Mail Service Center
Raleigh, NC 27699-4260

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ann Ferrari, Staff Attorney
Emily Coward, Staff Attorney
North Carolina Prisoner Legal Services
1110 Wake Forest Road
Raleigh, NC 27604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-ct-3166

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☐ Other *(specify)*: _____.

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Chad Bumgarner, et al.

Plaintiff

v.

North Carolina Department of Correction, et al.

Defendant

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Civil Action No. 5:10-ct-3166

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Laura Yates
ADA Coordinator, North Carolina Department of Correction
831 West Morgan Street
4201 Mail Service Center
Raleigh, NC 27699-4201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ann Ferrari, Staff Attorney
Emily Coward, Staff Attorney
North Carolina Prisoner Legal Services
1110 Wake Forest Road
Raleigh, NC 27604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-ct-3166

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☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____
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My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Chad Bumgarner, et al.

Plaintiff

v.

North Carolina Department of Correction, et al.

Defendant

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Civil Action No. 5:10-ct-3166

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Paula Y. Smith
Medical Director, North Carolina Department of Correction
831 West Morgan Street
4278 Mail Service Center
Raleigh, NC 27699-4278

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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Emily Coward, Staff Attorney
North Carolina Prisoner Legal Services
1110 Wake Forest Road
Raleigh, NC 27604

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:10-ct-3166

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

General Information

Case Name	Bumgarner et al v. North Carolina Department of Correction et al
Docket Number	5:10-ct-03166
Court	United States District Court for the Eastern District of North Carolina
Primary Date	2010-09-17 00:00:00
Nature of Suit	Prisoner Petitions: Habeus Corpus - Civil Rights
Related Opinion(s)	276 F.R.D. 452