

**No. 24-2673**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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JONATHAN DIFRAIA,

*Plaintiff-Appellant,*

v.

KEVIN RANSOM ET AL.,

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
No. 1:23-cv-01187-JPW-EW  
Hon. Jennifer P. Wilson

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**VOLUME II OF THE APPENDIX (JA023–JA082)**

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Matthew A. Feldman  
Sarah B. Bellos  
PENNSYLVANIA INSTITUTIONAL LAW  
PROJECT  
718 Arch Street, Suite 304S  
Philadelphia, PA 19106  
(215) 925-2966  
mfeldman@pilp.org  
sbellos@pilp.org

Jennifer A. Wedekind  
Joseph Longley  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th Street NW  
Washington, DC 20005  
(202) 675-2338  
jwedekind@aclu.org  
jlongley1@aclu.org

Sara J. Rose  
ACLU OF PENNSYLVANIA  
P.O. Box 23058  
Pittsburgh, PA 15222  
(412) 681-7736  
srose@aclupa.org

*Counsel for Plaintiff-Appellant*

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APPEAL,CLOSED,PROSE,PRSLC,WVSENT

**United States District Court**  
**Middle District of Pennsylvania (Harrisburg)**  
**CIVIL DOCKET FOR CASE #: 1:23-cv-01187-JPW-EW**

DiFraia v. Ransom et al  
Assigned to: Honorable Jennifer P. Wilson  
Referred to: Pro Se Law Clerk EW  
Case in other court: Third Circuit, 24-02673  
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 07/17/2023  
Date Terminated: 08/26/2024  
Jury Demand: None  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff**

**Jonathan DiFraia**

represented by **Jonathan DiFraia**  
QH-6513  
SCI Rockview  
SPECIAL MAIL OPEN ONLY IN  
PRESENCE OF INMATE  
Box A  
1 Rockview Place  
Bellefonte, PA 16823  
PRO SE

V.

**Defendant**

**Kevin Ransom**  
*Superintendent*

represented by **Christine C Einerson**  
Pennsylvania Office of Attorney General  
Litigation Department  
Strawberry Square  
Ste 15th Floor  
Harrisburg, PA 17120  
717-783-1476  
Email: ceinerson@attorneygeneral.gov  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Jasen Bohinski**  
*Deputy Superintendent for Centralized  
Services*

represented by **Christine C Einerson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Timothy Kross**  
*Doctor*

represented by **Benjamin M. Lombard**  
Weber Gallagher Simpson Stapleton Fires &  
Newby LLP  
6 PPG Place  
Suite 1130  
Pittsburgh, PA 15222

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412-281-4588  
 Fax: 412-281-4547  
 Email: blombard@wglaw.com  
**ATTORNEY TO BE NOTICED**

**Samuel H. Foreman**  
 Weber, Gallagher, Simpson, Stapleton, Fires  
 & Newby, LLP  
 Four PPG Place  
 5th Floor  
 Pittsburgh, PA 15222  
 (412) 281-4541  
 Fax: (412) 281-4547  
 Email: sforeman@wglaw.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Wayne Inniss**  
*Corrections Classification Program  
 Manager*

represented by **Christine C Einerson**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Rawlings**  
*Drug and Alcohol Treatment Specialist*

represented by **Christine C Einerson**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Bower**  
*Sergeant of the Guard*

represented by **Christine C Einerson**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**JOHN DOE**  
*Corrections Officer*

**Defendant**

**Osmulski**  
*Corrections Officer*

represented by **Christine C Einerson**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
07/17/2023	<a href="#"><u>1</u></a>	COMPLAINT against All Defendants lodged pending the disposition of the Motion for In Forma Pauperis, filed by Jonathon DiFraia.(lp) (Entered: 07/17/2023)
07/17/2023	<a href="#"><u>2</u></a>	<b>CERTIFIED</b> MOTION for Leave to Proceed in forma pauperis by Jonathon DiFraia.(lp) (Entered: 07/17/2023)
07/17/2023	<a href="#"><u>3</u></a>	<b>CERTIFIED</b> Prisoner Trust Fund Account Statement by Jonathon DiFraia. (lp) (Entered: 07/17/2023)
07/17/2023	<a href="#"><u>4</u></a>	AO 398 and AO 399 Waiver of Service Forms Completed by Plaintiff. (lp) (Entered: 07/17/2023)



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07/17/2023	<a href="#">5</a>	PRO SE LETTER ISSUED providing the case number and the AO 85 Notice & Consent Form. (Attachments: # <a href="#">1</a> Notice of Consent, # <a href="#">2</a> Instruction Sheet, # <a href="#">3</a> Fed and Local Rules) (lp) (Entered: 07/17/2023)
07/24/2023	<a href="#">6</a>	ORDER: 1. Pltfs application for leave to proceed ifp, <a href="#">2</a> , is granted.2. Pltf shall pay the full filing fee of \$350.00 per instructions in this order.3. The appropriate official at Pltfs place of confinement is directed to deduct an initial partial filing fee of 20% and balance per instructions in this order.4. The Clerk of Court shall send a copy of this Order to the Warden of the institution wherein Pltf is presently confined.5. The complaint, <a href="#">1</a> , is deemed filed.6. The Clerk of Court shall add Dfts identified on page seven of the complaint (Bower, John Doe, and Osmulski) as parties in CM/ECF.7. The Clerk of Court shall serve a copy of the complaint, Doc. 1, notice of lawsuit and request to waive service of summons (form AO 398), waiver of service of summons (form AO 399) and this Order on all the named Dfts including those identified in the above paragraph.8. If service is unable to be completed due to Pltfs failure to properly name the Dfts, or provide a correct mailing address, Pltf will be required to correct this deficiency. Failure to comply may result in the dismissal of Pltfs claims against the Dfts. Signed by Honorable Jennifer P. Wilson on 7/24/23. (ma) (Entered: 07/24/2023)
07/25/2023	<a href="#">7</a>	Waiver of Service forms (AO 398 and 399) Mailed to All Defendants Waiver of Service due by 8/24/2023. (ma) (Entered: 07/25/2023)
08/10/2023	<a href="#">8</a>	Letter to court from Jonathon DiFraia re appointment of counsel. Courtesy copy of Excerpts from Local Rules of Court sent. (sh) (Entered: 08/10/2023)
08/11/2023	<a href="#">9</a>	ORDER - IT IS ORDERED THAT Plaintiffs letter construed as a motion for appointment of counsel, Doc. 8, is DENIED without prejudice. Signed by Honorable Jennifer P. Wilson on 8/11/2023. (ve) (Entered: 08/11/2023)
08/24/2023	<a href="#">10</a>	NOTICE of Appearance by Christine C Einerson on behalf of Jasen Bohinski, Bower, Wayne Inniss, Osmulski, Kevin Ransom, Rawlings (Einerson, Christine) (Entered: 08/24/2023)
08/24/2023	<a href="#">11</a>	WAIVER OF SERVICE Returned by Rawlings, Jasen Bohinski, Kevin Ransom, Bower, Osmulski, Wayne Inniss. (Einerson, Christine) (Entered: 08/24/2023)
09/01/2023	<a href="#">12</a>	MOTION to Appoint Counsel filed by Jonathan DiFraia. (ibr) (Entered: 09/01/2023)
09/01/2023	<a href="#">13</a>	NOTICE of Appearance by Samuel H. Foreman on behalf of Timothy Kross (Foreman, Samuel) (Entered: 09/01/2023)
09/01/2023	<a href="#">14</a>	NOTICE of Appearance by Benjamin M. Lombard on behalf of Timothy Kross (Lombard, Benjamin) (Entered: 09/01/2023)
09/01/2023	<a href="#">15</a>	WAIVER OF SERVICE Returned by Timothy Kross. (Lombard, Benjamin) (Entered: 09/01/2023)
09/05/2023	<a href="#">16</a>	NOTICE by Timothy Kross <i>to Plaintiff of Defendant's Intent to Dismiss Pursuant to Pa. R.C.P. 1042.7</i> (Lombard, Benjamin) (Entered: 09/05/2023)
09/05/2023	<a href="#">17</a>	ORDER Denying pltf's mtn to appoint cnsl <a href="#">12</a> . Signed by Honorable Jennifer P. Wilson on 9/5/23. (ma) (Entered: 09/05/2023)
09/15/2023	<a href="#">18</a>	<b>(CERTIFIED)</b> Prisoner Trust Fund Account Statement by Inmate Accounts for Jonathan DiFraia. (ep) (Main Document 18 replaced on 9/15/2023) (ep). (Entered: 09/15/2023)
09/22/2023	<a href="#">19</a>	MOTION to Dismiss for Failure to State a Claim by Jasen Bohinski, Bower, Wayne Inniss, Osmulski, Kevin Ransom, Rawlings. (Attachments: # <a href="#">1</a> Proposed Order)(Einerson, Christine) (Entered: 09/22/2023)

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09/22/2023	<a href="#">20</a>	BRIEF IN SUPPORT re <a href="#">19</a> MOTION to Dismiss for Failure to State a Claim filed by Jasen Bohinski, Bower, Wayne Inniss, Osmulski, Kevin Ransom, Rawlings. (Attachments: # <a href="#">1</a> Exhibit(s) Exhibit A)(Einerson, Christine) (Entered: 09/22/2023)
09/25/2023	<a href="#">21</a>	MOTION to Dismiss for Failure to State a Claim <i>Plaintiff's Complaint or, in the alternative</i> , MOTION for Summary Judgment by Timothy Kross. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Exhibit(s) A - Grievances)(Lombard, Benjamin) (Entered: 09/25/2023)
09/25/2023	<a href="#">22</a>	BRIEF IN SUPPORT re <a href="#">21</a> MOTION to Dismiss for Failure to State a Claim <i>Plaintiff's Complaint or, in the alternative</i> MOTION for Summary Judgment filed by Timothy Kross. (Lombard, Benjamin) (Entered: 09/25/2023)
10/11/2023		Receipt of payment from JONATHON DIFRAIA in the amount of \$2.44 for Civil Filing Fee/PLRA/CCAM. Transaction posted on 10/10/2023. Receipt number 333106677 processed by EP. (jjs) (Entered: 10/11/2023)
10/16/2023	<a href="#">23</a>	Letter from Jonathan DiFraia re case. (Attachments: # <a href="#">1</a> Copy of DOC Reports and Grievances) (ibr) (Entered: 10/16/2023)
10/16/2023	<a href="#">24</a>	ORDER - IT IS ORDERED that Plaintiff shall have the opportunity to respond to the motions to dismiss, Docs. 19, 21, on or before November 6, 2023. All briefs must conform to the requirements prescribed by Local Rule 7.8. Signed by Honorable Jennifer P. Wilson on 10/16/2023. (ve) (Entered: 10/16/2023)
11/06/2023	<a href="#">25</a>	BRIEF IN OPPOSITION re <a href="#">19</a> MOTION to Dismiss for Failure to State a Claim , <a href="#">21</a> MOTION to Dismiss for Failure to State a Claim <i>Plaintiff's Complaint or, in the alternative</i> MOTION for Summary Judgment filed by Jonathan DiFraia. (Attachments: # <a href="#">1</a> Exhibits) (ibr) (Entered: 11/06/2023)
11/06/2023		DOCKET ANNOTATION: Docket entry 25 was deleted and refiled on behalf of plaintiff. (ibr) (Entered: 11/06/2023)
11/22/2023		Receipt of payment from JONATHON DIFRAIA in the amount of \$1.18 for Civil Filing Fee/PLRA/CCAM. Transaction posted on 11/21/2023. Receipt number 333107260 processed by CP. (jjs) (Entered: 11/22/2023)
01/17/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$3.44 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 1/16/2024. Receipt number 333108048 processed by EP. (jjs) (Entered: 01/17/2024)
02/13/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$15.44 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 2/12/2024. Receipt number 333108440 processed by CP. (jjs) (Entered: 02/13/2024)
04/09/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$3.08 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 4/8/2024. Receipt number 333109296 processed by EP. (jjs) (Entered: 04/09/2024)
05/07/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$3.44 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 5/6/2024. Receipt number 333109730 processed by DJ. (jjs) (Entered: 05/07/2024)
06/12/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$3.61 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 6/11/2024. Receipt number 333110254 processed by EP. (jjs) (Entered: 06/12/2024)
07/09/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$3.61 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 7/8/2024. Receipt

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		number 333110606 processed by CP. (jjs) (Entered: 07/09/2024)
07/09/2024	<a href="#">26</a>	MEMORANDUM re mtns to dismiss <a href="#">19</a> and <a href="#">21</a> (Order to follow as separate docket entry) Signed by Honorable Jennifer P. Wilson on 7/9/24. (ma) (Entered: 07/09/2024)
07/09/2024	<a href="#">27</a>	ORDER - In accord with the accompanying Memorandum <a href="#">26</a> : 1. Dfts mtns to dismiss, Docs. <a href="#">19</a> , <a href="#">21</a> , are GRANTED. 2. The Eighth Amendment claim is DISMISSED without prejudice.3. The Americans with Disabilities Act claim is DISMISSED with prejudice as to the eight individual Dfts named in the complaint.4. The Fourteenth Amendment claim is DISMISSED without prejudice.5. The FTCA claim is DISMISSED with prejudice as to the eight individual Dfts named in the complaint.6. The medical negligence claim is DISMISSED without prejudice.7. The defamation claim is DISMISSED without prejudice.8. Any criminal claims raised in the complaint are DISMISSED with prejudice.9. Pltf is granted leave to file an amended complaint by 8/9/24. Failure to timely file an amended complaint will result in the complaint being dismissed with prejudice and the case being closed.10. The Clerk of Court shall forward to Pltf (2) copies of this courts prison civil-rights complaint form, which Pltf shall use in preparing his third amended complaint. Signed by Honorable Jennifer P. Wilson on 7/9/24 (ma) (Entered: 07/09/2024)
08/26/2024	<a href="#">28</a>	ORDER - AND NOW, on this 26th day of August 2024, in consideration of the courts July 9, 2024 order, Doc. 27, and Plaintiffs failure to file an amended complaint, IT IS ORDERED THAT the complaint, Doc. 1, is DISMISSED with prejudice and the Clerk of Court is directed to CLOSE the case. Signed by Honorable Jennifer P. Wilson on 8/26/2024. (ve) (Entered: 08/26/2024)
08/30/2024	<a href="#">29</a>	Letter from Jonathan DiFraia re case. (ibr) (Entered: 08/30/2024)
09/06/2024	<a href="#">30</a>	NOTICE OF APPEAL in PRISONER Case as to <a href="#">28</a> Order Dismissing Case, by Jonathan DiFraia. Filing Fee and Docket Fee NOT PAID. Filing fee \$ 605 The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (ibr) (Entered: 09/06/2024)
09/10/2024		Receipt of payment from JONATHON DIFRAIA in the amount of \$16.38 for Civil Filing Fee/PLRA/Non-Prisoner Installment/CCAM. Transaction posted on 9/9/2024. Receipt number 333111543 processed by DJ. (jjs) (Entered: 09/10/2024)
10/09/2024	<a href="#">32</a>	Appeal Filing fee: \$ 605.00, receipt number 333111951. (dw) (Entered: 10/09/2024)
10/09/2024		Supplemental Record on Appeal transmitted to US Court of Appeals re <a href="#">32</a> Filing Fee Received (Receipt). Documents and Docket Sheet available through ECF. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (dw) (Entered: 10/09/2024)
10/10/2024		Receipt of payment from DPAM123CV001187 in the amount of \$605.00 for Notice of Appeal/Docketing Fee. Transaction posted on 10/9/2024. Receipt number 333111951 processed by AO. (jjs) (Entered: 10/10/2024)
11/19/2024	<a href="#">33</a>	SUGGESTION OF BANKRUPTCY Upon the Record as to Wellpath, LLC - Employer of Defendant Kross - <i>and Notice of Automatic Stay</i> by Timothy Kross. (Attachments: # <a href="#">1</a> Exhibit(s) A - Petition, # <a href="#">2</a> Exhibit(s) B - Order)(Lombard, Benjamin) (Entered: 11/19/2024)

**CIVIL COMPLAINT FORM TO BE USED BY A *PRO SE* PRISONER**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DiFrak, Jonathan OH-6513  
Full Name of Plaintiff Inmate Number

v.

Civil No. 1:23-cv-1187  
(to be filled in by the Clerk's Office)

Ransom, Kevin  
Name of Defendant 1

☐ Demand for Jury Trial

☐ No Jury Trial Demand

Bahinski, Jason  
Name of Defendant 2

Kross, Timothy  
Name of Defendant 3

Innis, Wayne  
Name of Defendant 4

Rawlings,  
Name of Defendant 5

(Print the names of all defendants. If the names of all defendants do not fit in this space, you may attach additional pages. Do not include addresses in this section).

**FILED  
SCRANTON**

JUL 17 2023

PER ju  
DEPUTY CLERK

**I. NATURE OF COMPLAINT**

Indicate below the federal legal basis for your claim, if known.

☒ Civil Rights Action under 42 U.S.C. § 1983 (state, county, or municipal defendants)

☐ Civil Rights Action under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (federal defendants)

☒ Negligence Action under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346, against the United States



II. ADDRESSES AND INFORMATION

A. PLAINTIFF

DiFraia, Jonathan, A

Name (Last, First, MI)

GH-6513

Inmate Number

SCI Rockview

Place of Confinement

Smart Communications PA/DC PO BOX 33028

Address

St Petersburg, Florida, 33733

City, County, State, Zip Code

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

B. DEFENDANT(S)

Provide the information below for each defendant. Attach additional pages if needed.

Make sure that the defendant(s) listed below are identical to those contained in the caption. If incorrect information is provided, it could result in the delay or prevention of service of the complaint.

Defendant 1:

Ransom, Kevin

Name (Last, First)

Superintendent

Current Job Title

SCI Dallas 1000 Follies Rd

Current Work Address

Dallas, Luzerne, PA, 18612

City, County, State, Zip Code

Defendant 2:

Bahinski, Jasen

Name (Last, First)

Deputy Superintendent for Centralized Services

Current Job Title

SCI Dallas 1000 Follies Rd

Current Work Address

Dallas, Luzerne, PA, 18612

City, County, State, Zip Code

Defendant 3:

Kross, Timothy

Name (Last, First)

Doctor

Current Job Title

1000 Follies Rd

Current Work Address

Dallas, Luzerne, PA, 18612

City, County, State, Zip Code

Defendant 4:

Inniss, Wayne

Name (Last, First)

Corrections Classification Program Manager

Current Job Title

1000 Follies Rd

Current Work Address

Dallas, Luzerne, PA, 18612

City, County, State, Zip Code

Defendant 5:

Rawlings

Name (Last, First)

Drug and Alcohol Treatment Specialist

Current Job Title

1000 Follies Rd

Current Work Address

Dallas, Luzerne, PA, 18612

City, County, State, Zip Code

### III. STATEMENT OF FACTS

State only the facts of your claim below. Include all the facts you consider important. Attach additional pages if needed.

A. Describe where and when the events giving rise to your claim(s) arose.

At SCT-Dallas on 1-15-23 and 1-22-23 I received misconducts on 1-25-23 I saw Dr. Kross and was removed from MAT. (Suboxone) medication VIA a Taper of 7 days

B. On what date did the events giving rise to your claim(s) occur?

1-15-23, 1-22-23, 1-25-23

C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?)

On 1-15-23 I was strip searched during this search by Sgt Bower and C/O they found in my Jacket pocket an E-cig with the caps on it I was issued a DC-141 misconduct report for contraband for having it during MAT line, the E-cig was not on my person during dosing but was in my possession and it was not altered or being utilized for nefarious means. On 1-22-23 during MAT line I got my medication and after putting it in my mouth C/O Osmulski made me stand up and demanded I give him the E-cig cap, I did not have one nor did I ingest one, I received a misconduct for possession of contraband even though there was no contraband. On 1-25-23 I saw Dr. Kross and he told me I was being removed from MAT Suboxone for diversion, I contacted and wrote to Superintendent Ransom, Deputy Bohinski, CCPM Imis DATS Rawlings and Dr. Kross asking to be placed back on MAT and explained the issue and was refused and told I did not have to actually be caught diverting to be considered a diverter.



#### IV. LEGAL CLAIM(S)

You are not required to make legal argument or cite any cases or statutes. However, state what constitutional rights, statutes, or laws you believe were violated by the above actions. If you intend to assert multiple claims, number and set forth each claim in separate paragraphs. Attach additional pages if needed.

- 1, I believe my 8<sup>th</sup> Amendment of the constitution was violated, cruel and unusual punishment due to me being removed from medication for disciplinary sanctions
- 2 Eighth Amendment my right to medical care I believe that the Doctor and prison officials showed deliberate indifference to my medical needs
- 3 Fourteenth Amendment Equal Protection I believe if the medication was different the Prison would not have removed me,
- 4 Tort Acts I believe the Doctor and Prison officials were negligent
- 5 ADA I believe that even if I were a diverter the ADA claims I could not be removed from said medication.
- 6 I believe they broke the law by being maliciously vague and lying in the misconduct reports.
- 7 I believe they slandered my name by lying.

#### V. INJURY

Describe with specificity what injury, harm, or damages you suffered because of the events described above.

I was forced to go through withdrawals, due to them I picked my arms and have scars, my mental health and physical took a downturn

#### VI. RELIEF

State exactly what you want the court to do for you. For example, you may be seeking money damages, you may want the court to order a defendant to do something or stop doing something, or you may be seeking both types of relief. If you are seeking monetary relief, state your request generally. Do not request a specific amount of money.

I pray the courts grant me to be put back on my medicine, change the policy regarding MAT in prison, and grant me compensatory and punitive damages.



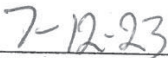
**VII. SIGNATURE**

By signing this complaint, you represent to the court that the facts alleged are true to the best of your knowledge and are supported by evidence, that those facts show a violation of law, and that you are not filing this complaint to harass another person or for any other improper purpose.

Local Rule of Court 83.18 requires *pro se* plaintiffs to keep the court informed of their current address. If your address changes while your lawsuit is being litigated, you must immediately inform the court of the change in writing. By signing and submitting the complaint form, you agree to provide the Clerk's Office with any changes to your address where case-related papers may be served, and you acknowledge that your failure to keep a current address on file with the Clerk's Office may result in dismissal of your case.



Signature of Plaintiff



Date

## Additional Defendants

Bower,  
Defendant 6

Continuation of page 1

John Doe  
Defendant 7

Osmulski,  
Defendant 8

Defendant 6

Continuation of page 3

Bower,  
Sergeant of the Guard  
1000 Follies Rd  
Dallas, Luzerne, PA, 18612

Defendant 7

John Doe  
Corrections Officer  
1000 Follies Rd

Dallas, Luzerne, PA, 18612

Defendant 8

Osmulski  
Corrections Officer

Dallas, Luzerne, PA, 18612

V. Injury

plunge causing severe anxiety, depression and relapse. As well as a return of pain I suffer from plates and screws in my ankle. It also caused a reversion of my thought process and coping skills.

JA035

Smart Communications NH 1302  
Jonathan DiFuria QH-6513  
SCIE Rockview  
PO BOX 33028  
St Petersburg Florida 33733

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JUL 17 2023

PER  
DEPUTY CLERK

United States District Court  
Middle District of Pennsylvania  
235 N. Washington Ave  
PO BOX 1148  
Scranton PA 18501

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PA DEPT OF  
CORRECTIONS



US POSTAGE  
ZIP 16823 \$002.55  
02 4M  
0000376203 JUL 13 2023

JA036

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JONATHAN DIFRAIA,</b>	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:23-CV-01187</b>
<b>v.</b>	:	
	:	<b>Judge Wilson</b>
<b>KEVIN RANSOM, JASEN BOHINSKI, TIMOTHY KROSS, WAYNE INNISS, RAWLINGS, BOWER, JOHN DOE and OSMULSKI,</b>	: : : : : : :	<b>Electronically Filed Document</b>
<b>Defendants</b>	:	<i>Complaint Filed 07/17/23</i>

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

AND NOW, come Defendants Ransom, Bohinski, Inniss, Rawlings, Bower, and Omulski (collectively, "Movants"), by and through their undersigned counsel, to move pursuant to Fed. R. Civ. P. 12(b)(6) for dismissal of this action for failure to state a claim for which relief can be granted.

**Respectfully submitted,**

**MICHELLE A. HENRY**  
**Attorney General**

By: *s/ Christine C. Einerson*

**CHRISTINE C. EINERSON**  
**Deputy Attorney General**  
**Attorney ID 326729**

**KAREN M. ROMANO**  
**Chief Deputy Attorney General**  
**Civil Litigation Section**

**Office of Attorney General**  
**15<sup>th</sup> Floor, Strawberry Square**  
**Harrisburg, PA 17120**  
**Phone: (717) 783-1476**

**ceinerson@attorneygeneral.gov**

**Date: September 22, 2023**

**Counsel for Defendants**

**JA037**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JONATHAN DIFRAIA,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:23-CV-01187</b>
	:	
<b>v.</b>	:	
	:	<b>Judge Wilson</b>
	:	
<b>KEVIN RANSOM, JASEN</b>	:	
<b>BOHINSKI, TIMOTHY KROSS,</b>	:	<b>Electronically Filed Document</b>
<b>WAYNE INNISS, RAWLINGS,</b>	:	
<b>BOWER, JOHN DOE and</b>	:	<i>Complaint Filed 07/17/23</i>
<b>OSMULSKI,</b>	:	
	:	
<b>Defendants</b>	:	

**CERTIFICATE OF SERVICE**

I, Christine C. Einerson, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on September 22, 2023, I caused to be served a true and correct copy of the foregoing document titled Motion to Dismiss to the following:

**VIA U.S. MAIL AND ECF:**

**Smart Communications/PADOC**  
**Jonathan DiFraia, QH-6513**  
**SCI Rockview**  
**PO Box 33028**  
**St. Petersburg, FL 33733**  
*Pro Se Plaintiff*

Samuel H. Foreman  
Benjamin M. Lombard  
blombard@wglaw.com  
sforeman@wglaw.com  
Weber Gallagher Simpson Stapleton  
Fires & Newby, LLP  
Four PPG Place 5th Floor Pittsburgh,  
PA 15222  
*Counsel for Co-Defendant Dr. Kross*

**/s/ Christine C. Einerson**

**JA038**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JONATHAN DIFRAIA,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:23-CV-01187</b>
<b>v.</b>	:	
	:	<b>Judge Wilson</b>
<b>KEVIN RANSOM, JASEN</b>	:	
<b>BOHINSKI, TIMOTHY KROSS,</b>	:	<b>Electronically Filed Document</b>
<b>WAYNE INNIS, RAWLINGS,</b>	:	
<b>BOWER, JOHN DOE and</b>	:	<i>Complaint Filed 07/17/23</i>
<b>OSMULSKI,</b>	:	
<b>Defendants</b>	:	

**DEFENDANTS' BRIEF IN  
SUPPORT OF THEIR MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

Defendants Ransom, Bohinski, Inniss, Rawlings, Bower, and Omulski, by and through counsel, hereby submit this brief in support of their motion to dismiss.

**STATEMENT OF FACTS**

**A. Plaintiff's Factual Allegations**

Plaintiff Jonathan Difraia is a *pro se* inmate incarcerated at SCI-Dallas. ECF Doc. No. 1.<sup>1</sup> On January 15, 2023, January 22, 2023, and January 25, 2023, Plaintiff received misconducts due to possessing contraband. *Id.* On January 25, 2023, Plaintiff saw Dr. Kress, who informed Plaintiff he was being removed from the MAT (Medication Assisted Treatment) program and will be taken off of Suboxone. *Id.*

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<sup>1</sup> Plaintiff did not utilize numbered paragraphs in his Complaint, therefore Defendants will cite to ECF Doc. No. 1 for citation purposes.

Plaintiff contacted Ransom, Bohinski, Imiss, and Rawlings to request being placed back on Suboxone to no avail. *Id.*

### **Plaintiff's Legal Claims and Procedural History**

Plaintiff filed the Complaint in this action on July 17, 2023. ECF Doc. No. 1. Plaintiff purports to assert federal claims against Defendants under 42 U.S.C. § 1983 for alleged violations of the Eight Amendment for cruel and unusual punishment, and displaying a deliberate indifference to his medical needs; violation of the Fourteenth Amendment Equal Protection; Violation of the Americans with Disabilities Act; Violation of the Federal Tort Claims Act, and slander. ECF Doc. No. 1.

### **STATEMENT OF QUESTION INVOLVED**

- I. Should Plaintiff's Eight Amendment claim be dismissed because a mere difference of opinion regarding an inmate's treatment does not support a claim of cruel and unusual punishment?
- II. Should Plaintiff's Americans with Disabilities Act claim be dismissed because it is improperly plead and not applicable to this case?
- III. Should Plaintiff's Fourteenth Amendment Equal Protection claim be dismissed?
- IV. Should Plaintiff's Federal Tort Claims Act claim be dismissed because it is improperly plead and is not applicable to this case?
- V. Should Plaintiff's defamation claim be dismissed due to the truth of the defamatory communication cited within the misconduct report?

Suggested answer: yes.

### **ARGUMENT**



The Complaint should be dismissed for “failure to state a claim upon which relief can be granted[.]” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual allegations, taken as true, to ‘state a claim to relief that is plausible on its face.’” *Fleisher v. Standard Ins.*, 679 F.3d 116, 120 (3d Cir. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “In other words, a complaint must do more than allege the plaintiff’s entitlement to relief. A complaint has to ‘show’ such an entitlement with its facts.” *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). To satisfy the plausibility standard, the complaint must indicate that defendant’s liability is more than “a sheer possibility.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). Here, Plaintiff fails to satisfy this pleading standard and the Complaint should be dismissed.

**A. Plaintiff fails to state an Eight Amendment claim: a mere difference of opinion between the prison’s medical staff and the inmate regarding the treatment which the inmate receives does not support a claim of cruel and unusual punishment.**

In order to establish an Eighth Amendment medical claim, a plaintiff must show “(i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need.” *Natale v. Camden Cty. Correctional Facility*, 318 F.3d 575, 582 (3d Cir. 2003). See also *Rouse v. Plantier*, 182 F.3d

192, 197 (3d Cir. 1999). A serious medical need is one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that a layperson would recognize the need for a doctor's attention. *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). In addition, “if unnecessary and wanton infliction of pain results as a consequence of denial or delay in the provision of adequate medical care, the medical need is of the serious nature contemplated by the eighth amendment.” *Hymer v. Kross*, No. CV 3:22-1531, 2022 WL 17978265, at \*5 (M.D. Pa. Dec. 28, 2022). A prison administrator cannot be found deliberately indifferent under the Eighth Amendment because he or she fails to respond to the medical complaints of an inmate being treated by a prison physician, or because, as non-physicians, they defer to the medical judgment of the inmate's treating physicians. *Id.*, 991 F.2d at 69. If, however, non-medical prison personnel had “a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner,” liability may be imposed. *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004).

A mere difference of opinion between the prison's medical staff and the inmate regarding the diagnosis or treatment which the inmate receives does not support a claim of cruel and unusual punishment. *Farmer v. Carlson*, 685 F. Supp. 1335, 1339 (M.D. Pa. 1988). See *McCracken v. Jones*, 562 F.2d 22, 24 (10th Cir. 1977); *Smart v. Villar*, 547 F.2d 112, 113 (10th Cir. 1976).

Additionally, if there is a dispute over the adequacy of the received treatment, courts have consistently been reluctant to second guess the medical judgment of the attending physician. *Little v. Lycoming County*, 912 F. Supp. 809, 815 (M.D. Pa.), aff'd, 101 F.3d 691 (3d Cir. 1996). The key question is whether the defendant has provided the plaintiff with some type of treatment, regardless of whether it is what the plaintiff desires. *Farmer v. Carlson*, 685 F. Supp. at 1339.

In *Hymer v. Kross* the Middle District ruled that removing an inmate from the MAT program does not violate the Eight Amendment. *Hymer v. Kross*, No. CV 3:22-1531, 2022 WL 17978265, at \*6 (M.D. Pa. Dec. 28, 2022). In *Hymer*, plaintiff received medical attention—therefore the attention he received lacks the requisite deliberate indifference to support a Section 1983 claim. *Id.* Hymer was removed from the MAT program for diverting medication on November 9, 2020, and was placed on tapering doses of Suboxone, as well as placed on Clonidine for withdrawal. *Id.* The Middle District reasoned that at best, plaintiff's complaint demonstrates his disagreement with being removed from the program and taken off the Suboxone. *Id.* The Middle District provided the following reasoning for its ruling:

Though Hymer may have wished to remain in the program and on Suboxone, his disagreement with the course of action that Defendants took based on the diversion of medication on November 9, 2020, is not enough to state a § 1983 claim. *Sample v. Diecks*, 885 F.2d 1099, 1109 (3d Cir. 1989).

This is particularly so in light of the fact that there are no allegations in the complaint that any of the Defendants intentionally withheld medical treatment from Plaintiff in order to inflict pain or harm upon Plaintiff. *Farmer*, 511 U.S. at 837; *Rouse*, 12 F.3d at 197. Thus, the allegations in the Plaintiff's complaint amount to nothing more than Plaintiff's subjective disagreement with the treatment decisions and medical judgment of the medical staff at the prison. To the extent that Plaintiff alleges that he had "a relapse that ended in an overdose on April 14, 2021," the Court finds Plaintiff's allegation tenuous, at best, that Plaintiff's November 12, 2020 removal from the MAT Program and medically monitored tapered removal from Suboxone resulted in an overdose some five months later. Again, the Court finds the allegations in the Plaintiff's complaint amount to nothing more than Plaintiff's subjective disagreement with the treatment decisions and medical judgment of the medical staff at the prison to remove Plaintiff from the MAT Program.

*Hymer v. Kross*, No. CV 3:22-1531, 2022 WL 17978265, at \*6 (M.D. Pa. Dec. 28, 2022).

Here, on January 25, 2023, Dr. Kress removed Plaintiff from the MAT program and medically monitored tapered removal from Suboxone. ECF Doc. No. 1. Plaintiff alleges the removal violated his Eight Amendment rights. *Id.* However, Plaintiff's disagreement with the course of action that Defendants took based on the diversion of medication is not enough to state a § 1983 claim. Especially in light of the fact that there are no allegations in the complaint that any of the Defendants intentionally withheld medical treatment from Plaintiff in order to inflict pain or harm upon Plaintiff. As a result, Plaintiff's Eight Amendment claim should be dismissed with prejudice.

**B. The Americans with Disabilities Act is improperly plead and should be dismissed.**

The Americans with Disabilities Act (“ADA”) focuses on employment issues for individuals with disabilities—clearly, it is not applicable to this case. A prima facie claim of discrimination under ADA requires plaintiff to show he (1) is disabled within meaning of ADA, (2) can perform essential functions of his job with or without reasonable accommodation, and (3) suffered adverse employment action as result of his disability. Americans with Disabilities Act of 1990 § 102, 42 U.S.C.A. § 12112(a).

Plaintiff cannot claim that his substance abuse disorder is a disability.

*McCamey v. Wetzel*, No. 3:20-CV-183-SLH-KAP, 2021 WL 11695987, at \*3 (W.D. Pa. Aug. 16, 2021), report and recommendation adopted, No. 3:20-CV-183, 2022 WL 20542970 (W.D. Pa. Mar. 8, 2022). In addition, Plaintiff fails to state an ADA claim when he is being excluded from participation in the Medication-Assisted Treatment program “on the basis of his disability.” *Id.* In *McCamey v. Wetzel*, the Western District analyzed a similar issue to the one presented here:

Plaintiff’s allegations amount to the claim that the Department of Corrections is not giving him suboxone despite his alleged substance abuse disorder (the alleged disability), not “by reason of” that disorder. “On the basis of” and “by reason of” can be translated as “because of,” but not “despite.” An alleged failure to provide an inmate with adequate medical treatment does not state a claim under the ADA. *See Bryant v. Madigan*, 84 F.3d 246, 248 (7th Cir. 1996), *cited with approval in Beckett v. Pennsylvania Department of Corrections*, 597 Fed.Appx. 665, 667 (3d Cir. 2015); *Iseley v. Beard*, 200 Fed.Appx. 137, 142 (3d Cir. 2006).

*McCamey*\_at \*3.

Plaintiff fails to plead any element of an ADA claim-- (1) he has failed to identify having a disability within meaning of ADA, (2) he has failed to identify what, if any, DOC job he has obtained, and (3) he has failed to plead that he suffered adverse employment action as result of his disability. In fact, Plaintiff's Complaint is void of any reference of employment while incarcerated within the DOC. Even if Plaintiff's Complaint is read liberally, his ADA claim still fails because an alleged failure to provide an inmate with adequate medical treatment does not state a claim under the ADA. As a result, Plaintiff's ADA claim should be dismissed with prejudice.

**C. Plaintiff fails to state a Fourteenth Amendment Equal Protection Claim.**

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," which is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). The general rule is that the state action is valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate government interest. *City of Cleburne*, 473 U.S. at 440. This general rule only gives way when the classification is suspect, in which case a higher level of scrutiny applies. *Id.* A person can also bring an equal protection claim as a "class of one". *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000); *Hill v. Borough of Kutztown*, 455 F.3d



225, 239 (3d Cir. 2006); *Gagliardi v. Clark*, 2006 WL 2847409 at \*11-12 (W.D. Pa. 2006). To qualify as a class of one, a plaintiff must allege that (1) the defendant treated him differently from others similarly situated; (2) the defendant did so intentionally; and (3) there was no rational basis for the difference in the treatment. Hill, 455 F.3d at 239; *Cornell Narberth LLC v. Borough of Narberth*, 167 A.3d 228, 243 (Pa. Cmwlth. 2017).

A lack of evidence that a defendant has treated the plaintiff any differently than other members of his class is fatal to a class of one equal protection claim. *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006); *Babb v. Plusa*, 2016 WL 100184 at n.12 (Pa. Cmwlth. 2016) (not reported) (citing *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 198 (Pa. 2003)). This is true even when a suspect class is involved. *City of Cleburne* at 439; *Whitney v. Wetzel*, 649 Fed.Appx. 123, 128 (3d Cir. 2016).

Here, Plaintiff alleges that Defendants violated the Fourteenth Amendment Equal Protection rights—specifically, he “believe(s) if the medication (Suboxone) was different the prison would not have removed me.” ECF Doc. No. 1. If read liberally, this allegation involves a “class of one” equal protection claim. However, Plaintiff fails to allege that (1) the defendant treated him differently from others similarly situated; (2) the defendant did so intentionally; and (3) there was no rational basis for the difference in the treatment. Here, there is a lack of evidence that Plaintiff

was treated differently from individuals who were not prescribed Suboxone. Plaintiff was removed from the MAT program because he possessed contraband, not because he uses Suboxone. Even assuming, *arguendo*, that Plaintiff has established the first two prongs of the analysis he has not satisfied the third prong. Plaintiff himself states he was issued several misconducts for possessing contraband (e-cigarettes). As a result, he was removed from the MAT program and no longer given Suboxone. Plaintiff's removal has a legitimate rational basis—e-cigarettes have been used for nefarious means and for abuse of Suboxone and other medications used to treat opioid addictions. Thus, there is a rational basis to remove Plaintiff 1 from the program which provides Suboxone. As a result, Plaintiff's Fourteenth Amendment Equal Protection claim should be dismissed with prejudice.

**D. Violation of the Federal Tort Claims Act is improperly plead and should be dismissed.**

The Federal Tort Claims Act ("FTCA") waives the United States' sovereign immunity and allows it to be liable for injury or loss caused by the negligent or wrongful act or omission of a federal government employee acting within the scope of their employment, to the extent that a private party would be liable under similar circumstances based upon applicable state tort law. E.g., *Pornomo v. United States*, 814 F.3d 681, 687 (4th Cir. 2016) ("The FTCA does not create a new cause of action; rather, it permits the United States to be held liable in tort by



providing a limited waiver of sovereign immunity.”); *Raplee v. United States*, 842 F.3d 328, 331 (4th Cir. 2016) (explaining that “the FTCA merely waives sovereign immunity to make the United States amenable to a state tort suit”); *Hornbeck Offshore Transp., LLC v. United States*, 569 F.3d 506, 508 (D.C. Cir. 2009) (“This statutory text does not create a cause of action against the United States; it allows the United States to be liable if a private party would be liable under similar circumstances in the relevant jurisdiction.”).

Plaintiff incorrectly claims that Defendants violated the FTCA. Defendants are employees of the Pennsylvania State Department of Corrections, not the United States’ Department of Corrections. The FTCA only applies to negligent or wrongful acts of a federal government employee acting within the scope of their employment, not a state employee. As a result, Plaintiff’s FTCA claim should be dismissed with prejudice.

**E. Plaintiff’s defamation claim should be dismissed due to truth of the defamatory communication cited within the misconduct report.**

Under Pennsylvania law, in an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised:

- (1) The defamatory character of the communication.
- (2) Its publication by the defendant.
- (3) Its application to the plaintiff.
- (4) The understanding by the recipient of its defamatory meaning.
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff.

(6) Special harm resulting to the plaintiff from its publication.

PA. 42 § 8343(a).

A defendant can overcome a defamation allegation by demonstrating the truth of the defamatory communication. *Id* at (b). Here, Plaintiff has failed to establish any elements of defamation. Plaintiff merely alleges that Correction Officer Osmulski issued him a misconduct for possessing contraband despite not being in possession of such. ECF Doc. No. 1. However, Plaintiff had a misconduct hearing regarding the allegations and was found guilty of the offense. Plaintiff appealed the verdict and the verdict was upheld. *See* Appeal of Misconduct Number D559667, attached hereto as Exhibit A.<sup>2</sup> Clearly, Plaintiff was in possession of contraband (on several occasions), there was truth to the information cited in the misconduct, therefore his defamation claim fails. As a result, Plaintiff's defamation claim should be dismissed with prejudice.

### CONCLUSION

Based upon the foregoing, all of Plaintiff's claims against Defendants should be dismissed *with prejudice*.

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<sup>2</sup> Although a district court ruling on a motion to dismiss may generally not consider matters extraneous to the pleadings, a well-settled exception exists for documents "integral to or explicitly relied upon in the complaint." *See Doe v. Princeton Univ.*, 30 F.4th 335, 342 (3d Cir. 2022) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997); *Doe v. Univ. Of Scis.*, 961 F.3d 203, 208 (3d Cir. 2020)).

**Respectfully submitted,**

**MICHELLE A. HENRY**  
**Attorney General**

**Office of Attorney General**  
**15<sup>th</sup> Floor, Strawberry Square**  
**Harrisburg, PA 17120**  
**Phone: (717) 783-1476**

**[ceinerson@attorneygeneral.gov](mailto:ceinerson@attorneygeneral.gov)**

**Date: September 22, 2023**

**By: s/ Christine C. Einerson**

**CHRISTINE C. EINERSON**  
**Deputy Attorney General**  
**Attorney ID 326729**

**KAREN M. ROMANO**  
**Chief Deputy Attorney General**  
**Civil Litigation Section**

**Counsel for Defendants Ransom,**  
**Bohinski, Inniss, Rawlings, Bower and**  
**Osmulski**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JONATHAN DIFRAIA,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:23-CV-01187</b>
<b>v.</b>	:	
	:	<b>Judge Wilson</b>
<b>KEVIN RANSOM, JASEN</b>	:	
<b>BOHINSKI, TIMOTHY KROSS,</b>	:	<b>Electronically Filed Document</b>
<b>WAYNE INNISS, RAWLINGS,</b>	:	
<b>BOWER, JOHN DOE and</b>	:	<i>Complaint Filed 07/17/23</i>
<b>OSMULSKI,</b>	:	
<b>Defendants</b>	:	

**CERTIFICATE OF SERVICE**

I, Christine C. Einerson, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on September 22, 2023, I caused to be served a true and correct copy of the foregoing document titled Brief in Support of Motion to Dismiss to the following:

**VIA U.S. MAIL AND ECF:**

**Smart Communications/PADOC  
Jonathan DiFraia, QH-6513  
SCI Rockview  
PO Box 33028  
St. Petersburg, FL 33733  
*Pro Se Plaintiff***

Samuel H. Foreman  
Benjamin M. Lombard  
blombard@wglaw.com  
sforeman@wglaw.com  
Weber Gallagher Simpson Stapleton  
Fires & Newby, LLP  
Four PPG Place 5th Floor Pittsburgh,  
PA 15222  
*Counsel for Co-Defendant Dr. Kross*

*s/ Christine C. Einerson*  
**CHRISTINE C. EINERSON**

**JA052**

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN DIFRAIA,

***FILED ELECTRONICALLY***

Plaintiff,

CIV. ACTION NO. 1:23-cv-1187

vs.

KEVIN RANSOM, *et al.*,

Defendants.

**BRIEF IN SUPPORT OF MOTION TO DISMISS**  
**PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE**  
**FOR SUMMARY JUDGMENT**

Defendant Timothy Kross, by and through his attorneys, hereby submits the following Brief in Support of his Motion to Dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, for summary judgment under Rule Fed. R. Civ. P. 56.<sup>1</sup>

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<sup>1</sup> This Motion is brought in the alternative in this manner because Defendant raises a "failure to exhaust defense." It is well-established within the Third Circuit that a failure to exhaust may be raised at an early dispositive motion stage, either by Motion to Dismiss or conversion of same to a Motion for Summary Judgment.

"In Spruill v. Gillis, 372 F.3d 218, 230 (3d Cir. 2004), the United States Court of Appeals for the Third Circuit addressed the issue of whether the defendants in Spruill properly identified their motion as one for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court noted that "[g]iven that the exhaustion issue turns on the indisputably authentic documents related to Spruill's grievances, we hold that we may also consider these without converting it to a motion for summary judgment." *Id.* at 223 (citing Steele v. Fed. Bureau of Prisons, 355 F.3d 1204, 1212 (10th Cir. 2003)). *See also* Brown v. Croak, 312 F.3d 109, 111 (3d Cir. 2002) ("In appropriate cases, failure to exhaust may be raised as the basis for a motion to dismiss"); Ray v. Kertes, 285 F.3d 287, 293 n.5 (3d Cir. 2002) (motions to dismiss may be pursued on failure to exhaust grounds in certain circumstances).

## I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Jonathan DiFraia, *pro se*, is an inmate currently incarcerated within the Pennsylvania Department of Corrections at State Correctional Institution Rockview. Mr. DiFraia commenced this lawsuit on or about July 12, 2023, by serving a Civil Complaint and Motion for Leave to Proceed *in forma pauperis* with this Court, which was formally filed on July 17, 2023. (ECF No. 1-2). Mr. DiFraia's Motion to proceed IFP was granted on July 24, 2023. (ECF No. 6).

Mr. DiFraia's Complaint raises claims pursuant to 42 U.S.C. §1983 for alleged violations of his civil rights. (ECF No.1, pp. 1). Mr. DiFraia's Complaint names Dr. Timothy Kross along with several individuals from the Department of Corrections for events arising at SCI-Dallas between the dates of January 15, 2023, to January 25, 2023. (ECF No.1, pp. 4).

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Accordingly, the Court will consider the Department of Corrections' policies and inmate grievance records as indisputably authentic documents. *See Spruill*, 372 F.3d at 223 (suggesting that an inmate's grievance records are "indisputably authentic documents").

*O'Hara v. Mosher*, 2017 U.S. Dist. LEXIS 189245, at \*7 n.1 (M.D.Pa. Nov. 13, 2017). *Accord, Weicksel v. Griffiths*, 2017 U.S. Dist. LEXIS 142826, at \*1 (W.D.Pa. Sep. 5, 2017, Gibson, J.). In *Weicksel*, the Court converted a Motion to Dismiss into one for summary judgment as to the issue of exhaustion.

The principal Third Circuit authority on the question is the case of *Ray v. Kertes*, 285 F.3d 287, 295 (3d Cir. 2002), in which the Third Circuit characterized failure to exhaust under the PLRA as an affirmative defense, but also stated that it may be one that may be raised through a Rule 12(b)(6) Motion in appropriate circumstances, citing *Flight Sys., Inc. v. Elec. Data Sys. Corp.*, 112 F.3d 124, 127 (3d Cir. 1997) (observing affirmative defenses may be considered on a Rule 12(b)(6) motion if the defense would "present[] an insuperable barrier to recovery by the plaintiff").

According to Mr. DiFraia, on January 15, 2023, he was strip-searched by corrections officers, during which time they discovered an e-cigarette and an e-cigarette cap in his jacket pocket. *Id.* Subsequently, Mr. DiFraia was issued a misconduct for contraband. *Id.* Mr. DiFraia alleges that the e-cigarette and the cap were not being utilized for nefarious means, and that they were in his possession but not on his person during medication-assisted treatment (“MAT”) dosing.<sup>2</sup> *Id.*

On January 22, 2023, after Mr. DiFraia received his suboxone medication and put it in his mouth during MAT line, a correctional officer demanded that he give up his e-cigarette cap. *Id.* Following this event, he was issued a misconduct for possession of contraband. *Id.* Dr. Kross then saw him on January 25, 2023. *Id.* During this visit, Dr. Kross informed Mr. DiFraia that he was being removed from the MAT suboxone program as a result of diversion. *Id.* Mr. DiFraia alleges that after being removed from the MAT suboxone program, he contacted and wrote to Superintendent Kevin Ransom, Deputy Jason Bohinski, and Dr. Kross asking to be placed back on the program but was refused. *Id.*

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<sup>2</sup> The medication-assisted treatment program (MAT), expanded within the DOC’s prison system at the direction of Governor Wolf in January of 2018, provides medications approved by the FDA for use in opioid addiction treatment. One such medication is Suboxone, which produces agonist effects such as euphoria and respiratory depression. In order to render beneficial treatment, the DOC utilizes compliance measures that closely monitor patients during the treatment period. Medication Assisted Treatment, Dep’t of Corr., <https://www.cor.pa.gov/About%20Us/Initiatives/Pages/Medication-Assisted-Treatment.aspx#:~:text=In%20January%202018%2C%20Governor%20Wolf,%2C%20Subutex%2C%20and%20Sublocade>

Based upon his allegations, Mr. DiFraia sets forth an Eighth Amendment claim alleging that Dr. Kross and prison officials showed deliberate indifference to his medical needs due to his putatively improper removal from the MAT program. (ECF No.1, pp. 5). He also raises a claim for a violation of the Equal Protection Clause of the Fourteenth Amendment, a claim for a violation of the Americans with Disabilities Act, and a pendent a state law claim of professional negligence against Dr. Kross. *Id.*

Dr. Kross now moves for the dismissal of Plaintiff's claims pursuant to Rule 12(b)(6) for Mr. DiFraia's failure to state a claim upon which relief may be granted, as Plaintiff's allegations, even taken in a light most favorable to Plaintiff, fail to sustain a claim of deliberate indifference. As to the claim of professional negligence, Dr. Kross moves for dismissal because Mr. DiFraia has failed to produce the requisite certificate of merit. Finally, Dr. Kross moves in the alternative per Rule 56 for summary judgment as to any claims raised against him because Mr. DiFraia has failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act ("PLRA) 42 U.S.C. §1997e.

## **II. LEGAL STANDARD**

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) challenges the legal sufficiency of the complaint filed by Plaintiff. The United States Supreme Court has held that “[a] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic



recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)).

The Court must accept as true all well-pleaded facts and allegations, and must draw all reasonable inferences therefrom in favor of the plaintiff. However, as the Supreme Court made clear in Twombly, the “factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* After Ashcroft v. Iqbal, 556 U.S. 662 (2009), a district court must conduct a two-part analysis when presented with a motion to dismiss for failure to state a claim. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009).

First, the Court must separate the factual and legal elements of the claim. *Id.* at 210-11. Second, the Court “must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’ In other words, a complaint must do more than allege the plaintiff’s entitlement to relief. A complaint has to ‘show’ such an entitlement with its facts.” *Id.* at 211 (citing Iqbal 129 S.Ct. at 1949). The determination for plausibility will be “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 211 (quoting Iqbal 129 S.Ct. at 1950). “Pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to

dismiss.” *Id.* at 211. That is, “all civil complaints must now set out ‘sufficient factual matter’ to show that the claim is facially plausible. This then ‘allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Id.* at 210 (*quoting Iqbal*, 129 S.Ct. at 1948).

### III. ARGUMENT

#### A. **PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR A VIOLATION OF HIS RIGHTS UNDER THE EIGHTH AMENDMENT FOR DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED AS TO DR. KROSS.**

Within his Complaint, Mr. DiFraia raises a claim of deliberate indifference to his medical needs against Dr. Kross on the basis that Dr. Kross improperly discontinued him from the Suboxone MAT program. (ECF No.1, pp. 5). Upon review of these limited allegations, it is evident that Mr. DiFraia was treated appropriately and within constitutional standards.

In order to state a claim against a correctional health care provider under 42 U.S.C. §1983, a plaintiff must prove “deliberate indifference to a serious medical need” on the part of the provider. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). It is a “well-established rule that mere disagreements over medical judgment do not state Eighth Amendment claims.” *White v. Napoleon*, 897 F.2d 103 (3d Cir. N.J. 1990).

In addition to medical judgment, deliberate indifference is generally not found when some significant level of medical care has been offered to the inmate. *Clark v.*

Doe, 2000 U.S. Dist. LEXIS 14999, 2000 WL 1522855, at \*2 (E.D. Pa., 2000) (“courts have consistently rejected Eight Amendment claims where an inmate has received some level of medical care”). Thus, such complaints where at least some level of medical care was offered generally fail as constitutional claims under §1983 since “the exercise by a doctor of his professional judgment is never deliberate indifference. *See e.g., Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) (While the distinction between deliberate indifference and malpractice can be subtle, it is well established that as long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights.)” Gindraw v. Dendler, 967 F.Supp. 833, 836 (E.D. Pa. 1997).

Prison medical authorities are afforded considerable latitude in the diagnosis and treatment of the medical problems of inmate patients, and courts will thus disavow any attempt to second guess the propriety or adequacy of a particular course of treatment, because such consideration remains a question of sound professional judgment. Inmates of Allegheny County Jail v. Pierce, 612 F. 2d 754, 762 (3d Cir. 1979) (*quoting Bowring v. Godwin*, 551 F.2d 44, 48 (4th Cir. 1977)).

Another recent case before this Court is substantially on point both factually and legally. In Hymer v. Kross, the Court decided that when a “plaintiff’s complaint demonstrates his disagreement with being removed from the program and taken off the suboxone ... his disagreement with the course of action that defendants took based

on the diversion ... is not enough to state a §1983 claim.” Hymer v. Kross, 2022 U.S. Dist. LEXIS 232763 \*; 2022 WL 17978265 at \*15 (M.D. Pa. 2022, Mannion, J.). Similarly, here, Mr. DiFraia is pursuing this action on the basis of disagreement with the course of action that Dr. Kross took based on the report of diversion and being removed from the suboxone program as a result.

Based upon a reading of Mr. DiFraia's allegations, Dr. Kross appropriately exercised his medical judgment when discontinuing his Suboxone. Brown v. Borough of Chambersburg, 903 F.2d 274, 278 (3d. Cir. 1990) (“the exercise by a doctor of his professional judgment is never deliberate indifference.”); *See also*, Gindraw v. Dendler, 967 F.Supp. 833, 836 (E.D. Pa. 1997) (“[I]t is well established that as long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights.”) Because Mr. DiFraia was prescribed suboxone and then was reported to be diverting it, Dr. Kross exercised his professional medical judgment in deducing that there was no need for the medication, as diversion involves selling or passing the medication to another, or hoarding instead of taking it as prescribed, contrary to its intended, medical purposes. For that reason, Mr. DiFraia was discharged from the suboxone MAT program.

Although Plaintiff differs in his judgment about whether the suboxone should have been discontinued, his personal preference and disagreement with Dr. Kross does not implicate an Eighth Amendment violation. White v. Napoleon 897 F.2d 103

(3d Cir. N.J. 1990) (It is a “well-established rule that mere disagreements over medical judgment do not state Eighth Amendment claims.”) Further, Plaintiff cannot properly state a 42 U.S.C. §1983 claim based on his disagreement with being taken off suboxone after reportedly being caught diverting. *See Hymer v. Kross*, 2022 U.S. Dist. LEXIS 232763 \*; 2022 WL 17978265 at \*15 (M.D. Pa., 2022) (Holding that “disagreement with the course of action that defendants took based on the diversion ... is not enough to state a § 1983 claim.”). For the same reasons that this Court dismissed the case in *Hymer v. Kross*, in which the facts regarding the issue were similar to the facts here, this case should accordingly be dismissed as well.

In sum, Mr. DiFraia’s averments reveal that Dr. Kross exercised professional medical judgment and treated him within constitutional standards, invalidating any Eighth Amendment claims now raised against him. Accordingly, Dr. Kross respectfully requests that any claim that Plaintiff raises against him under the Eighth Amendment for a deliberate indifference to a serious medical need be dismissed with prejudice.

**B. PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR A VIOLATION OF HIS RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AGAINST DR. KROSS.**

Within his Complaint, purports to raise an Equal Protection claim under the Fourteenth Amendment, regarding his discontinuance from the MAT program. (ECF No.1, pp. 5). In this claim, Mr. DiFraia has failed to articulate of which purported

class of people he is a member, which is a necessary element to state an Equal Protection claim.

Under the Equal Protection Clause of the Fourteenth Amendment, “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, §1. The Equal Protection Clause announces the “fundamental principle” that “the State must govern impartially,” New York City Transit Auth. v. Beazer, 440 U.S. 568, 587, 99 S.Ct. 1355, 1367, 59 L.Ed.2d 587 (1979), and “is essentially a direction that all persons similarly situated should be treated alike.” City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); Evans v. Wayne County Corr. Facility, 2012 U.S. Dist. LEXIS 50263, 37 (M.D. Pa. 2012).” *See also* United States v. Armstrong, 517 U.S. 456 (1996) (Equal Protection Clause prohibits decision to prosecute based on an unjustifiable standard such as race, religion, or other arbitrary classification). To state a claim under this theory, “a plaintiff must at a minimum allege that he was intentionally treated differently from others similarly situated by the defendant and that there was no rational basis for such treatment.” Phillips v. County of Allegheny, 515 F.3d 224, 243 (3d Cir. 2008).

Here, Mr. DiFraia has failed to indicate exactly which class of similarly situated individuals he belongs to for the purpose of an Equal Protection claim, how that class was treated disparately, and/or how his membership in that class resulted in impartial

treatment. He simply stated that he would not have been removed “if the medication was different.” (ECF No. 1, pp. 5). This allegation fails to establish any element of a Fourteenth Amendment Equal Protection Clause claim. Accordingly, Dr. Kross respectfully requests that any claim that Mr. DiFraia raises against him under the Equal Protection Clause of the Fourteenth Amendment be dismissed with prejudice.

**C. PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR A VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (ADA).**

Dr. Kross also seeks dismissal of any ADA claim against him because he is not among the class of defendants against whom such statutory claims can be brought.

Title II of the ADA provides, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be 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; Doe v. County of Centre, 242 F.3d 437, 446 (3d Cir. 2001); Spencer v. Courtier, 552 Fed. Appx. 121, 125 (3d Cir. 2014); Brown v. Deparlos, 492 Fed. Appx. 211, 215 (3d Cir. 2012).

The class of defendants against whom a claim may be brought for a violation of Title II of the ADA is limited. “The Court of Appeals for the Third Circuit has found that there is generally no individual liability under the ADA.” Emerson v. Thiel College, 296 F.3d 184, 189 (3d Cir. 2002) (“individuals are not liable under Titles I and II of the ADA”). “In suits under Title II of the ADA, as under many other federal



anti-discrimination laws, such as Title VII and the ADA, the proper defendant usually is an organization rather than a natural person.” Walker v. Snyder, 213 F.3d 344 (7th Cir. 2000). Under Title II of the ADA, which forbids discrimination by "any public entity", 42 U.S.C. sec.12131, the proper defendant is that "entity." *Id.*

Therefore, because Dr. Kross is not a cognizable defendant for any private cause of action under Title II of the Americans with Disabilities Act, the ADA claim set forth in Plaintiff's Complaint is misdirected and legally inapplicable as to Dr. Kross. Accordingly, Dr. Kross respectfully requests that any claim that Mr. DiFraia raises against him regarding the ADA be dismissed with prejudice.

**D. ANY CLAIMS OF PROFESSIONAL NEGLIGENCE MUST BE DISMISSED FOR PLAINTIFF'S FAILURE TO PRODUCE A CERTIFICATE OF MERIT.**

Next, Defendant Dr. Kross moves to dismiss any allegation the Complaint may seek to plead in the manner of state law medical malpractice, on the grounds that Mr. DiFraia has failed to produce a Certificate of Merit as required by the Pennsylvania Rules of Civil Procedure.

The Third Circuit has held that Rule 1042.3 is substantive law that must be applied by federal courts under Erie R.R. v. Thompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1983). Liggon-Redding v. Estate of Sugarman, 659 F.3d 258, 262-4 (3d Cir. 2011). Rule 1042.3 requires a plaintiff in a medical malpractice action to file a certificate of merit with the complaint or within sixty days thereafter attesting that

“an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the [medical service described] in the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.” Pa. R.C.P. 1042.3.

“[W]hen a plaintiff has failed to submit a certificate of merit or otherwise indicated that he has retained an expert witness, it is appropriate for a federal district court to dismiss his professional malpractice claim without prejudice.” Green v. Sec'y Wetzel, 2019 U.S. Dist. LEXIS 53423, at \*20 n.7 (W.D. Pa. 2019), *citing* Donnelly v. O'Malley & Langan, P.C., 2009 U.S. Dist. LEXIS 92289, 2009 WL 3241662 (M.D. Pa. 2009).

Despite having filed suit on July 17, 2023 (ECF No.1) and raising a claim of professional negligence in his Complaint against Dr. Kross, Mr. DiFraia failed to file the requisite certificate of merit. Defendant therefore sent Mr. DiFraia notice of his intent to move for dismissal of any claim of professional negligence asserted against him by the Complaint if a Certificate of Merit was not timely produced. This notice, pursuant to Pa. R.C.P. 1042.7 was sent to Mr. DiFraia on September 5, 2023. (ECF No. 16). Because Mr. DiFraia has failed to file a certificate of merit to date, any and all claims of professional negligence against Defendant Dr. Kross should be dismissed.

Accordingly, Defendant requests that any claim of professional negligence asserted against him be dismissed with prejudice.

**E. PLAINTIFF HAS FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES FOR HIS CLAIMS ASSERTED AGAINST DR KROSS, BARRING HIS CLAIMS PER THE PRISON LITIGATION REFORM ACT, 42 U.S.C. § 1997E.**

A review of the grievance files maintained by the Secretary's Office of Inmate Grievances and Appeals ("SOIGA") reveals that Mr. DiFraia has not exhausted his administrative remedies as to any claims involving Dr. Kross which are asserted by the Complaint. For that reason, any claims against Dr. Kross should be dismissed with prejudice for Mr. DiFraia's failure to exhaust his administrative remedies pursuant to PA DOC Policy and the Prison Litigation Reform Act.

Any grievance that has been properly exhausted must necessarily have gone through the office responsible for the final stage of appeal in the PA DOC grievance process, the Secretary's Office of Inmate Grievances and Appeals ("SOIGA"). These SOIGA records were produced to Defendant upon subpoena and are attached hereto as Exhibit "A." The SOIGA records include two (2) grievances submitted to final review by Mr. DiFraia, with responses dated May 30, 2023, and June 28, 2023.

Both grievances were filed to the facility with responses from the facility manager, and then to SOIGA at the final stage of appeal. In both grievances, Mr. DiFraia raised the issue of being taken off his previously prescribed suboxone medication. Despite this, for both grievances, he failed to provide SOIGA with

required and/or legible documentation for proper review, which led to a dismissal of the grievances by SOIGA at this final stage of review. (Exh. A, pp. 1, 4). Because Mr. DiFraia failed to provide SOIGA with the proper documentation to conduct a review of his grievances, the appeals were both dismissed which amounts to a procedural default, rather than a decision on the merits of the appeal (which would constitute proper exhaustion no matter the outcome or determination by SOIGA). Since he did not submit proper grievances that were eligible for a review on the merits, Mr. DiFraia did not properly exhaust the administrative remedies available to him.

The Pennsylvania Department of Corrections provides an administrative grievance system that requires inmates to file formal written grievances following unsuccessful informal resolution of a problem. DC-ADM 804 is the Department's Consolidated Inmate Grievance Review System. If an inmate is dissatisfied with the initial review response, the inmate may appeal to the facility manager or the Superintendent. If this result is also unsatisfactory, the inmate can appeal to final review with the Chief of the Secretary's Office of Inmate Grievances and Appeals (SOIGA). Properly completing the process through the final appeal on the merits with SOIGA is a prerequisite to filing any federal suit. Determining whether a plaintiff has properly exhausted the grievance process is relatively simple in most cases – if SOIGA has considered the grievance on its merits, even if they denied it or upheld denials below – it has been exhausted.

A provision of the Prison Litigation Reform Act of 1995 , 42 U.S.C. § 1997e(a), directs that: “No action shall be brought with respect to prison conditions under Section 1983...or any other Federal law, by a prisoner...until such administrative remedies as are available are exhausted.” Therefore, under Section 1997e(a), a state prisoner must exhaust all available administrative remedies with regard to each and every issue prior to seeking relief pursuant to 42 U.S.C. § 1983 or any other federal law. The exhaustion requirement applies to all prisoners seeking redress for any prison circumstances or occurrences, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. Porter v. Nussle, 534 U.S. 516, 122 S.Ct. 983, 992, 152 L. Ed. 2d 12 (2002).

More specifically, in the context of procedurally deficient administrative grievances and appeals, the United States Supreme Court held that “a prisoner cannot satisfy the Prison Litigation Reform Act's exhaustion requirement, 42 U.S.C.S. § 1997e(a), by filing an untimely or otherwise procedurally defective administrative grievance or appeal.” Woodford v. Ngo, 548 U.S. 81, 126 S. Ct. 2378 (2006). This decision carved out the requirement that “proper exhaustion” of administrative remedies is necessary. *Id.* Proper exhaustion further “means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits).” *Id.* (quoting Pozo v. McCaughtry, 286 F.3d 1022 (7<sup>th</sup> Cir. 2002)).

Here, Mr. DiFraia failed to satisfy the Prison Litigation Reform Act's exhaustion requirement because he filed a procedurally defective appeal and received a default dismissal with no consideration of the merits of the appeal. SOIGA responded to Mr. DiFraia's appeals in the Final Appeal Decision dismissal by stating that "this office has not received any of the required documentation for a proper appeal to final review. (Exh. A, pp. 1, 4). Based on that fact, SOIGA stated that Mr. DiFraia's "appeal to this office is dismissed." *Id.* While Mr. DiFraia attempted to utilize some steps that were available to him, he did not do so properly, and the issues were not addressed on the merits. Therefore, the two procedurally defective grievances filed by Mr. DiFraia perfect examples that the Supreme Court of the United States identified as improper exhaustion and thus constitute a bar to judicial relief. Woodford, 548 U.S.

Accordingly, because Mr. DiFraia has not exhausted his administrative remedies for any allegations, he seeks to make against Dr. Kross, and pursuant to the Prisoner Litigation Reform Act, 42 U.S.C. §1997e and the binding precedent on this Court, he is now precluded from pursuing his claims against Dr. Kross in the instant lawsuit and he should be dismissed.

### III. CONCLUSION

For the reasons set forth herein, Defendant Dr. Kross respectfully requests that this Honorable Court grant his Motion to Dismiss, or in the alternative, for Summary Judgment and enter the attached proposed Order.

Respectfully submitted,

WEBER GALLAGHER SIMPSON STAPLETON  
FIRES & NEWBY LLP

BY: /s/ Benjamin M. Lombard  
Benjamin M. Lombard, Esquire  
blombard@wglaw.com  
PA322376

Samuel H. Foreman, Esquire  
sforeman@wglaw.com  
PA77096

Four PPG Place, 5th Floor  
Pittsburgh, PA 15222  
(412) 281-4541



**CERTIFICATE OF WORD COUNT**

I, Benjamin M. Lombard, Esquire, hereby certify pursuant to LR 7.8(b)(2) that this Brief in Support of Defendants’ Motion to Dismiss complies with the word-count limit described in LR 7.8(b) inasmuch as the Brief contains 4,555 words.

/s/ Benjamin M. Lombard  
Benjamin M. Lombard, Esq.

Dated: September 25, 2023

**CERTIFICATE OF SERVICE**

I, Benjamin M. Lombard, Esquire, hereby certify that on this date a true and correct copy of the foregoing **BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT** was sent to all counsel of record *via* CM/ECF and by first class United States mail, postage prepaid, to the following:

***By U.S. Mail only to:***

Jonathan DiFraia, QH-6513  
Smart Communications/PADOC  
SCI-Rockview  
PO Box 33028  
St Petersburg FL 33733  
*Plaintiff*

***By CM/ECF Notice only to:***

Christine C. Einerson, Deputy Attorney General  
PA Office of Attorney General  
Litigation Department  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120  
*Counsel for DOC Defendants*

/s/ Benjamin M. Lombard  
Benjamin M. Lombard, Esquire

Dated: September 25, 2023

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JONATHON DIFRAIA,	:	Civil No. 1:23-CV-01187
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
KEVIN RANSOM, <i>et al.</i> ,	:	
	:	
Defendants.	:	Judge Jennifer P. Wilson

**ORDER**

**AND NOW**, on this 16th day of October 2023, in consideration of the potentially dispositive motions pending in this case and Plaintiff's failure to respond before the deadlines set forth in Local Rule 7.6, **IT IS ORDERED** that Plaintiff shall have the opportunity to respond to the motions to dismiss, Docs. 19, 21, on or before **November 6, 2023**. All briefs must conform to the requirements prescribed by Local Rule 7.8.

Plaintiff is advised that Local Rule 7.6 imposes an affirmative duty on Plaintiff to respond to motions, and provides, in relevant part:

Any party opposing any motion, other than a motion for summary judgment, shall file a brief in opposition within fourteen (14) days after service of the movant's brief, or, if a brief in support of the motion is not required under these rules, within seven (7) days after service of the motion. *Any party who fails to comply with this rule shall be deemed not to oppose such motion.* Nothing in this rule shall be construed to limit the authority of the court to grant any motion before expiration of the prescribed period for filing a brief in opposition.

Local Rule 7.6 (*emphasis added*). Plaintiff is cautioned that a failure to file a brief will result in the motions being deemed unopposed.

s/Jennifer P. Wilson  
JENNIFER P. WILSON  
United States District Judge  
Middle District of Pennsylvania

Case 1:23-cv-01187-JPW-EW

Document 25

Filed 11/06/23

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10-30-23

Sylvia H. Rambo

PER <sup>Isa</sup>  
DEPUTY CLERK

Ms Rambo, I do not know how to correctly answer the motion to dismiss, I will do my best though.

1. Claim which relief is sought.

I was removed from the MAT program based upon lies which violated my rights both Eighth and Fourteenth Amendments, I was placed in the RHU and suffered through withdrawals without comfort medication, granted I was tapered off over a week long period which is not long enough to stave off the effects of withdrawal symptoms.

The relief I am seeking is to be put back on MAT Suboxone and have the defendants pay the price of this lawsuit and punitive damages if the judge sees fit for them to.

2. Defamation claim, In my grievance process I was told I was removed from Suboxone for possessing Suboxone that was not being utilized for the MAT program, (see highlighted sections of attached papers, Grievance # 1021953 and Grievance # 1018884, numbered 1, 2, 3) Those are lies and slander



Jonathan B. Brown  
Case 1:23-cv-01117-JPW-EW Document 25 Filed 11/06/23 Page 2 of 6  
10-30-23

I was not issued misconducts for possession of Suboxone.

3. Eighth Amendment violation stems from those lies, I was forced to undergo withdrawal and post acute withdrawal symptoms in the RTHU because of lies. This should be considered a type of cruel and unusual punishment. Under the Eighth Amendment I also have a right to adequate medical care, which I am not receiving. I was taken off of my medication because I was issued misconducts, I was not charged with diversion or anything that should concern medical staff yet I was removed and for non-medical reasons. I was removed as a disciplinary sanction.

4 Fourteenth Amendment violation, Firstly if I were to be caught diverting psychotropic medication I would not be removed from them, but even being wrongfully accused of diverting a drug addiction medicine was enough to remove me, it is not right to be persecuted like this because I am a drug addict and took those medications I was treated differently than someone on other types of meds. Secondly the laws are supposed to protect



Jonathan D. Francis

Case 1:23-cv-01181-JPW-EW Document 25 Filed 11/06/23 Page 3 of 6

people from lies and slander, an investigation should have been launched to prove if I was actually a diverter, granted I was found guilty of possessing E-cig contraband, I was not guilty nor even charged with diversion or possessing Suboxone, there is no way I should have been labeled a diverter.

5. Exhaustion of remedies. I took every measure I could to properly exhaust the grievance process. I wrote to my counselor in Dallas's RHV and asked for the procedure on filing grievances he wrote me back and told me he did not know them, nor was he able to look them up for me (I have sent that request slip in already as evidence.) I did the absolute best I could while dealing with time constraints and being in the RHV. I did technically exhaust the grievance process and my final appeal was denied on both grievances (see Attached papers #4, 5 on grievance #1021953 and grievance #1018854.)

6. ADA claim, my addiction is a disease that affects me on a daily basis especially now not receiving treatment, when I am home it has caused me to be homeless, hungry, depressed it literally affects



Jonathan D. Frail  
10-30-23  
Case 1:23-cv-01187-JPW-EW Document 25 Filed 11/06/23 Page 4 of 6

every choice I make everyday it is my biggest downfall being a drug addict. Since I started using my life has been an uphill battle I have made so many mistakes and bad decisions, my addiction has taken friendships and shunned me from my family, it is a major impairment to daily life, it is the reason I was in prison in 2010 and is the reason I am in prison now, So for anyone to say that it doesn't meet the requirements is foolish. Drug Addiction affects everyone differently and for me it is a disability, it is really much worse but this is not about that.

In closing I ask that the defendant's motion to dismiss be dismissed. I also ask for an injunction or ruling to place me back on Suboxone at least till the outcome of this case. I understand I messed up and should have double checked my pockets before reporting to med line, I max out of prison 12-8-24 and need to be stabilized on this medication if I am to have any hope of succeeding. I also ask for summary judgement in favor of the plaintiff all I ask is to be put back on Suboxone and the defendant's pay the ~~cost~~ court costs I will drop

Case 1:23-cv-01187-JPW-EW Document 25 Filed 11/06/23 Page 5 of 6

the rest of this suit and go about my life,  
please consider ruling in ~~my~~ favor of Plaintiff

Sincerely

Jonathan DiFraia



10-30-23



Smart Communications PA/Doc

JE Rockwell

Jonathan Difuria OH-6513

Box 330928

Harrisburg, PA 17102

INMATE MAIL  
PA DPT OF  
CORRECTIONS



Office of the Clerk  
United States District Court  
Middle District of Pennsylvania  
H. Rambo United States Courthouse  
1501 North 6th Street, Suite 101  
Harrisburg PA 17102

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PER JS DEPUTY CLERK

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JA080

Sylvia H. Rambo

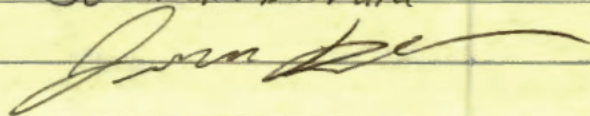
8-25-24

DiFraia V Ransom 1:23-CV-1187

I was unable to file a timely response due to the fact that this prison lost all of my property including all of my legal documents and I was just now on Friday the 23<sup>rd</sup> able to get this address to file any type of response in my civil case.

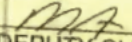
That being said I do not intend to file an amended complaint. I request that the court issue a final order so I can file an appeal to the third circuit. Thank you

Sincerely Jonathan DiFraia



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last communications PA1102  
Nathaniel D. Faria Oct-6513  
CI Lockview  
PO Box 33028  
St Petersburg FL 33733

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PER MA  
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INMATE MAIL PAID  
PA DPT OF  
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Sylvia H. Rambo US Courthouse  
Clerks office  
1501 North 6<sup>th</sup> Street Harrisburg PA 17102

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