

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:12-cv-81413-WPD**

Cummnings v. New England Compounding Center et al
Assigned to: Judge William P. Dimitrouleas
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 12/26/2012
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Darrel Cummings

represented by **Darrel Cummings**
088532
South Bay Correctional Facility
Inmate Mail/Parcels
600 U.S. Highway 27 South
South Bay, FL 33493
PRO SE

V.

Defendant

New England Compounding Center
Barry Caden, CEO

Defendant

Warden Tom Levins
GEO Group Inc.

Defendant

Ms. N. Finnisse
MSM, HSA

represented by **Gregory A. Kummerlen**
Wiederhold, Moses, Kummerlen
& Waronicki, P.A.
560 Village Boulevard, Suite 240
PO Box 3918
West Palm Beach, FL 33402
561-615-6775
Fax: 615-7225
Email: gkummerlen@wmrfla.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

J. Dauphin, D.O.

Defendant

Dr. Jules Heller, M.D.
Medical Director

represented by **Gregory A. Kummerlen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dr. Robert Lins, M.D.
Orthopedic Specialist

Defendant

Officer McIntire
CO1

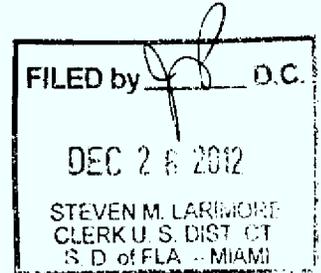
Date Filed	#	Docket Text
12/26/2012	<u>1</u>	Civil Rights COMPLAINT Form For Use In Actions Under 42 U.S.C. 1983 against Dr. J. Duaphin, D.O., N. Finnisse, Dr. Jules Heller, M.D., Tom Levins, Dr. Robert Lins, M.D., McIntire, New England Compounding Center. Filing fee \$ 350.00 No fee/No IFP, filed by Darrel Cummings. (Attachments: # <u>1</u> Exhibits A-L)(yar) (Entered: 12/27/2012)
12/26/2012	<u>2</u>	Judge Assignment to Judge William P. Dimitrouleas (yar) (Entered: 12/27/2012)
12/26/2012	<u>3</u>	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (yar) (Entered: 12/27/2012)
12/28/2012	<u>4</u>	ORDER REQUIRING PAYMENT OF FILING FEE OR FILING OF MOTION TO PROCEED IFP WITH DETAILED AFFIDAVIT. Filing Fee due by 1/24/2013. Motions due by 1/24/2012. Signed by Magistrate Judge Patrick A. White on 12/28/2012. (Attachments: # <u>1</u> Affidavit IFP) (tw) (Entered: 12/28/2012)
12/28/2012	<u>5</u>	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Magistrate Judge Patrick A. White on 12/28/2012. (tw) (Entered: 12/28/2012)
12/28/2012	<u>6</u>	NOTICE of Stay by Reason of Bankruptcy by New England Compounding Center (Bavol, Charles) Modified text on 12/31/2012 (yha). (Entered: 12/28/2012)
01/11/2013	<u>7</u>	MOTION for Leave to Proceed in forma pauperis by Darrel Cummings. (tpl) (Entered: 01/11/2013)
01/16/2013	<u>8</u>	MOTION for Leave to Proceed in forma pauperis by Darrel Cummings. (cbr) (Entered: 01/17/2013)
02/05/2013	<u>9</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>7</u> Motion for Leave to Proceed in forma pauperis; granting <u>8</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 2/5/2013. (tw) (Entered: 02/05/2013)
02/15/2013	<u>10</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Dr. J. Dauphin, Physician, South Bay Correctional Facility,600 U.S. Highway 27, South Bay, FL 33493 and Dr. Jules HellerMedical DirectorSouth Bay Correctional Facility, 600 U.S. Highway 27South Bay, FL 33493. Signed by Magistrate Judge Patrick A. White on 2/15/2013. (tw) (Entered: 02/15/2013)
02/15/2013	<u>11</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint, filed by Darrel Cummings. Recommending 1. Claims for denial of adequate medical treatment continue against Drs. Dauphin and Heller, and against Dr. Heller for retaliation. 2. Claims against Warden Levins, Finnisse, Dr. Lins and Officer McIntire, and the CEO of New England Compounding Center be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii)for failure to state a claim upon which relief may be granted. Objections to RRdue by 3/4/2013 Signed by Magistrate Judge Patrick A. White on 2/15/2013. (tw) (Entered: 02/15/2013)
02/21/2013	<u>12</u>	Summons Issued as to J. Duaphin, D.O.. (br) (Entered: 02/21/2013)
02/21/2013	<u>13</u>	Summons Issued as to Jules Heller, M.D.. (br) (Entered: 02/21/2013)
03/01/2013	<u>14</u>	OBJECTIONS to <u>11</u> Report and Recommendations by Darrel Cummings. (cbr) (Entered: 03/01/2013)
03/01/2013	<u>15</u>	SUPPLEMENTAL Attachments to <u>14</u> Objections to Report and Recommendations by Darrel Cummings (cbr) (Entered: 03/01/2013)
03/06/2013	<u>16</u>	MOTION to Correct Clerical Error re <u>14</u> Objections to Report and Recommendations by Darrel Cummings. Responses due by 3/25/2013 (cbr) (Entered: 03/06/2013)

03/11/2013	<u>17</u>	MOTION for Preliminary Injunction by Darrel Cummings. (cbr) (Entered: 03/12/2013)
03/13/2013	<u>18</u>	ORDER ADOPTING IN PART REPORT AND RECOMMENDATIONS and SUSTAINING IN PART OBJECTIONS; re <u>11</u> Report and Recommendations ; Granting <u>16</u> Motion to Amend/Correct clerical errors. ORDER REFERRING this matter to Judge Patrick A. White for further proceedings as appropriate, including the Pending Request for an injunction : <u>17</u> MOTION for Preliminary Injunction filed by Darrel Cummings. Signed by Judge William P. Dimitrouleas on 3/12/2013. (gp) (Entered: 03/13/2013)
03/15/2013	<u>19</u>	ORDER that the United States Marshal shall serve a copy of the complaint and appropriate summons upon:Ms. N. Finnisse, MSM, Health Service Administrator, South Bay Correctional Facility, 600 U.S. Highway 27 South, South Bay, FL 33493. Signed by Magistrate Judge Patrick A. White on 3/15/2013. (tw) (Entered: 03/15/2013)
03/18/2013	<u>20</u>	Summons Issued as to N. Finnisse. (br) (Entered: 03/18/2013)
03/25/2013	<u>21</u>	AMENDED COMPLAINT against All Defendants, filed by Darrel Cummings.(cbr) (Entered: 03/26/2013)
04/01/2013	<u>22</u>	MOTION for Preliminary Injunction and Restraining Order (Responses due by 4/18/2013) by Darrel Cummings. (cbr) (Entered: 04/02/2013)
04/01/2013	<u>23</u>	Summons (Affidavit) Returned Unexecuted as to J. Duaphin, D.O.. (cbr) (Entered: 04/02/2013)
04/01/2013	<u>24</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint, with a 21 day response/answer filing deadline Jules Heller, M.D. served on 3/21/2013, answer due 4/11/2013. (cbr) (Entered: 04/02/2013)
04/05/2013	<u>25</u>	SUPPLEMENTAL REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>21</u> Amended Complaint filed by Darrel Cummings. Recommending 1. It is therefore recommended that the amended complaint shall be admitted solely as to permit the claim of denial of adequate medical care to continue against Officer McIntire. (DE#21)2. She will be served by separate order. Objections to RRdue by 4/22/2013 Signed by Magistrate Judge Patrick A. White on 4/5/2013. (tw) (Entered: 04/05/2013)
04/05/2013	<u>26</u>	REPORT AND RECOMMENDATIONS. Dismissing without prejudice as premature <u>17</u> MOTION for Preliminary Injunction filed by Darrel Cummings and denying <u>22</u> MOTION for Preliminary Injunction MOTION for Temporary Restraining Order filed by Darrel Cummings. Objections to RRdue by 4/22/2013 Signed by Magistrate Judge Patrick A. White on 4/5/2013. (tw) (Entered: 04/05/2013)
04/11/2013	<u>27</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Jules Heller, M.D..(Kummerlen, Gregory) (Entered: 04/11/2013)
04/22/2013	<u>28</u>	OBJECTIONS to <u>25</u> , <u>26</u> Report and Recommendations by Darrel Cummings. (cbr) (Entered: 04/23/2013)
04/25/2013	<u>29</u>	OBJECTIONS to Magistrate <u>25</u> , <u>26</u> Report and Recommendations, Attachment Process Receipt and Return United States Marshall Service by Darrel Cummings. (ral) (Entered: 04/26/2013)
05/02/2013	<u>30</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by N. Finnisse.(Kummerlen, Gregory) (Entered: 05/02/2013)
05/09/2013	<u>31</u>	RENEWED MOTION for Preliminary Injunction by Darrel Cummings. (asl) (Entered: 05/09/2013)
05/09/2013	<u>32</u>	SUMMONS (Affidavit) Returned Executed on <u>21</u> Amended Complaint with a 14 day response/answer filing deadline pursuant to Fed. R. Civ. P. 15 N. Finnisse served on 4/26/2013, answer due 5/10/2013. (asl) (Entered: 05/09/2013)
05/10/2013	<u>33</u>	OMNIBUS ORDER Adopting and Approving Reports of Magistrate Judge and Overruling Objections; denying <u>17</u> Motion for Preliminary Injunction; denying <u>22</u>

		Motion for Preliminary Injunction; denying <u>22</u> Motion for Temporary Restraining Order; adopting <u>25</u> Report and Recommendations; adopting Report and Recommendations re <u>26</u> Report and Recommendations. Certificate of Appealability: No Ruling. Referring <u>31</u> to Magistrate Judge White. Signed by Judge William P. Dimitrouleas on 5/10/2013. (asl) (Entered: 05/10/2013)
05/10/2013	<u>34</u>	RENEWED MOTION for Preliminary Injunction by Darrel Cummings. (asl) (Entered: 05/10/2013)
06/03/2013	<u>35</u>	Summons (Affidavit) Returned Unexecuted as to J. Duaphin, D.O. (asl) (Entered: 06/04/2013)
06/06/2013	<u>36</u>	MOTION to Furnish Defendant's Update Addresses (Responses due by 6/24/2013) by Darrel Cummings. (asl) (Entered: 06/06/2013)
06/17/2013	<u>37</u>	SECOND MOTION to Furnish Defendant's Updated Addresses by Darrel Cummings. (Address Updated) (yar) (Entered: 06/17/2013)
06/25/2013	<u>38</u>	ORDER granting <u>36</u> Motion ; granting <u>36</u> Motion to Appoint Special Process Server, granting motion to furnish defendants address, service will be ordered by separate order ; denying <u>37</u> Motion to update address, a former attorney and former employer are not proper persons to accept service. Signed by Magistrate Judge Patrick A. White on 6/25/2013. (cz) (Entered: 06/25/2013)
06/25/2013	<u>39</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>34</u> MOTION for Preliminary Injunction filed by Darrel Cummings, <u>31</u> MOTION for Preliminary Injunction filed by Darrel Cummings. Recommending that the motions for preliminary injunction be dismissed without prejudice as premature(DE#31 &34). Objections to RRdue by 7/12/2013 Signed by Magistrate Judge Patrick A. White on 6/25/2013. (tw) (Entered: 06/25/2013)
06/25/2013	<u>40</u>	RENEWED MOTION for Preliminary Injunction by Darrel Cummings. (yar) (Entered: 06/25/2013)
06/26/2013	<u>41</u>	ORDER denying <u>40</u> Motion for Preliminary Injunction, this motion was filed on June 25, 2013, and a Report and Recommendation on the plaintiff's motions for TRO was entered on June 25, 2013. Signed by Magistrate Judge Patrick A. White on 6/26/2013. (cz) (Entered: 06/26/2013)
06/28/2013	<u>42</u>	(VACATED by DE# 46.)ORDER that the United States Marshal shall serve a copy of the complaint and appropriate summons upon:Dr. Jean R. Dauphin, 512 West Oakland Park Boulevard, Fort Lauderdale, FL 33311 and Officer McIntire, Correctional Officer, South Bay Correctional Facility, 600 U.S. Highway 27, South Bay, FL 33493. Signed by Magistrate Judge Patrick A. White on 6/28/2013. (tw) Modified to reflect "vacated" on 7/16/2013 (wc). (Entered: 06/28/2013)
07/03/2013	<u>43</u>	Summons Issued as to J. Duaphin, D.O.. (br) (Entered: 07/03/2013)
07/03/2013	<u>44</u>	Summons Issued as to McIntire. (br) (Entered: 07/03/2013)
07/11/2013	<u>45</u>	OBJECTION to the Magistrate's <u>39</u> Report and Recommendations by Darrel Cummings. (yar) (Entered: 07/11/2013)
07/15/2013	<u>46</u>	*Endorsed OrderReview of the Court's docket reveals that service upon Dr. Jean Dauphin wasreturned to the Court as unexecuted, and the Marshal noted that this defendant never worked at that address provided. tHE PLAINTIFF MUST PROVIDE THE COURT WITH AN UPDATED CURRENT ADDRESS FOR THIS DEFENDANT OR DEFENDANT DAUPHIN WILL BE DISMISSED FROM THIS CASE.ORDER DE42 REQUIRING THE MARSHAL TO FILE A RETURN FOR THIS DEFENDANT IS VACATED. Signed by Magistrate Judge Patrick A. White on 7/15/2013. (cz) (Entered: 07/15/2013)
07/18/2013	<u>47</u>	Summons (Affidavit) Returned Unexecuted as to Dr. J. Dauphin, D.O.. (yar) (Entered: 07/18/2013)
07/19/2013	<u>48</u>	MOTION for Leave to File an Amended Complaint by Darrel Cummings. (Attachments: # <u>1</u> Exhibit – Second Amended Civil Rights Complaint)(yar) (Entered: 07/19/2013)

CIVIL RIGHTS COMPLAINT FORM
FOR USE IN ACTIONS UNDER 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA



DARREL CUMMINGS
Inmate # 088532

Vs.

CASE NUMBER: _____
(To be assigned by Clerk)

NEW ENGLAND COMPOUNDING CENTER, CEO., BARRY CADEN,
GEO GROUP INC., TOM LEVINS, WARDEN,
MS. N. FINNISSE, MSM, HSA,
DR. J. DAUPHIN, D.O.,
DR. JULES HELLER, M.D.,
DR. ROBERT LINS, M.D.,
OFFICER MCINTIRE, CO1,
Defendant(s)

_____ /

ANSWER ALL QUESTIONS ON THE FOLLOWING PAGES:

1983-550 - West Palm Beach
No White No

I. PLAINTIFFS:

State your full name, inmate number, and full mailing address in the lines below. Include the name of the institution in which you are confined. Do the same for any additional Plaintiffs:

(A) Plaintiff's name: Darrel Cummings
Plaintiff's inmate number: # 088532
Prison or jail: South Bay Correctional Facility
Mailing address: 600 U.S. Hwy 27
South Bay, FL. 33493

II. DEFENDANTS:

State the full name of the defendant, official position, mailing address, and place of employment. Do the same for every defendant.

(1) Defendant's name: New England Compounding Center, Ceo., Barry Caden
Official position: Pharmaceutical Company
Mailing address: 697 Waverly St.
Framingham, Mass. 01702

(2) Defendant's name: Tom Levins
Official position: The Warden, Geo Group Inc.
Mailing address: South Bay Correctional Facility, 600 U.S. Hwy 27
South Bay, FL 33493

(3) Defendant's name: Ms. N. Finisse

- Official position: Health Service Administrator
Mailing address: 600 U.S. Hwy 27
South Bay, FL 33493
- (4) Defendant's name: Dr. J. Dauphin
Official position: Physician
Employed at: South Bay Correctional Facility
Mailing address: 600 U.S. Hwy 27
South Bay, FL 33493
- (5) Defendant's name: Dr. Jules Heller
Official position: Medical Director
Employed at: South Bay Correctional Facility
Mailing address: 600 U.S. Hwy 27
South Bay, FL 33493
- (6) Defendant's name: Dr. Robert Lins
Official position: Orthopedic Specialist
Employed at: Center for Bone and Joint Surgery
Mailing address: 10131 West Forest Hill Blvd., Suite #230
West Palm Beach, FL 33414
- (7) Defendant's name: Officer McIntire
Official position: Correctional Officer
Employed at: South Bay Correctional Facility
Mailing address: 600 U.S. Hwy 27
South Bay, FL 33493

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES:

NOTE: THE COURT WILL NOT ACCEPT THE COMPLAINT FOR FILING UNTIL PLAINTIFF(S) FILL OUT THE FOLLOWING REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES. UNDER THE PRISON LITIGATION REFORM ACT OF 1995, 42 U.S.C. § 1997e (AS AMENDED), THIS COMPLAINT IS SUBJECT TO DISMISSAL IF THE CLAIMS PRESENTED HAVE NOT BEEN PROPERLY EXHAUSTED.

A. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN THE FLORIDA DEPARTMENT OF CORRECTIONS?

Yes () No ()

[If your answer is YES, answer all the questions in this subsection. If your answer is NO, proceed to subsection III B.]

Exhaustion of administrative remedies pursuant to Fla. Admin. Code Chapter 33-103 is required prior to pursuing a civil rights action concerning events occurring within the Florida Department of Corrections. Any required grievance, appeals, and responses must be submitted to the Court to verify exhaustion. Each plaintiff must complete a separate Section III.

EXHAUSTION STEPS REQUIRED:

* Emergency Grievance, Grievance of Reprisal, Grievance of a Sensitive Nature, Medical Grievance, Grievance Concerning Violation of Americans with Disabilities Act (ADA), Medical Grievance, Grievance Involving Admissible Reading Material, Grievance Governed by Fla. Admin. Code Rule 33-601.101 Incentive Gain Time, Grievance Involving Disciplinary Action.

a. Formal Grievance to Warden or to the Office of

Secretary (Form DC1-303)

b. Appeal to the Office of Secretary (Form DC1-303)

* General Grievance

a. Informal Grievance (Form DC6-236)

b. Formal Grievance (Form DC1-303)

c. Appeal to the Office of Secretary (Form DC1-303)

EXHAUSTION STEPS TAKEN:

1. Emergency Grievance, Grievance of Reprisal, Grievance of a Sensitive Nature, Medical Grievance, Grievance Concerning Violation of Americans with Disabilities Act (ADA), Grievance Involving Admissible Reading Material, Grievance Governed by Fla. Admin. Code Rule 33-601.101 Incentive Gain Time, Grievance Involving Disciplinary Action (these are requests for Administrative Remedy or Appeal, by-passing the informal grievance step).

a. Did you submit your grievance directly to the Warden and/or to the Office of Secretary (Form DC1-303)?

Yes () No ()

b. If so, you must attach a copy of the grievance and response to this complaint form.

Yes () No ()

c. Were you denied emergency status or otherwise required to first file an informal grievance?

Yes () No ()

d. Did you have a disciplinary hearing concerning this matter?

Yes () No ()

e. If so, you must attach a copy of the disciplinary report and disciplinary committee's findings and decision to this complaint form.

2. Informal Grievance (Request for Interview)

a. Did you submit an informal grievance (Form DC6-236)?

Yes () No ()

b. If so, you must attach a copy of the grievance and response to this complaint form.

3. Formal Grievance (Request for Administrative Remedy or Appeal)

a. Did you submit a formal grievance (Form DC1-303)?

Yes () No ()

b. If so, you must attach a copy of the grievance and response to this complaint form.

4. Appeal to the Office of the Secretary (Request for Administrative Remedy or Appeal)

a. Did you submit an appeal to the Office of the Secretary (Form DC1-303)?

Yes () No ()

b. If so, you must attach a copy of the appeal and response to this complaint form.

B. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN A COUNTY JAIL?

Yes () No ()

If your answer is YES, answer the following questions.

1. Is there a grievance procedure at your institution or jail?

Yes () No (**x**)

2. Did you present the facts relating to your complaint in the prison grievance procedure?

Yes () No (**x**)

3. If your answer is YES:

- a. What steps did you take?
- b. What were the results?

4. If your answer is NO, explain why not:

IV. PREVIOUS LAWSUITS

NOTE: UNDER THE PRISON LITIGATION REFORM ACT OF 1995, 28 U.S.C. § 1915 (AS AMENDED), NO PRISONER SHALL BRING A CIVIL ACTION OR APPEAL A JUDGMENT IN A CIVIL ACTION UNDER 28 U.S.C. § 1915 IF THE PRISONER HAS, ON 3 OR MORE PRIOR OCCASIONS, WHILE INCARCERATED OR DETAINED IN ANY FACILITY, BROUGHT AN ACTION OR APPEAL IN A COURT OF THE UNITED STATES THAT WAS DISMISSED ON THE GROUNDS THAT IT IS FRIVOLOUS, MALICIOUS, OR FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, UNLESS THE PRISONER IS UNDER IMMINENT DANGER OF SERIOUS PHYSICAL INJURY. THEREFORE, IT IS EXTREMELY IMPORTANT THAT THIS SECTION BE COMPLETED IN **THE MOST TRUTHFUL AND COMPLETE MANNER POSSIBLE**. FAILURE TO GIVE COMPLETE AND TRUTHFUL INFORMATION ABOUT PRIOR CASES CAN RESULT IN THE **DISMISSAL** OF THIS ACTION.

A. Have you initiated other actions in **state** court dealing with the same or similar facts or issues as involved in this action?

Yes () No (**x**)

B. Have you initiated other actions in **federal** court dealing with the same or similar facts or issues as involved in this action?

Yes () No ()

C. If your answer to either (A) or (B) is YES, describe each action in the space provided below. If there is more than one action, describe all additional actions on a separate piece of paper, using the same format as below.

(1) Parties to previous action:

Plaintiff(s): Cummings

Defendant(s): Harrison

(2) Court (if federal court, name the district; if state court, name the county): Northern District of Florida

(3) Docket Number: 4:07CV428 WCS

(4) Name of Judge: Honorable William C. Sherrill, Jr.

(5) Briefly describe the facts and basis of the action: Excessive use of force, Deliberate indifference, Retaliation . . .

(6) Disposition (Was the case dismissed? If so, why? No Did you appeal? What result): Trial, Appeal No# 11-13507-

AA

(7) Approximate filing date: 10/14/07, verdict rendered.

(8) Approximate disposition date:

D. Have you initiated other actions (other than those listed in (A) or (B)) in state or federal court relating to the fact or manner of your imprisonment or the conditions of your imprisonment?

Yes () No ()

E. If your answer to (D) is YES, describe each action in the spaces below. Attach additional pages if necessary.

- (1) Court (if federal court, name the district; if state, name the county): Southern District of Florida
- (2) Docket Number: 06-61122 CIV-COHN/SNOW
- (3) Parties to the previous action
 - (a) Plaintiff(s): Tabatha Thompson, Darrel Cummings
 - (b) Defendant(s): Progressive Auto Insurance et. al.
- (4) Basis of action: Insurance claim malicious prosecution
- (5) Is it still pending? Dismissed criminal case was not overturned.
Yes () No (**x**)

V. STATEMENT OF FACTS:

Using numbered paragraphs, state as briefly as possible the **FACTS** of your case. Describe how each defendant was involved and what each did or did not do to give rise to your claim. Include the names of persons involved, dates, times, and places. State exactly what happened. **DO NOT make any legal arguments or cite any cases or statutes.** You may make copies of these pages and attach additional sheets of paper if needed:

- (1) Approximately on March of 2010, I arrived at South Bay Correctional Facility, and initially Reported to the interviewing nurse complication of back and side pains gait favoring left side, limited range movement.
- (2) On April 10, 2010, Dr. Jean Dauphin was deliberately indifferent where he conducted an examination of my back and side to which abnormalities were found. Further, my medical file, history of x-rays taken on August 10, 2007, indicated spinal impressions, mild degenerative disc change at L5 S1 . . . no treatment provided.
- (3) Nothing was done until August 5, 2011, based upon numerous complaint of back pains that radiated to left leg. I reported medication did not work, x-rays ordered tried to return clinoril 200mg and indocin 50mg medication.

(4) On August 11, 2011, x-rays was done again and unlike the initial x-rays taken of the spine, here it was revealed by Dr. Robert Smalley that there was [a] bilateral defective pars interarticulars of L5 with a third-degree spondylolisthesis and degenerate disc . . .

(5) It would seem as if the findings by Dr. Robert Smalley M.D., differed from those that were initially found by Dr. Barry Smith M.D., on August 10, 2007. It is apparent that, Dr. Smith, indicated, “. . . [A] GRADE 1 spondylolisthesis at L5. S1 level mild degenerative disc change L5 S1 . . .”

(6) Where as Dr. Robert Smalley indicated, “Bilateral defective pars interarticularsis of L5 with a third-degree spondylolisthesis and degenerate disc . . .” So there was a significant change in my spine.

(7) Dr. Dauphin was deliberately indifferent to my medical needs where he was knowledgeable that this change had became or could have been causing chronic pain. However, he intentionally delayed and prolonged adequate treatment for said injury and pain for years.

(8) Dr. Dauphin, August 15, 2011, clearly documented this result change where he stated on the chronological record of health care report that, x-ray results . . . c/o persistant pain . . . A/P 1-Chronic back pain . . . 3rd degree spondylolisthesis . . . Roboxin 750g . . . ortho referral . . .”

(9) Dr. Bradford A. Slutsky orthopedic specialist on August 26, 2011, conducted examination recorded that, “patient has lower pains since altercation about 4 years ago. . . . He has been treated with anti-inflammatory and muscle relaxers. The pain is made worse with standing. Nothing appears to relieve it.”

(10) Further, Dr. Slutsky found from the radiographic examination: “Ap x-rays of the spine showed a Grade 2, spondylolisthesis at L5-S1 with some significant DDD at L5-S1 . . . Impression: lower back with a Grade 2., spondylolisthesis of the spine.”

(11) Finally, Dr Slutsky instituted a plan that, “The patient had signs of nerve impingement, which would be expected with this type of spondylolisthesis. He had conservative treatment with no improvement. I think it would be best to do an MRI, and I will see him back after that is completed. Cc: Jean R. Dauphin D.D. (South Bay Correctional Facility)”

(12) On August 29, 2011, it is indicative from the chronological health report that Dr. Dauphin was cognizant of the increased Grade of 2., in the spondylolisthesis of the L-spine, from a previous one. Further, evaluation revealed nerve impingement, to which only conservative treatment was offered with no improvements . . . requested MRI.

(13) On September 1, 2011, I [Plaintiff] instituted a sick call request back pain problems, the pain level at that point was a level nine (9) out of ten (10) as indicated in back pain protocol sheet.

(14) On September 2, 2011, it is apparent from the chronological report that, Dr. Dauphin discontinued chinoril 200mg., which didn't work and then prescribed ibuprofen 600mg. Awaiting MRI.

(15) On September 16, 2011, the MRI., was conducted at Lakeside Medical Center of the Lumbar Spine, Reason: Back Pain. Dr. Scott Ruehrmund M.D., was the reading physician and found; “. . . lumbarization of S1. There is approximately 25% anterior subluxation of L5 on S1. There is decreased disc signal with degenerative marrow signal changes in the end plates . . . circumferential disc bulge and osteophyte . . . severe bilateral facet hypertrophy . . . severe bilateral foraminal narrowing.”

(16) Further Dr. Ruehrmund, found as it relates to impressions: “at L5-S1, there is grade II (2) spondylolisthesis . . .”

(17) On September 25, 2011, Dr. Dauphin himself read the results where it was clearly indictive that, the grade of injury escalated from a one to a two.

(18) Additional information provided to Dr. Dauphin was lumerization of S1., 25% subluxation of L5 on S1, decreased disc signal with degenerative marrow signal changes in end plates . . . disc bulge . . . severe bilateral facet hypertrophy . . . severe foraminal narrowing . . .”

(19) On October 10, 2011, I [Plaintiff] return to Dr. Slutsky office with MRI, initial complaint was my back is getting worse, nothing is helping. The radiographic examination, showed the spondyrolisthesis at L5 with significate spinal stenosis. Impression: low back pain with spondylolisthesis and lateral spinal stenosis.

(20) Dr, Slutsky plan was . . . “trying a course of physical therapy and epidural injections . . . prior to proceed with surgery which would be a large fusion . . . he wants to consider surgery. That definitely is up to him . . .” cc: Jean Dauphin.

(21) Contrary to Dr. Slutsky’s recommendation that it was definitely up to me as to whether I wanted surgery or not. Dr. Dauphin was deliberately indifferent to serious medical need for surgery where he gave me absolutely no options of receiving surgery, considering the severe damage all following deprivations occurred under color of state law as promise by the U.S. constitution.

(22) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where, he did not consider viewing the actual x-rays which clearly displayed the extent of damage which was visibly enormous and extensive considering the disc was totally out of line and nerve being pinch between disc. Of which no epidural injection shot or physical therapy could remedy. This injury was clear and plain to where even a layman could understand its significance.

(23) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where he indicated on September 10, 2011 from his chronological record that, “I question the validity of the recommendation given by the orthopedic surgon saying that “it will not work.” Contrary to this barren assertions Dr. Slutsky gave me the option of surgery.

(24) In retrospection of this comment Dr. Dauphin also stated I said “that shit does not work.” In specific regards to ibuprofen 600mg for pain, shots and physical therapy.

(25) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where he still prescribed me more ibuprofen 800mg and wrote a consultation for epidural injection, despite my request for surgery an option afford to me by the orthopedic specialist slutsky.

(26) Dr. Dauphin was deliberately indifferent to my serious medical need by intentionally delaying and prolonging surgery, which had caused unnecessary, wanton infliction of excruciating pain. Pain occurred over an extremely long period of time, which has caused permanent damage, do to his conservative form of treatment.

(27) On September 8, 2011, I [Plaintiff] submitted grievance Log # 11-2773, “. . . In regards to unexplained and intentional delay in the treatment of serious and painful injuries and/or outright refusal to treat diagnosed injuries. Even though a court of competent jurisdiction has previously determine actual physical injuries to

my lower back and side in Cummings v. Harrison, 695 F.Supp.2d 1263; 2010 U.S. Dist. Lexis 11054 . . ." Exhibit "A" (Log # 11-2773).

(28) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm and causing me to suffer unnecessary and wanton infliction of pain where he lied to me about the results of the x-rays which I never actually seen at that time. He advised me accordingly from the x-ray report that I only had arthritic . . .

(29) Contrary to Dr. Dauphine's prognosis, Dr. Slutsky on August 26, 2011 displayed an actual visual of x-rays themselves on a lighted screen which clearly showed my entire spinal column. Dr. Slutsky, explained that there was no way the therapy or shot would cure the damage.

(30) Dr. Slutsky, further pointed out on the screen to myself, Inmate Kerr, Ofc. Howard, Ofc. Crayton, and Ofc. Petway who were all present in his office that ". . . the disc of your lower back had vertically came a good portion out of the spinal column. And do to the degree of this abnormality, your nerves which were indicated on the x-ray [screen] as lined circles connected to each disc separately, were not intacted where [my] disc had seemingly came out in my lower back. The nerves are trapped between disc."

(31) From my view of x-rays the lower portion of my spine didn't seem connected to the upper portion which shocked everyone. Especially me actually seeing the extent of injury with my own eyes, and the damage was far worse than the big medical terms that were used on x-ray reports/which I didn't understand.

(32) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm and suffering where my nerves (line circle) were trapped between the disc and being pinched which explained the chronic and severe pain that I was experiencing." To which he delayed treatment.

(33) Dr. Slutsky asked me, "what type of medication did Dr. Dauphin prescribe? I informed him that it was ibuprofen 600mg and sulindac [200mg]. He stated he didn't think this would do much for the type of injury I had or pain."

(34) Here it should be pointed out that Ofc. Howard and Ofc. Crayton had to strenuously assist me in and off the van, and during transport to orthopedic office in Okeechobee, Fl., do to chronic and severe pain that I was in at that time.

(35) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm which caused me to suffer unnecessary and wanton infliction of pain where he never even considered a consult for surgery or that specialist would

provide me with a medication or treatment that would relieve chronic pain at that time.

(36) Dr. Dauphin was deliberately indifferent to my serious medical need which caused unnecessary and wanton infliction of pain where he stated to me that, he didn't see why I was in pain all of a sudden when I had injury for sometime" Had Dr. Dauphin been paying attention to the previous x-rays, and current x-rays to include MRI,. He would have discovered that the injury was progressing. He further accused me of lying and wanting narcotics.

(37) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where, he was denying me surgery and adequate treatment because despite all the examinations and tests conducted by specialist in the field, he didn't believe I was in pain. So he intentionally delayed and prolonged surgery and adequate treatment to my detriment , dismay, and causing me to suffer extensively, and excruciatingly.

(38) Dr. Dauphin was deliberately indifferent to my serious medical needs where it took approximately two months before I went back to Dr. Slutsky's office on October 10, 2011 for only consult and no treatment all this time I was in pain , constantly making complaints. This has not only been physically exhausting, but also psychologically draining. Essentially where no surgery is being consulted or adequate medication provided for pain.

(39) Nevertheless, when Dr. Slutsky and I discussed options for treatment, the x-rays were very much a part of that discussion. From the outset I requested surgery from what I sough with my own eyes. Dr. Slutsky stated that most likely that's what I will need to fix it.

(40) Dr. Dauphin was deliberately indifferent to my serious medical needs where I could not get anything for relief at that time, as it was not authorized again by Dr. Dauphin. Dr. Slutsky informed me that he had adequate medication for pain but had to be authorized by the facility who refused to give it.

(41) In regards to Dr. Slutsky's recommendation of: 1. physical therapy; 2. Epidural injections, and; 3. Surgery by fusion of spine.

(42) Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where, out of anger he advised me that “surgery was out of the question because the budget was not going to allow it.” The issue here seems to be cost of providing adequate medical treatment at the expense of human torture which is equivalent to cruel and unusual punishment. Thus, I was denied imminent surgery.

(43) In response to grievance Log# 11-2773, Ms. N. Finisse, MSM., the health Service Administrator of S.B.C.F., On September 21, 2011 clearly stated that;

“Record indicate you were seen by the specialist on October 10, 2011 for back pain. It was recommended you should try course of physical therapy, epidural injections before considering surgery. You were seen by Doctor [Dauphin] on 11-10-11 which increased your ibuprofen from 600mg to 800mg., and wrote a consultation request for epidural injections. You are scheduled for an evaluation for epidural injection.” Grievance Denied for Imminent Surgery.

(44) Ms. N. Finisse, was deliberate indifferent to my serious medical needs and acted maliciously and sadistically for the very purpose of causing harm where she intentionally ignored where it states, 1. Recommended you should try course . . . , and 2. Before considering surgery. This language provided an option afforded to me by Dr. Slutsky. However, in the interest of the budget I was denied imminent treatment, via surgery.

(45) There was absolute noting to consider before surgery. Because I had made my decision for surgery upon viewing of x-rays immediate which was definitely up to me, not Ms. Finisse, as indicated by Dr. Slutsky.

(46) Ms. Finisse M.S.M. was deliberately indifferent to my serious medical need which had caused unnecessary and wanton infliction of pain which was maliciously and sadistically done for the very purpose of causing excruciating pain over a long period of time. A pain that in its ordinary meaning surely includes a notion of psychological harm, and cruel and unusual punishment.

(47) Contrary to Ms. Finisse’s response on grievance log# 11-2773 submitted on September 8, 2011 in direct regards to receiving treatment for back pains. In Grievance Log# 11-3042, Ms. Finisse directly contradicted herself where she

stated in this response that, “Your sick call visit on 11-8-11 for joint pains, is not a condition that you are being seen in chronic clinic or initiated by a physician. Your co-pay charge [\$5.00] for 11-8-11 is valid.” Exhibit “B” (Log # 11-3042).

(48) Ms. N. Finisse, was deliberately indifferent to my serious medical needs where she was not candid about \$5.00 in charging me for treatment that she herself stated I was already receiving for my back. The issue here is that if they are not being candid about \$5.00, the expense for surgery is far more enormous. The warden specifically referred complain to/ Ms. N. Finisse and ignored complaint altogether.

(49) Dr. Dauphin, in Grievance Log# 1112-405-042 supported this lie even where nurse Dixon RN., indicated on the chronological record of health care report that on 11-8-11, 0955am, “Sick call for c/o back/leg pains concern about follow up s/p ortho. Consult . . .” Exhibit “C” (Log # 1112-405-042).

(50) Interestingly the Warden never investigated that, Dr. Dauphin was the physician who treated me for this sick-call on 11-10-11 for back pains as documented on the chronological record at 0930am. This matter would seem somewhat simplistic but it’s not. Because by following this \$5.00 we see the entire chain of command supports one another even when they are wrong.

(51) The secretary for the Department of Corrections in Grievance Log# 12-6-02095 “determined that the response given by Dr. Dauphin on 1-5-12 appropriately addresses the issue [I] presented.” It’s obvious they never investigated grievance, based on officers statements. Exhibit “D” (Log #12-6-02095).

(52) The extent of this lie for \$5.00 prevail through every authoritative level of exhaustion when the clear facts were indicated in the record. That they were wrong.

(53) Ms. Finisse acted maliciously and sadistically for the very purpose of causing harm where the issue is the cost of providing surgery which is the adequate treatment for condition, so she’s prolonging adequate treatment at the expense of human torture which is equivalent to cruel and unusual punishment.

(54) I wasn’t seen by Dr. Robert Lins M.D. orthopedic specialist, until 11-22-11, the specific recommendation was for epidural injections in the consultation requested by Dr. Dauphin. Again authorization for pain medication was not authorized.

(55) Dr. Dauphin was deliberately indifferent to my serious medical need where he did not include MRI for examination, and my blood pressure was 176/102 caused by his increase of ibuprofen 800mg, which neither helped pain. I was admitted into the infirmary until pressure dropped. The trip to Dr. Lins office in West Palm Beach was a total waste and had to be rescheduled while I waited in pain.

(56) On 11-28-11, I [Plaintiff] submitted specifically to the Warden Grievance Log# 11-1088 in regards to Ms. Finisse's response to Grievance Log# 11-2773. What is apparent from this particular grievance is that the Warden refered grievance back to Ms. Finisse and even though I had made numerous complaints of chronic and severe pain, and that the medication was not working were totally being ignored by Ms. Finisse and Dr. Dauphin. The Warden was deliberate indifferent where he did absolutely nothing to prevent further damage and pain.

(57) By the intentional prolonging and delaying of adequate treatment, the Warden, Ms. Finisse, and Dr. Dauphin has cause me to suffer by the unnecessary and wanton infliction of pain which has become 3x worse than before, and injury caused to deteriorate. Exhibit "E" (Log #11-1088).

(58) Dr. Robert Lins was deliberately indifferent to my serious medical need for surgery where he knew from his own x-rays taken, and MRI., that more extensive and imminent treatment was needed. Also which was conveyed to him by Dr. Slutsky.

(59) Dr. Lins, advised me that epidural injections would not work on my condition, and was not a cure for the pinch nerves in my back, but it may provide temporary relief. However, he never explain the adverse effects of that relief were the pain came back 3x worse, and I was infected in the process with contaminated medication.

(60) The Warden was deliberately indifferent rather than responding to 12-21-2011 Grievance Log# 11-1088 refered grievance back to the parties complained of a Ms. N. Finisse M.S.M, and Dr. Dauphin to provide a response in regards to their own inappropriate conduct, which was challenged on the informal level.

(61) Here the Warden was deliberate indifferent to my serious medical need for imminent surgery and the unnecessary and wanton infliction of excruciating pain, and further damage.

(62) This Ms. Finisse, and Dr Dauphin was deliberately indifferent where, grievance, the appeal to the Warden of their informal responses were ignored.

(63) The Warden was deliberately indifferent where he totally disregarded proper procedure, and did absolutely nothing to prevent further pain and damage to existing injury which has crippled me and put me in a wheel chair.

(64) Ms. Finisse, M.S.M., and Dr. Dauphin D.O., stated in the Grievance Log# 11-1088 12-21-11 response that, “. . . Record indicate you were seen by a specialist on 10-10-2011 regarding back pains. During your visit the clinician recommended a course of epidural injections and physical therapy prior to proceeding with surgery. Your primary physician [Dr. Dauphin] submitted a consult for epidural injections and increased your ibuprofen to 800mg . . .” Your grievance is denied, also signed by the Warden who could have prevented further pain and damage but didn’t.

(65) Ms. Finisse, and Dr. Dauphin acted maliciously and sadistically for the very purpose of causing harm where, they omitted from there responses’ the facts that the specialist I seen on 10-10-2011 was Dr. Slutsky who also specifically stated that, “. . . the patient says he wants to see a spine surgeon. He wants to consider surgery. That definitely is up to him, but that is an option. . .”

(66) The Warden, Ms. Finisse, and Dr. Dauphin were deliberately indifferent to my serious medical need for surgery which caused unnecessary and wanton infliction of pain where they exercised an unauthorized use of authority in accepting the former portions of Dr. Slutsky’s report to their benefit.

(67) However, they rejected the later portions of Dr. Slutsky’s report to my dismay. Essentially, where in this case proper treatment would require a large fusion which could be substantially expensive to their budget. But that does not negate the option that was afforded to me of surgery by the specialist from the same report they adopted.

(68) In further appeal of this particular grievance for imminent treatment, the secretary, Dept. of Corr., in Grievance Log# 12-6-01054, Dated 1-19-12 stated, “. . . it is determined that the response made to you by Dr. Dauphin on 12-21-2011 appropriately addresses the issues you presented . . . it is the responsibility of your Chief Heath Office [Ms. Finisse] to determine the appropriate treatment regimen for the condition you are experiencing . . .” Exhibit “F” (Log #12-6-01054).

(69) Thus, in full exhaustion of administrative remedy. It would seem as if Dr. Dauphin, and Ms. Finisse’s response’s are binding by the secretary for the Dept. of Corr. Establishing epidural injections and physical therapy prior to surgery. “The established treatment plan”

(70) On 2-7-12 I submitted Grievance Log# 12-0293 in regards to further delay now of established treatment of which I'm still consistently suffering for approximately 4½ years since injury had been diagnosed, and six months since injury was discovered to have gotten substantially worse. Exhibit "G" (Log #12-0293).

(71) At this point it was clear that the injury to back, side legs were progressing, and condition deteriorating do to intentional delay and prolonging, which causes excruciating pain. To be left unsubstantially treated at this point is the equivalent of human torture which could only be deemed as cruel and unusual punishment.

(72) But it did not end here, the first phase of the established treatment, of a course of epidural injections were not conducted by Dr. Robert Lins M.D. orthopedic specialist, until approximately July 16, 2012, August 1, 2012, and August 22, 2012. This was approximately an entire year after being re-diagnosed on 8-11-2011 while I suffered in excruciating and persistent pain.

(73) Dr. Robert Lins was deliberately indifferent to my serious medical need for surgery which caused unnecessary and wanton infliction of pain where on 11-22-2011, Dr. Lins informed me, and knew from his own x-rays taken, and MRI that, "the spine showed a Grade 2. Spondylolisthesis, at L5-S1 with significant DDD at L5-S1 . . ." Id. x-rays, and MRI.

(74) Dr. Lins, knew that "[I] had signs of nerve impingement which would be expected with this type of spondylolisthesis." He further, explained that, the movement of my disc was causing my nerves to be pinched in between which made my complaints of chronic and severe pain very realistic.

(75) Dr. Lins knew that, "there [was] lumbarization of S1. There is approximately 25% anterior subluxation L5 on S1. The decreased disc signal with degenerative marrow signal changes in the end plates . . ."

(76) Dr. Lins knew that, "there [was] circumferential disc bulge and osteophyte . . . severe bilateral facet hypertrophy . . . severe forminal narrowing . . ." as he explained.

(77) And Dr. Lins knew that, ". . . the spondylolisthesis at L5 showed significate lateral spinal stenosis . . ."

(78) Dr. Lins was deliberately indifferent, as the specialist in the field where even though he knew of my critical condition and the potential that if left untreated it

could paralyze me. He should have equally knew that the epidural injection would not remedy my condition or pain.

(79) The fact of the matter is even though Dr. Lins informed me that the epidural injections would only provide temporary relief from pain, of which I disputed while Ofc. Alvarez, Ofc. Petway, Ofc. Crayton were present. In that, visualizing the x-rays he displayed. My position was, "you need to fix this! Dr. Slutsky recommended fusion." Ofc. Alvarez, was present for last epidural injection procedure.

(80) Dr. Lins stated, "He could not fix it without authorization of the facility. However, Dr. Lins is the orthopedic specialist and never even recommended that a fusion be conducted where he knew or should have known that the damage to spine was to extensive for shots to be of any substantive value.

(81) Dr. Lins acted maliciously and sadistically for the very purpose of causing harm by leaving this extensive damage unsubstantially treated where he knew it would cause further excruciating pain, and crippling results due to third degree of injury could only be viewed as the equivalent of intentional human torture which deemed as cruel and unusual punishment.

(82) Dr. Lins conducted follow up examination on August 31, 2012 at which time I was still unusually numb from the last shot I took on August 22, 2012 which was unusual because the other two previous shot never numb me pass three days and the pain would return worse every-time. Ofc. Alvarez, almost had to carry me to the after the shot, my feelings in my legs were gone.

(83) The last shot for some strange reason had me sick and blacking out. I knew it wasn't normal because it was a very unusual feeling, something I had not experience with the other shots. Thereafter the shots, Officer Coleman had to hold me up to keep from falling, and had to assist me, upon my return to the facility, as the pain had returned, which was extremely drastic and unbearable, with getting up to medical.

(84) Approximately on 9-5-2012, I was seen by Dr. Jules Heller, the Medical Director was deliberately indifferent to my serious medical need despite his expressed indifference and lack of concern towards my condition, I still told him that, my back and spinal pains had become much worse. Further, that I had normally felt the pains in my legs not directly in my spine. Now I felt extreme pain all over, but receive no imminent treatment for pain. Essentially he ignored me.

(85) Dr. Heller, advised me that a facet injection had been recommended by Dr. Lins, (who should have recommended surgery) and that he was going to initiate the consult for lumber injection. But I received absolutely nothing for pain.

(86) Thereafter, I started experiencing very unusual symptoms that I had not experience previous; for instance, headaches, left-side of spine back pain, direct pain from my spine generating around both sides of my lower body, and legs.

(87) Even though, I was already experiencing pain in my left leg. This was different, I am now experiencing excruciating pain in both legs. As if that wasn't enough, what's even more severe the pain in my ankles is unlike anything that I ever felt. It seems as if they were engulfed in flames from my ankle to my knee. For which I am continually suffering greatly in pain. However, I am currently temporary disabled.

(88) My once God given ability to move about and walk freely has been virtually diminished. I can't even stand unassisted, and at the rate of my deterioration, I will be permanently disabled within 6 months to a year.

(89) Officer McIntire was deliberately indifferent to my serious medical need which caused unnecessary and wanton infliction of pain where on 10-4-2012, at 8:45, when I collapsed from excruciating and unbearable pain. G-Dormitory Sergeant Scott, notified medical of an emergency. Thereafter, I fell and grabbing a chair to avoid hitting the ground. Pulling myself in the chair with only my up body strength. Officer McIntire, after the dorm sergeant notified medical to declare an emergency, forced me to move out of the chair and I fell flat into a door.

(90) Officer McIntire acted maliciously and sadistically for the very purpose of causing harm where upon being told that I was ordered not to move by Sgt., who notified medical and I had recent surgery something was wrong. She nefariously ordered me to get the hell out of her chair. When I told her I couldn't stand or walk, she stated, "I don't give a damn, get your "ass" out of my chair." I fell into a door but was caught by an inmate before I hit the ground. However aggravating injury and causing more pain, as she watched with her hands on her hips.

(91) During this same period there was a nationwide outbreak of deadly fungal meningitis of tainted or contaminated epidural (steroid) injections for back pains that were discovered to have been ship to Florida, etc. . . . During the months of July -September 2012.

(93) In retrospection to learning this information on 10-4-2012, I at 8:45 am was picked up by Nurse(s) Jones, Bennet, and Trimble, placed into a wheel chair and taken to the medical infirmary. I was not treated or seen by Dr. Heller until 1:30 pm., 4½ hours I sat in pain. Contrary to Ofc. McIntire's response in Grievance Log# 12-2102, she never notified medical of emergency nor was I treated. Exhibit "H" (Log #1210-2102, 1211-405-006, Sgt. Scott notified medical. Neither C0-1 McIntire nor Sgt. Scott candid about my serious medical condition in this regards. Officer McIntire alleged she notified medical, which was not true, as Sgt. Scott notified medical. However, Sgt. Scott alleged that she notified him. Nevertheless, this is not true either, as I personally notified Sgt. Scott.

(94) Upon arrival of Dr. Heller, from the outset, he was very belligerent, again unconcerned as if I was lying about pain. He was very unprofessional as a Health Care provider and his demeanor was indifferent and/or rather incompetent.

(95) Dr. Heller maliciously and sadistically for the very purpose of causing harm has previously shown a nefarious attitude towards me, and surgery to elevate the painful symptoms I'm experiencing and repairing my lower spinal column. By stating, "He didn't think it would help me," as if his recommendation for epidural injections was a better solution. The fact of the matter is they did not work.

(96) Dr. Heller, was deliberately indifferent in that he has misdiagnosed any adequate treatment, has made numerous inadequate prescriptions for pain. He has made numerous insufficient prognosis for recommended treatments, and consults all in a effort to delay and prolong adequate treatment, which has caused paralyzing damage and put me in a wheelchair.

(97) Dr. Heller maliciously and sadistically for the very purpose of causing harm, denied plan for diagnosed injury and course of treatments recommended by Dr. Slutsky on 10-10-2011. The second phase of that treatment plan was, "Physical therapy prior to proceeding with surgery, which would be a large fusion."

(98) But it should be pointed out here that I absolutely disagreed with the delay and prolonging of surgery do to the critical stages of my condiction, which has paralyzed me, and caused me to suffer the equivalent of human torture, which could only be deemed as cruel and unusual punishment.

(99) For Dr. Heller denied the remaining established course of treatments to remedy the condition and pain, is further an act that is maliciously and sadistically for the very purpose of causing more pain and permanent disability.

(100) Dr. Dauphin's last entry in regards to epidural injections was 12-21-2012. Thereafter, Dr. Heller superseded Dr. Dauphin and it was then Dr. Heller's responsibility to honor, appropriately address, and submit consultation for established treatment plan, to imminently attempt to relieve chronic and severe pain, and remedy condition from deterioration.

(101) However, the first epidural injection wasn't conducted until approximately July 16, 2012, last conducted August 22, 2012. Then it took approximately 8 months for Dr. Heller to complete this inadequately prognosis, and misdiagnosed source of treatment that did not elevate pain or remedy condition. In any way, shape, form or fashion, which was deliberately indifference, and cruel and unusual punishment.

(102) By Dr. Heller maliciously and sadistically for the very purpose of causing harm by intentionally prolonging and delaying of the proper treatment for diagnosed condition. Dr. Heller was deliberately indifferent to my serious medical need for surgery where he knew or should have known that, to leave this substantive injury unsubstantially and timely treated, there would be a potential risk of being paralyzed or permanent damage.

(103) Dr. Heller's caused unnecessary and wanton infliction of pain by his actions and/or inactions has caused me to suffer unnecessary and wanton infliction of pain which is three times worse than when treatment begun. Even moreso, the adverse affects have virtually paralyzed me from the waist down.

(104) These facts bring into question: The nationwide outbreak of fungal meningitis of the tainted epidural injections for back pains that was distributed by New England Compound Center, to various States to included Florida, to which a number of illness from various symptoms were recorded and actual deaths from this disease.

(105) The above mention concerns were appropriately address in a emergency Grievance Log# 1210-405-031 directly to the Warden dated 10-7-2012, requesting to contact the CDC Office, urgent. Do to unusual and excruciating pain that caused my clasped. Essentially, since I had taken the shots during the contaminating