

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

JAMES FONTANO,)
)
Plaintiff,)
)
v.)
)
S.A. GODINEZ, Director of the)
Illinois Department of Corrections;)
ALEX DAWSON, Warden of Logan)
Correctional Center; JOHN DOE, Assistant)
Warden of Operations at Logan Correctional)
Center; JOHN DOE, Assistant Warden of)
Programs at Logan Correctional Center;)
KEVIN STANDLEY; D. SIMMONS;)
GARY BENDER; VILLA JENNINGS;)
B. CALL; OFFICER FISHEL;)
and SALEH OBAISI,)
)
Defendants.)

JURY TRIAL DEMANDED

Case No. 3:12-cv-3042

COMPLAINT

Plaintiff JAMES FONTANO, by his undersigned attorneys, for his complaint against Defendants S.A GODINEZ, Director of the Illinois Department of Corrections; ALEX DAWSON, Warden of Logan Correctional Center; JOHN DOE, Assistant Warden of Operations at Logan Correctional Center; JOHN DOE, Assistant Warden of Programs at Logan Correctional Center; LIEUTENANT KEVIN STANDLEY, Supervisory Officer at Logan Correctional Center; MAJOR D. SIMMONS, Supervisory Officer at Logan Correctional Center; VILLA JENNINGS, employee at Logan Correctional Center; B. CALL, employee at Logan Correctional Center; GARY BENDER, employee at Logan Correctional Center; OFFICER FISHEL, employee at Logan Correctional Center; and SALEH OBAISI, Medical Officer at Logan Correctional Center, alleges as follows:

JURISDICTION AND VENUE

1. This is an action brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the First, Eighth, and Fourteenth Amendments to the United States Constitution.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to the claims asserted in this complaint occurred in this judicial district.

PARTIES

3. Plaintiff James Fontano is a citizen of the State of Illinois. In August 2011, he was sexually and physically assaulted multiple times by his cellmate while in the custody of the Illinois Department of Corrections within the Central District of Illinois. He was thereafter disciplined and retaliated against for reporting the assaults. Plaintiff was released from custody on September 15, 2011, and he currently resides in the City of Chicago.

4. Defendant S.A. Godinez was the Director of the Illinois Department of Corrections and maintained administrative and supervisory authority over the operations at Logan Correctional Center, where Plaintiff was housed at the time of the events giving rise to this case. Godinez failed to implement or administer adequate screening procedures in the allocation of inmate housing assignments at Logan Correctional Center. Godinez also facilitated or approved the unreliable investigative methods and unwarranted disciplinary charges taken in response to Plaintiff's report that he had been sexually assaulted by his cellmate.

5. Defendant Alex Dawson was the warden of Logan Correctional Center at the time of the events giving rise to this case. Dawson failed to implement or administer adequate screening procedures in the allocation of inmate housing assignments at Logan Correctional

Center. Dawson also facilitated or approved the unreliable investigative methods and unwarranted disciplinary charges taken in response to Plaintiff's report that he had been sexually assaulted by his cellmate.

6. Defendant John Doe was the assistant warden of operations at the time of the events giving rise to this case. Doe failed to implement or administer adequate screening procedures in the allocation of inmate housing assignments at Logan Correctional Center. Doe also facilitated or approved the unreliable investigative methods and unwarranted disciplinary charges taken in response to Plaintiff's report that he had been sexually assaulted by his cellmate.

7. Defendant John Doe was the assistant warden of programs at the time of the events giving rise to this case. Doe failed to implement or administer adequate screening procedures in the allocation of inmate housing assignments at Logan Correctional Center. Doe also facilitated or approved the unreliable investigative methods and unwarranted disciplinary charges taken in response to Plaintiff's report that he had been sexually assaulted by his cellmate.

8. Defendant Fishel was a correctional officer at Logan Correctional Center and in charge of inmate housing in the prison's reception area. Fishel failed to implement or administer adequate screening procedures in allocating Plaintiff's housing assignment.

9. Defendant Kevin Standley was a supervisory officer at Logan Correctional Center and a member of the prison's Internal Affairs Department at the time of the events giving rise to this case. Standley was in charge of investigating Plaintiff's report of sexual abuse. Standley intimidated and coerced Plaintiff to force him to retract the rape allegations. Standley also approved false charges against Plaintiff in retaliation for Plaintiff's refusal to retract the allegations.

10. Defendant Major D. Simmons was a supervisory officer at Logan Correctional Center at the time of the events giving rise to this case. He approved the false disciplinary charges against Plaintiff recommended by Defendant Standley in the “Offender Disciplinary Report.”

11. Defendant B. Call was an employee at Logan Correctional Center at the time of the events giving rise to this case. He approved the false disciplinary charges against Plaintiff recommended by Defendant Standley in the “Offender Disciplinary Report.”

12. Defendant Villa Jennings was an employee at Logan Correctional Center at the time of the events giving rise to this case and a member of the prison’s Adjustment Committee, which issued the “Final Summary Report” approving disciplinary measures against Plaintiff.

13. Defendant Gary Bender was an employee at Logan Correctional Center at the time of the events giving rise to this case and a member of the prison Adjustment Committee, which issued the “Final Summary Report” approving disciplinary measures against Plaintiff.

14. Defendant Saleh Obaisi was a medical officer and physician at Logan Correctional Center at the time of the events giving rise to this case. Obaisi conducted an improper medical examination of Plaintiff and submitted a false medical report to prison officials. Obaisi facilitated the unlawful investigative methods and unwarranted disciplinary charges taken in response to Plaintiff’s report that he had been sexually assaulted by his cellmate.

15. Each of the government-employed defendants is sued in his or her individual capacity. Each government-employed defendant acted within the scope of his or her employment. All defendants acted under the color of the laws, regulations, and customs of the State of Illinois. All of the defendants’ actions constituted “state action” as defined under federal law.

FACTUAL ALLEGATIONS

The Defendants Failed to Protect Plaintiff from a Known and Substantial Threat of Physical and Sexual Violence

16. On or about July 11, 2009, Plaintiff—a first-time offender with no prior contacts with the criminal justice system—was convicted of possession of a controlled substance and sentenced to two years of probation. Plaintiff remained on probation until he was found to have violated one of the conditions of his release. In lieu of serving an extended term of supervised release, Plaintiff accepted a plea bargain of a one-year prison sentence, with the understanding that he would spend at most six months in prison on account of good time credits, and potentially as few as 60 days incarceration if he remained on good behavior and received early discharge due to prison overcrowding. Plaintiff also believed that he would spend the entirety of his sentence in a low-security work camp.

17. Upon his admission to the Illinois Department of Corrections (“DOC”), Plaintiff was housed at Pittsfield Work Camp at Jacksonville Correctional Center, a minimum security institution for low-level offenders. However, in March 2011, a month after entering Pittsfield, Plaintiff was charged with a minor disciplinary violation. Despite the minor nature of the charge, Plaintiff received a disciplinary transfer to Logan Correctional Center (“Logan CC”) in Lincoln, Illinois. There, Plaintiff was forced to spend 7 days in disciplinary segregation before being transferred to the prison’s reception and classification area.

18. At the time he was transferred to Logan, Plaintiff, a twenty-year old white male, was 5’7” tall and weighed approximately 150 pounds. He was a non-violent offender with no gang affiliations, expected to serve substantially less than one year in prison. He had no prior experience with the criminal justice system. Due to his youth, race, small size, lack of criminal

history, lack of gang affiliation, and the fact that he had committed a non-violent offense, Plaintiff was a highly vulnerable inmate.

19. Plaintiff was particularly vulnerable in comparison to the rest of the prison population at Logan CC. Logan is a medium-security correctional facility that houses offenders convicted of the most serious crimes under Illinois law, including murder, rape, and armed robbery. Plaintiff's offense was trivial in comparison to the crimes for which most of Logan's two thousand inmates are incarcerated.

20. At the time of the events giving rise to this case, Logan CC was administered and managed by the prison's warden, Defendant Dawson, the assistant warden of operations, John Doe, and the assistant warden of programs, John Doe. Defendant Godinez established and implemented policies and procedures regarding the operations of the entire DOC prison system, including Logan CC. As prison administrators, Defendants Godinez, Dawson, Doe, and Doe knew that inmate-on-inmate violence was a commonplace occurrence both in Logan CC and within the DOC generally, and that Logan CC was failing to properly address the problem. They obtained this knowledge both from their personal experience administering prisons within the Illinois system, and because such systematic failures had been widely reported over the past ten years by various advocacy and governmental organizations.

21. A 2001 study published by Human Rights Watch ("HRW") reported on the pervasive problem of inmate-on-inmate rape in prisons throughout the United States, including in Illinois. *See* Human Rights Watch, *No Escape: Male Rape in U.S. Prisons*, April 2001 (available at <http://f11.findlaw.com/news.findlaw.com/cnn/docs/hrw/hrwmalerape0401.pdf>) (hereinafter, "HRW Report"). The HRW Report determined that "rape and other sexual abuses occur in prison because correctional officials ... do little to stop them from occurring," for

instance, by monitoring inmates and implementing prisoner classification policies that separate “dangerous prisoners from those whom they are likely to victimize.” *Id.* at 14. The Report found that “[i]n the worst cases, prisoners are actually placed in the same cell with inmates who are likely to victimize them.” *Id.* at 111. In advocating for stricter classification policies, HRW delineated several “risk factors” that make an inmate more likely to be targeted for sexual assault by other inmates, including an inmate’s youth, small size, white racial identity, and lack of criminal history. *Id.* at 53-59. The HRW Report subsequently led Congress to pass the Prison Rape Elimination Act of 2003 (PREA), legislation in which Congress acknowledged the prevalence of prison rape in U.S. institutions and recognized that “young first-time offenders are at increased risk of sexual victimization.” 42 U.S.C. § 15601(4).

22. The HRW Report findings were later confirmed by the National Prison Rape Elimination Commission (NPREC), created by the PREA to investigate the incidence of prison rape in correctional facilities throughout the country. NPREC’s 2009 report found that “youth, small stature, and lack of experience in correctional facilities appear to increase the risk of sexual abuse by other prisoners.” National Prison Rape Elimination Commission Report, June 2009, at 7 (available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>). As a result, the NPREC concluded that prisons must conduct targeted risk assessments of “all incoming prisoners specifically for risk of sexual assault” and establish “baseline requirements for when and how to screen prisoners for risk of being a victim or perpetrator of sexual abuse.” *Id.* at 8.

23. On the state level, the Illinois DOC has also acknowledged the necessity of implementing classification standards to prevent violence and rape in correctional facilities. Minutes from a 2009 meeting of the Illinois Department of Corrections Adult Advisory Board show that the Department hired a consultant to review and revamp DOC’s classification system,

which had not been “looked at” in over 10 years. *See* Minutes, Adult Advisory Board Meeting, Illinois Department of Corrections, Kaskaskia Community College, Aug. 24, 2009; *see also* Minutes, Adult Advisory Board Meeting, Illinois Department of Corrections, Decatur Correctional Center, Oct. 25, 2010. Minutes from another board meeting in 2010 describe the Department’s intent to develop a “strategic plan” to reorganize inmate placements according to inmates’ “medical, educational, substance, *security*, and geriatric needs.” Minutes, Adult Advisory Board Meeting, Illinois Department of Corrections, Stateville Correctional Center, July 26, 2010 (emphasis added). Despite their actual knowledge of the need for strengthened classification and assignment procedures, Defendants Godinez, Dawson, Doe, and Doe continued to use the old, inadequate screening procedures at the time Plaintiff was transferred to Logan CC.

24. At the time of the events giving rise to this case, as a result both of their personal experience and well-publicized government policy-making efforts, Defendants Godinez, Dawson, Doe, and Doe knew that prison rape was an endemic problem within the State’s prison system and that vulnerable inmates, like Plaintiff, were most at risk of being the victims of physical and sexual violence perpetrated by other inmates. They were also aware that in order to protect the prison’s most vulnerable inmates, it was essential to take into account each inmate’s age, physical size, offense of conviction, sentence, criminal record, and gang affiliation in assigning shared cells.

25. Despite their knowledge, and in violation of prevailing standards, the Defendants failed to implement screening and classification procedures designed to identify and protect at-risk inmates such as Plaintiff. Instead, the Defendants ignored Plaintiff’s obvious vulnerability—described in paragraph 18—and, in April 2011, facilitated and approved

Plaintiff's placement in a two-person cell with one Quentin Robinson, an imposing 185-pound violent offender and known Gangster Disciple affiliate, who was serving a twenty-year sentence for armed and aggravated battery and had a history of instituting fights within the prison. The cell assigned to Plaintiff and Robinson was located in the B-wing of X-house, the section of Logan CC reserved for gang-affiliated inmates with disciplinary problems, and known to be the most dangerous area in the entire prison. By their actions, the Defendants intentionally disregarded the known and substantial risk that Plaintiff would be harmed while in their custody.

26. Defendant Fishel, the officer in charge of allocating inmate housing assignments at Logan CC, knew the facts regarding Plaintiff's vulnerability, alleged above, and the obvious and substantial risks to Plaintiff of assigning him to share a cell with Robinson. Like Godinez, Dawson, Doe, and Doe, Fishel did not implement or follow procedures to prevent Plaintiff from being housed with an inmate who presented a known physical threat. In failing to do so, Fishel disregarded the known and substantial risk that Plaintiff would be physically and sexually assaulted by his cellmate.

27. As a direct result of these failures in both policy and practice, Plaintiff was physically beaten and raped multiple times by Robinson.

28. On or about August 3, 2011, Plaintiff was alone in his locked cell until 10:15 p.m., at which time Robinson returned to the cell. Plaintiff and Robinson went to bed at approximately 12 a.m. Shortly after, Robinson came over to Plaintiff's bed, told him to "get up and drop 'em," and anally raped and beat him. The following day, on or about August 4th, Plaintiff attempted to transfer cells through the prison's housing placement office without reporting the rape. The request was denied. On or about the night of August 4th, Robinson again assaulted Plaintiff, raping him, beating him, and forcing him to perform oral sex. The next

day, on or about August 5th, while Plaintiff was in his unlocked cell preparing to attend his G.E.D. class, Robinson once again attempted to rape Plaintiff. In order to evade Robinson's advances, Plaintiff ran from the cell yelling. Later that day, Plaintiff became afraid to return to his cell and so informed a correctional officer that he had been raped multiple times by Robinson. Plaintiff told the officer that he did not feel safe in his cell.

**Plaintiff Was Subjected to Unlawful Retaliation for
Exercising His Constitutional Right to Report a Grievance**

29. At the time of the events giving rise to this case, the Defendants knew that Logan and the DOC generally did not maintain adequate policies or procedures for dealing with victims of inmate rape. The previously-described HRW Report found that a “central problem with regard to sexual abuse in prison...is the inadequate—and in many instances, callous and irresponsible—response of correctional staff to complaints of rape.” HRW Report at 15. In this regard, the Report emphasized:

When an inmate informs an officer that he has been threatened with rape or, even worse, actually assaulted, it is crucial that his complaint be met with a rapid and effective response. Most obviously, he should be brought somewhere where his safety is protected and where he can explain his complaint in a confidential manner. If the rape has already occurred, he should be taken for whatever medical care may be needed and—a step that is crucial for any potential criminal prosecution—where physical evidence of rape can be collected.

Id. The HRW Report determined, however, that this proper response was uncommon in most institutions, and that instead, prisons often isolate the victim, locking him in segregative custody rather than instituting adequate internal disciplinary proceedings or facilitating an external criminal prosecution against the offender. *Id.* at 15.

30. At the time Plaintiff reported his own rape, these same problems existed at Logan CC. Upon reporting the attacks, Plaintiff was placed in segregation, subjected to disciplinary

proceedings, and punished. He was not given proper medical care, and his complaint was never referred to local law enforcement for further legal action.

31. Instead, after reporting the rapes, Plaintiff was transferred to the segregation unit within the prison infirmary. Once in the infirmary, Defendant Obaisi, the prison's doctor and medical officer, performed a faulty medical examination and rape kit on Plaintiff. Despite the fact that Plaintiff had been anally raped several times in the previous three days, attacks that left seminal fluid in Plaintiff's rectum, Obaisi reported to prison authorities that he could find "no trauma" or other physical evidence on Plaintiff's body to suggest rape. Obaisi also placed the sterile test kit swabs directly on the unsterile countertop, told inappropriate jokes throughout the examination, and accused Plaintiff of lying about being assaulted. By failing to provide Plaintiff with proper medical treatment and submitting a false report to prison authorities, Obaisi facilitated, approved, and promoted the Defendants' scheme to retaliate against Plaintiff and deprive him of his constitutional rights.

32. Following Obaisi's examination, Defendant Standley was assigned to investigate Plaintiff's allegations of sexual assault. On or about August 7th, Standley conducted a one-on-one interview with Plaintiff. During this interview, Standley threatened Plaintiff that he would receive additional prison time if he refused to retract the allegations. Fearing for his safety if he was forced to endure additional incarceration, Plaintiff withdrew his accusations against Robinson. However, after Standley left Plaintiff's presence, Plaintiff re-asserted the allegations, telling his prison counselor that he had in fact been raped multiple times by Robinson. During the remainder of his incarceration, Plaintiff continued to maintain that he had been raped by his cellmate.

33. After Plaintiff was released from Logan CC, Robinson was himself transferred from the prison. On information and belief, Robinson's transfer was punishment for assaulting Plaintiff. However, in the month following the attacks, while Plaintiff was still incarcerated at Logan CC, the Defendants failed to take any disciplinary action against Robinson. At no point in time did prison authorities report the incident to local law enforcement authorities or the office of the local State's Attorney. Instead, Standley and unknown prison officials administered a polygraph examination to Robinson, during which Robinson lied and denied that he had sexually assaulted Plaintiff. Standley and the officers who administered the polygraph reported that Robinson had tested truthful. Standley refused to allow Plaintiff to take a polygraph examination, though Plaintiff asked to do so.

34. Standley used the unreliable results from Robinson's polygraph examination to threaten Plaintiff with over five months of additional incarceration. On or about August 18th, Plaintiff received a disciplinary ticket and offense report, authored by Standley and approved by Defendants Simmons and Call, charging Plaintiff with "impeding or interfering with an investigation" and "giving false information to an employee." Offender Disc. Report (attached as Ex. A). Standley based these findings on the "lack of physical evidence, conflicting statements, [and] Deception Detection Test results." *Id.* In reality, the "lack of physical evidence" was a result of improper collection procedures by Defendant Obaisi; Plaintiff's allegedly "conflicting" statements were obtained by Standley's intimidation tactics; and the "Deception Detection Test" results were the result of an unreliable and false polygraph examination.

35. On or about August 26th, Plaintiff was found guilty of the charges set forth in Standley's false disciplinary report by the Adjustment Committee, headed by Defendant

Dawson and including Defendants Jennings and Bender. The Committee placed Plaintiff on “B-Grade” disciplinary status and ordered him to complete two months of segregation. *See* Final Summary Report (attached as Ex. B).

36. On or about August 11, 2011, Defendant Dawson was informed in a written letter from Plaintiff’s counsel that Plaintiff had been sexually assaulted by his cellmate and that he was being disciplined by prison officials for reporting the assaults. After Plaintiff was attacked, Dawson also spoke directly with Plaintiff and Plaintiff’s parents about Plaintiff’s rape allegations. Despite his actual knowledge that Plaintiff had consistently alleged that he was raped, and despite having both the power and opportunity to intervene to protect Plaintiff from ongoing retaliation, Dawson failed to prevent Plaintiff from being subject to retribution or discipline the other Defendants under his command for their unlawful conduct. Instead, Dawson approved the disciplinary charges against Plaintiff and took concerted action to conceal both Robinson’s crimes and his subordinate officers’ retaliatory actions.

37. On or about August 12, 2011, Defendant Godinez was also informed in a written letter from Plaintiff’s counsel that Plaintiff had been sexually assaulted by his cellmate and that he was being disciplined by prison officials for reporting the assaults. Despite his actual knowledge that Plaintiff had consistently alleged that he was raped, and despite having both the power and opportunity to intervene to protect Plaintiff from ongoing retaliation, Godinez failed to prevent Plaintiff from being subject to retribution or discipline the other Defendants under his command for their unlawful conduct.

38. Though a victim of a violent crime, the Defendants punished Plaintiff by keeping him in segregation throughout the entire month following the assaults. While in segregation, Plaintiff was not allowed access to writing materials, he was prevented from finishing his G.E.D.

course (though he had been scheduled to take the exam one week after he was attacked), and he was allowed to wash only once every 7 days. Most egregiously, Plaintiff was initially prevented from seeing his parents, who did not find out that Plaintiff had been sexually abused until well after the attack.

39. After being placed in segregation, Plaintiff drafted journal entries describing the events alleged above. However, unknown prison employees confiscated his personal papers. Plaintiff's journal detailing these events was not returned to Plaintiff upon his release from prison, nor has it been returned as of the date of the filing of this complaint. Upon information and belief, Plaintiff's journal remains in the custody of Logan CC officials.

40. Prior to his release from Logan CC, Plaintiff was not allowed to pack his own belongings. Prison officials packed Plaintiff's personal effects, as well as those of Robinson, who was transferred on or about the same date that Plaintiff was released. In the course of packing Plaintiff's and Robinson's effects, unknown prison employees placed Plaintiff's items, including a Bible that contained all of Plaintiff's personal and family contact information, in Robinson's bag. Robinson has since used this information to repeatedly place harassing phone calls to Plaintiff's friends and family.

PLAINTIFF'S DAMAGES

41. Plaintiff has suffered serious injury as a direct and proximate result of the misconduct of the Defendants alleged in the preceding paragraphs. Because the Defendants failed to institute proper inmate screening processes and maintain adequate housing procedures, Plaintiff was the victim of a series of violent sexual assaults while in the Defendants' custody.

42. In the immediate aftermath of these assaults, rather than receiving proper medical care, emotional support, and access to the appropriate legal resources, Plaintiff was subjected to

intimidation and unwarranted disciplinary action by the Defendants. Plaintiff was punished merely for asserting his rights as a victim of a violent crime.

43. As a result of the Defendants' wrongful actions, Plaintiff has suffered severe physical and emotional trauma. Plaintiff was victimized twice—first, as a result of the Defendants' failure to protect him from serious physical injury and, second, as a result of the Defendants' attempts to suppress and conceal the incident by engaging in acts of retaliation and intimidation. Plaintiff continues to suffer from humiliation, depression, rage, anxiety, panic attacks, insomnia, and post-traumatic stress.

COUNT I
Failure to Protect in Violation of the
Eighth Amendment under 42 U.S.C. §1983

44. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

45. Count I is alleged against Defendants Godinez, Dawson, Doe, Doe, and Fishel.

46. Under settled United States Supreme Court authority, and in accordance with the Eighth Amendment, Plaintiff is entitled to be free from a known and unreasonable risk of serious harm while in the custody of the State.

47. In violation of Plaintiff's Eighth Amendment rights, Defendants Godinez, Dawson, Doe, Doe, and Fishel knew and consciously disregarded the substantial risk that Plaintiff would be injured while in custody at Logan Correctional Center. The Defendants, acting individually and in conspiracy, failed to employ adequate screening procedures for assigning inmates to cells, despite the significant and obvious risk that Plaintiff, a vulnerable inmate, would be subjected to serious harm by his cellmate, a serious offender with a history of violence.

48. As a direct and proximate result of the Defendants' failure to protect Plaintiff by implementing adequate classification and screening procedures, Plaintiff was unlawfully subjected to an unreasonable risk of serious harm and suffered damages.

COUNT II
Unlawful Retaliation in Violation of the
First and Fourteenth Amendments under 42 U.S.C. § 1983

49. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

50. Count II is alleged against all named defendants.

51. The Defendants, individually and in conspiracy, violated Plaintiff's First Amendment and Fourteenth Amendments rights by subjecting him to retaliation for exercising his constitutional right to report a personal grievance to prison authorities. The Defendants subjected Plaintiff to threats, intimidation, and internal disciplinary procedures in order to retaliate against him for reporting a series of sexual assaults and to prevent Plaintiff from pursuing the allegations.

52. As a direct and proximate result of the Defendants' retaliatory actions, Plaintiff suffered damages.

COUNT III
Civil Conspiracy under 42 U.S.C. § 1983

53. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

54. Count III is alleged against all named defendants.

55. As described more fully in the preceding paragraphs, the Defendants and other co-conspirators not yet known to Plaintiff acted in concert with one another to accomplish an unlawful purpose by unlawful means.

56. The Defendants and other co-conspirators not yet known to Plaintiff reached an agreement among themselves to both deprive Plaintiff of his right to be free from unreasonable harm and subject him to unlawful retaliation, in violation of his constitutional rights, in the manner described above.

57. In furtherance of this conspiracy, and as set forth in the complaint above, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

58. As a direct and proximate result of the illicit agreement referenced above, Plaintiff's rights were violated and he suffered damages.

COUNT IV
Failure to Intervene under 42 U.S.C. § 1983

59. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

60. Count IV is alleged against all named defendants.

61. As described more fully in the preceding paragraphs, the Defendants (and other as-yet-unknown individuals) knew that Plaintiff's rights were being violated, had the realistic opportunity to intervene to prevent or stop the constitutional misconduct alleged above, and failed to do so.

62. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally and with willful indifference to Plaintiff's constitutional rights.

63. As a result of the Defendants' failure to intervene, Plaintiff's constitutional rights were violated and he suffered damages.

COUNT V
State Law Claim for Intentional Infliction of Emotional Distress

64. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

65. Count V is alleged against all named defendants.

66. The acts of the Defendants as set forth above were both extreme and outrageous. The Defendants intended to cause, or acted in reckless disregard of the probability that they would cause, severe emotional distress to Plaintiff.

67. The misconduct described above was undertaken with malice, willfulness, and reckless indifference to Plaintiff's rights.

68. As a direct and proximate result of the misconduct described above, Plaintiff's rights were violated and he suffered damages.

COUNT VI
State Law Claim for Civil Conspiracy

69. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth in this Count.

70. Count VI is alleged against all named defendants.

71. As described more fully in the preceding paragraphs, the Defendants and other co-conspirators not yet known to Plaintiff acted in concert with one another to accomplish an unlawful purpose by unlawful means.

72. In furtherance of a conspiracy to deprive Plaintiff of his right to be free from unreasonable harm and retaliation while in State custody, the Defendants and other unknown co-conspirators committed overt acts and were otherwise willful participants in joint activity.

73. The misconduct described above was undertaken with malice, willfulness, and reckless indifference to Plaintiff's rights.

74. As a direct and proximate result of the illicit agreement referenced above, Plaintiff's rights were violated and he suffered damages.

WHEREFORE, Plaintiff James Fontano prays that this Court enter judgment in his favor and against the Defendants, awarding compensatory damages, costs and attorneys' fees, and punitive damages against each of the Defendants in their individual capacities, and for such further additional relief as this court may deem appropriate and just.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

JAMES FONTANO

By: /s/ Alexa Van Brunt
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