UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Jason Kokinda, Plaintiff,	:	**CIVIL ACTION**
	:	
vs.	:	**Case No. 2:17-cv-217**
Pennsylvania Department of Corrections, et al., Defendant(s),	:	

MEMORANDUM IN SUPPORT OF RESPONSE TO MOTION TO DISMISS AND MOTION FOR RECONSIDERATION OF PREVIOUSLY DISMISSED CLAIMS

I. INTRODUCTION

A. Wholesale Pseudo-Judicial Theatre

1. Everything that the defendants counsel and the courts say is just more evidence that they are compulsive liars who intentionally misrepresent the law and nature of the claims pled to manipulate the general public.

II. SCOPE AND STANDARD OF REVIEW

A. Fed.Civ.R.P. Rule 54(b)

"[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of

fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is *subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.* "

B. Motion to Dismiss

[T]he plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Specifically, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The question is not whether the claimant "will ultimately prevail . . . but whether his complaint [is] sufficient to cross the federal court's threshold." *Skinner v. Switzer*, 131 S. Ct. 1289, 1296 (2011) (citation and internal quotation marks omitted). Thus, assessment of the sufficiency of a complaint is "a context-dependent exercise" because "[s]ome claims require more factual explication than others to state a plausible claim for relief." *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 98 (3d Cir. 2010). In evaluating the sufficiency

of a complaint, the Court adheres to certain well-recognized parameters. For one, the Court "must consider only those facts alleged in the complaint and accept all of the allegations as true." *ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994); *see also Twombly*, 550 U.S. at 555 (stating that courts must "assum[e] that all the allegations in the complaint are true (even if doubtful in fact)"); *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) ("[A] court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents."). The Court must also accept as true all reasonable inferences emanating from the allegations, and view those facts and inferences in the light most favorable to the nonmoving party. *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989); *see also Revell v. Port Auth.*, 598 F.3d 128, 134 (3d Cir. 2010). But that admonition does not demand that the Court ignore or discount reality. The Court "need not accept as true unsupported conclusions and unwarranted inferences," *Doug Grant, Inc. v. Greate Bay Casino Corp.*,

232 F.3d 173, 183-84 (3d Cir. 2000) (citations and internal quotation marks omitted), and "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," *Ashcroft*, 556 U.S. at 678; *see also Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (explaining that a court need not accept a plaintiff's "bald assertions" or "legal conclusions" (citations omitted)). Finally, "if a [claim] is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile." *Phillips v. County of Allegheny*, 515 F.3d 224, 236 (3d Cir. 2008).

III. DISCUSSION – PART I

A. Background that Makes this Case Extraordinary

1. The following narrative of the case is layered together from the First, Second, and Third Affidavits of Truth attached; as well as the attached Affidavit-Response and various attached or cross-referenced exhibits.

2. The claims presented admittedly involve voluminous evidence because they are based on the conspiratory conduct of the Koch Network in using politicians like Tom Corbett and the Pennsylvania Office of the Attorney General to bribe officials even at an international-scale to retaliate and micromanage any dissent to their desired megalomaniac totalitarian state agenda.
3. The Koch Brothers are so distant from the chain of events and officials below that the evidence linking them requires a depth of study into their record of obsessions with micromanaging dissidents and the financial incentives of all the parties retaliating against Mr. Kokinda.[1] *See* "Dark Money" by Jane Mayer as a perfect example.

[1] *Verifiable facts of public record* - Prosecutor Micheal Sprow was immediately promoted after Mr. Kokinda was forced to waive trial, agent Frattare was promoted to an out of state job in Cleveland, OH, President Judge of the Penn. Superior Court E.D. Correale F. Stevens was promoted to the U.S. Supreme Court during malicious obstruction of Mr. Kokinda's PCRA appeals, Sallie Mundie (panel judge denying PCRA appeal) was promoted to the U.S. Supreme Court, Vermont was provided with incentive-based contracts to maliciously prosecute Mr. Kokinda for a consensual hug with an adult woman. And these are just the most visible ones. *See* Exhibit-Corbett, that shows how the Koch Brothers sponsored Corbett.

4. When you consider that the Koch Brothers and big energy sponsored Corbett and have retaliated against and spied on dissent news reporters like Jane Mayer, and that many agree that the Koch Network has hijacked control of the Republican party (including Vice President Mike Pence);[2] it is easy to how plausible a crony capitalism case is to plead against any politically motivated prosecution.
5. Mr. Kokinda's prosecution was politically motivated. It was a featured arrest for Tom Corbett that he couldn't stop bragging about on TV and in the Berks County region for political demagogue power. Corbett went on to use Act 13 to enforce lax regulations for the big energy cabal.[3]
6. Corbett was also at least guilty by association with his close friend serial pedophile Jerry Sandusky and was desperate to present himself as super anti-pedophile with hundreds of false or scapegoat arrests that manipulated evidence to win at all costs.

[2] *See* Exhibit-Koch-Mayer
[3] *See* Exhibit-Shale

7. It is common sense to understand why the Koch Brothers and their big energy partners would finance retaliations against Mr. Kokinda by using various political associates to bribe and influence others against him. Tom Corbett has many inside political associations in the Penn. OAG and U.S. Dist. Ct. W.D. Dist. Penn. to bribe who use government funds to bribe others in kickback schemes and promotions.
8. Because there are no real Christians and everyone's true religion is commercial nihilism these days, it is easy for a crony capitalism agenda to infect global governments from top to bottom. No one will logically stand up to what seems like insurmountable tyranny to suffer needless tribulations.
9. What is going on in the United States today is plainly no different than the crony capitalism in Peru. In Peru, a large Brazilian corporation bribed the former-president with millions of dollars he was caught laundering. The same is obviously true with the big energy corporations like Koch Industries, Inc. controlling the U.S. political system from top to bottom. The judges in Peru were

recently caught on record taking bribes, just as the US justice system is infected with various levels of bribes and special favors for those serving the giant corporations.[4]

10. Kathleen Kane is the example of the elite carrying out retaliations against dissidents for her feminist agenda to unseat corporate-sponsored Masonic puppet judges in the Pennsylvania Supreme Court and failed retaliations against Mr. Kokinda.

11. When we consider the depth of power that can corrupt the entire prison against Mr. Kokinda in a militant-like chain of command fashion, where dissidents are reprimanded or fired, it is easy to see how all the defendants played some role in the RHU retaliation.

12. The reality is that the U.S. and world governments are being controlled more and more aggressively by big energy corporations who are dependent largely upon the Koch Network to fix elections. Big energy controls Tom Wolf. His campaign was funded by billionaire coal baron Tom Steyer.

B. Fragmented Discussion of Dismissed Claims

[4] *See* Exhibits-Peru-A,B

1. Mr. Kokinda was not allowed to amend his Complaint to develop a record against the Koch Brothers when it came to his attention that they are the keystone uniting the various superrich big energy elitists sponsoring Tom Corbett and Tom Wolf who are responsible for the crony capitalism agenda of epic retaliations against him.
2. Mr. Kokinda was not allowed to amend his Complaint to consider the fulness of evidence in the Vermont cases that demonstrate that the epic civil rights violations and tyranny against Mr. Kokinda come from a single source (that manifests chiefly from the pecuniary interests of the superrich using the Koch Network to pass and enforce laws that favor their interests). *See* U.S. Dist. Ct. for Dist. Vt. Cases *Kokinda v. Koch Indus., et al*, 2:17-cv-98, 2:18-cv-95.
3. When we consider these factors and reconsider the capricious denials of amendment and context for the claims, it is apparent that justice is only served by acknowledging the correct standard of § 1983 conspiracy, supervisor liability, unconstitutional policies, lack of collateral estoppel, and the perversity of applying *Heck* bar to evade discussion of extraordinary claims.

4. The law needs to be applied with common sense. The case-law is only theoretical and would never change if the judges did not use common sense when applying it to extraordinary factual situations. The *Heck* bar is a weak bar to begin with that is limping along in some circuits for garden variety cases.[5] Cases that involve such pleadings of egregious crony capitalism do not allow justice to be served when the record is mute on discussing the underlying motivations for the retaliations.

[5] Spencer v. Kemna, 523 U.S. 1, 20 (1998) (The better view, then, is that a former prisoner, no longer "in custody," may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable termination requirement [of *Heck*].) Pursuant to 47 AM. JUR. 2D *Judgments* § 489 (2012), the second and fourth prong of the *collateral estoppel* test would not bar relief in the instant case. Because the claims of innocence were never addressed on the merits and were not adjudicated in full and fair proceedings. *See, e.g.*, Cohen v. Longshore, 621 F.3d 1311, 1316–17 (10th Cir. 2010) (agreeing with the *Spencer* concurrence approach that is more just and more in accordance with the purposes of § 1983 to not apply *Heck* to a petitioner who has no available habeas remedy); Wilson v. Johnson, 535 F.3d 262, 267–68 (4th Cir. 2008) (holding that a past prisoner does not "fall squarely" within *Heck* and choosing to employ the *Spencer* concurrences so plaintiff would not be left without access to federal court); Harden v. Pataki, 320 F.3d 1289, 1298 (11th Cir. 2003) (adopting the view from *Spencer* that when federal habeas corpus is not available to address constitutional wrongs, § 1983 must be available); Nonnette v. Small, 316 F.3d 872, 876 (9th Cir. 2002) (joining the circuits that find a § 1983 claim maintainable where petitioner has no habeas remedy); Huangv. Johnson, 251 F.3d 65, 74–75 (2d Cir. 2001) (holding that even though a mother's § 1983 action challenged the duration of confinement, it didn't challenge the validity thereof, and finding *Spencer* to hold that § 1983 must be available to address constitutional wrongs where habeas isn't available); Carr v. O'Leary, 167 F.3d 1124, 1127 (7th Cir. 1999) (indicating that *Spencer* dictum implies that *Heck* should not be a bar to prisoners who can no longer bring habeas petitions since released); Leather v. Eyck, 180 F.3d 420, 424 (2d Cir. 1999) (holding that the plaintiff had "escaped the jaws of *Heck*" because he was not ever in the custody of the state); *cf.* Guerrero v. Gates, 442 F.3d 697, 704–05 (9th Cir. 2006) (identifying an important limit on *Nonnette*, namely that the prisoner must "timely pursu[e]" the habeas claim while it is available for *Heck* not to apply after release). Mr. Kokinda's case is the silver bullet that would kill the overextension of *Heck*, where the test of *collateral estoppel* itself provides enough flexibility.

5. Whether it is granted or not, the Petition for Review pending in the U.S. Supreme Court proves Mr. Kokinda was maliciously prosecuted and that the Courts have evaded his claims at every level with incoherent opinions that are not even cognizant of Mr. Kokinda's filings.[6]

Mixing "Personal Involvement" Standards with Conspiracy

6. A claim for conspiracy, historically, has not incorporated the separate analysis of "personal involvement" *al a carte*. It is manifest error for the Court to dismiss all defendants who are alleged to be a logical part of a systematic conspiracy by ignoring the correct and independent test for **conspiracy**.

See, e.g., Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 10 172 F.3d 238, 254 (3d Cir. 1999) ("In order to prevail on a conspiracy claim under § 1983, a plaintiff must prove that persons acting under color of state law conspired to deprive him of a federally protected right."); *Marchese v. Umstead*, 110 F.Supp.2d 361, 371 (E.D. Pa. 2000) ("To state a section 1983 conspiracy claim, a plaintiff must allege: (1) the existence of a conspiracy involving

[6] *See* Exhibit-SupremeCt.Cert

state action; and (2) a depravation [sic] of civil rights in furtherance of the conspiracy by a party to the conspiracy.")

7. Because this conspiracy test is nowhere to be found in the various dismissal opinions, the analysis was never made. The more specific standard of law always takes precedence over the more general. *See* (*lex specialis derogat legi generali*".) While "personal involvement" may be a general standard, the rules for a § 1983 conspiracy are much lighter burdens.[7]

    (a) As you can see, direct evidence is **rare** in a conspiracy. This is the Achille's heel of the order dismissing so many defendants. **Conspiracy** is the lowest standard of proof in the entire jurisprudence. It cannot be conflated with the more general

[7] *See In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 906 F.2d 432, 439 (9th Cir. 1990) (noting that "direct evidence will rarely be available"); *Milgram v. Loew's, Inc.*, 192 F.2d 579, 583 (3d Cir. 1951) ("[I]t is rare indeed for a conspiracy to be proved by direct evidence."); *Battle v. Lubrizol Corp.*, 673 F.2d 984, 992 (8th Cir. 1982) ("However, we think that it is most unlikely that antitrust plaintiffs, like any other plaintiffs alleging conspiracy, will have direct evidence."). "*Express consent* is that directly given, either *viva voce* or in writing. *Implied consent* is that manifested by signs, actions, or facts, or by inaction or silence, from which arises an inference that the consent has been given." *Wade v. Southwest Bank*, 211 Cal.App.2d 392, 406 (1962). ***See also***, *Guarrasi v. Gibbons*, No. 07-5475, 2008 WL4601903, ante (B.)(2.)(b.) (E.D. Penn.(Oct. 15, 2008)) ([A conspiracy] allegation is nonfrivolous [if] it states a cause of action based on facts that plaintiff could plausibly prove at trial.) ***At trial plaintiff need only prove a reasonable inference of an unlawful agreement of implied consent from circumstantial evidence and one overt act by one co-conspirator, in furthering the general criminal objective; by a preponderance of the evidence. See*** *U.S. v. Rubin*, 844 F.2d 979, 984 (2d Cir. 1988) (The fundamental element of a conspiracy is unlawful agreement.)(citations omitted).

"personal involvement" standard to obviate it. That is just a paper shuffle that you pretend the law is something else to further the same epic conspiracy.

Plausibility of Defendants Being Liable for Conspiracy/Retaliation

8. Mr. Kokinda has properly pled how the defendants are responsible for conspiring to engage in systematic conspiracy. The focus of this conspiracy was chiefly fixated on putting him in the RHU as a covering to steal his case-file. (*See* Third Affidavit of Truth, ¶2-4, 21-27, 29., and Exhibit-F, case-file theft related filings from ECF 118 recorded in *Kokinda v. Gilmore, et al.*, U.S. Dist. Ct. E.D. Penn.).
9. Lynne Sitarski and Jan E. DuBois played a critical role in coordinating this extrajudicial retaliation. They worked hand in hand with defendant Dennis G. Charles and William Stoycos on the records to make sure the case-file arrived only under these unique circumstances. While they may be immune for the orders to transmit it, they are condemned by the evidence that this was a subterfuge for the extrajudicial conspiracy retaliation.

See King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985)(although setting bond on an arrest warrant is a judicial act, the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was nonjudicial) In the same manner, the ordering the transmission of case-file was a judicial act. However, when it became the means for (what a jury may believe to be) a conspiratory extrajudicial prison retaliation against Mr. Kokinda, the immunity does not exist.

The factors considered in determining whether a judge's act is a "judicial" one are (1) whether the act complained of is one normally performed by a judge, (2) whether the act occurred in the courtroom or an appropriate adjunct such as the judge's chambers, (3) whether the controversy centered around a case pending before the judge, and (4) whether the act arose out of a visit to the judge in his judicial capacity. *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993) (citing *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972). These factors should be broadly construed in favor of immunity. *Malina*, 994 F.2d at 1124; *Adams*, 764 F.2d at 297. Not all of the

factors must be met for immunity to exist. *Malina*, 994 F.2d at 1124; *Harris v. Deveaux*, 780 F.2d 911, 915 (11th Cir. 1986). In some circumstances, immunity may exist even if three of the four factors are not met. *Adams*, 764 F.2d at 297 n.2.

(a) Pursuant to this test; (1) judges do not normally perform prison retaliations and grievous case-file thefts; (2) the setting was intraprison; (3) the prison retaliation was only tangentially related to the case pending before the judges, in the most meaningless degree; (4) the prison retaliation could not have arisen from a visit to the judges in judicial capacity, since retaliation is not a judicial act.

10. The entire prison was turned against Mr. Kokinda as a result of John E. Wetzel having control as the operating chief to direct Robert Gilmore, DiAlesandro, and everyone involved in the operation below into retaliating. The critical flaw with the dismissal analysis is that it does not consider the timing of the extrajudicial retaliation to hold these

defendants liable and see the plausibility of an epic conspiracy by reason of the militant chain of command system the prison officials use.

11. An entire army of DOC employees was turned against Mr. Kokinda by reason of their head John E. Wetzel being appointed by Tom Corbett and following his every instruction in dealing with the politically problematic Mr. Kokinda.

12. Mr. Kokinda has demonstrated that the Pennsylvania Office of the Attorney General uses Masonic occult numerology to mark their crimes. They have held the most adversarial events on his birthday and the birthdays of his immediate family. This means that the judges involved in the judicial aspect of obstructing Mr. Kokinda also had implied-consent to any extrajudicial retaliations necessary to protect them from receiving recompense for their judicial crimes. It was not necessary for them to know what specific steps would be taken to injure Mr. Kokinda, only that the ultimate goal of the conspiracy would evolve into extrajudicial injuries like those the Pennsylvania Office of the Attorney General coordinated before. This includes the retaliatory cell search in 2:16-cv-5, *Kokinda v. Penn. Dep't. of Corr.*, U.S. Dist. W.D. Penn. to

obstruct Court Access during pendency of PCRA appeals and phony corrupt judicial orders that obstructed appeal and denied *nunc pro tunc* relief.

C. Case-law in Support of Reconsideration/Amendment

1. The dismissal of the former defendants was not a final order and is liberally subject to revision at any time under Fed.R.Civ.P. Rule 54(b):

> "[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is *subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.* "

(a) Fed.R.Civ.P. Rule 54(b) is arguably limited by some weight to former decisions by law of the case doctrine.

Law of the Case Doctrine

The law of the case doctrine is inapplicable when there is any material change in a mixed question of law and fact, or when it is clearly erroneous. See, e.g., *Koppers Co., Inc. v. Certain Underwriters at Lloyd's, London*, 993 F.

Supp. 358, 364 (W.D.Pa.1998) ("The law of the case doctrine applies only to issues actually addressed and decided at a previous stage of the litigation."); *see also* Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 4434 at page 130-31 ("Preclusion should not apply within the framework of a continuing action."). Therefore, law-of-the-case doctrine is flexible. "The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atlantic Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). That said, application of the doctrine is discretionary and it "need not be applied when no prejudice results from its omission." *First Nat'l Bank of Hollywood v. American Foam Rubber Corp.*, 530 F.2d 450, 453 n.3 (2d Cir. 1976); *see also United States v. Uccio*, 940 F.2d 753, 758 (2d Cir. 1991). The doctrine is "driven by considerations of fairness to the parties, judicial economy, and the societal interest in finality." *United States v. Carr*, 557 F.3d 93, 102 (2d Cir. 2009)."

2. Because the consideration of claims is a context-based exercise and

Mr. Kokinda needed sufficient time to unravel the epic retaliation conspiracy he was facing, it would be **manifest injustice** to protect the crony capitalism corrupt defendants in a case like none other ever recorded. No one has the legal skills and courage to record these types of violations against the giant corporations controlling our government and using officials as disposable pawns to carry out a tyrannical megalomaniac agenda.

"The question is not whether the claimant "will ultimately prevail . . . but whether his complaint [is] sufficient to cross the federal court's threshold." *Skinner v. Switzer*, 131 S. Ct. 1289, 1296 (2011) (citation and internal quotation marks omitted). Thus, assessment of the sufficiency of a complaint is "a context-dependent exercise" because "[s]ome claims require more factual explication than others to state a plausible claim for relief." *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 98 (3d Cir. 2010).

3. Amendment should have been allowed to consider this said context and allow for a proper adjudication on the merits. If you are not going to consider the voluminous context needed to comprehend the depths

of crony capitalism infecting the USA today, then you are just part of the problem and a tool for the corruption.

"The discretion to amend pursuant to Fed.R.Civ.P. Rule 15(a) must be guided by the strong federal policy favoring the disposition of cases on the merits and permitting amendments with "extreme liberality." *DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

IV. DISCUSSION – PART II

A. The Defendant's Motion to Dismiss

1. The Defendant's Motion to Dismiss is one of the epic records that demonstrate crony capitalism because they are compulsive liars who are always looking for some sophism to materially misrepresent the law and facts.[8]

   (a) This is the same thing done by healthcare providers when they commit insurance fraud. Maybe a few overbilling issues may be chalked up to mere human error. However, an epic pattern of

[8] *See* attached Affidavit-Response

errors (and in many of Mr. Kokinda's cases egregious errors) demonstrates that they are intent on committing fraud.

2. The Motion to Dismiss chiefly relies upon their mendacious statement that Mr. Kokinda was ultimately sentenced to 30-days cell restriction and that he was therefore not held in isolation at the RHU, starved, and tortured.

3. Although Mr. Kokinda was not transferred to the D/C (Detention Custody) side of the RHU, he was held in the A/C (Administrative Custody) side which is identical in nearly every aspect. After he was there for several weeks being starved, tortured, forced to eat soy; and after his case-file was stolen and the evidence was fabricated to argue that he sent the long sought-after case-file home; only then did he receive a sentence that later allowed him to spend the remaining few days of the thirty-days in cell restriction. The thirty-day cell restriction was shortened by the time he spent in the A/C side of the RHU as days that counted towards the 30-days. (*See* attached Affidavit-Response)

4. They are also instructing their co-conspirators on how to whitewash the blatant abuses of power by falsely claiming the affidavits were petitions and that Mr. Kokinda wouldn't eat the food solely because he thought it was poisoned from a divine revelation.[9]

5. The rest of their nonsense arguments are intentional misrepresentations of the legal standards at play. They know from Mr. Kokinda's other soy case motions that articulate the weighty U.S. Supreme Court standards and recent Third Circuit rulings what the correct standards of law are.

B. Soy Allergy Violation Case-Law against Defendants RN Mills & PAC Waula, Correct Care Solutions, and the Penn. DOC.

1. The claims against RN Mills and PAC Waula are essentially a continuation of the claims against Dr. Jin, Correct Care Solutions, and the DOC. It was necessary to plead these violations with the factual context of the RHU confinement rather than in previous lawsuit so that the jury may understand the full nature of the

[9] *See* attached Affidavit-Response

decision to deny Mr. Kokinda a soy-free diet and the damages done. (*See* attached Third Affidavit of Truth).

6. Because the phony magistrate failed to recognize any violations when the DOC, Dr. Jin, and CCS committed the same ADA, Eighth Amendment, and *Monell* violations, those 2:16-cv-1303, *Kokinda v. Dep't. of Corr.*, objections and internal references are incorporated herein by reference.
7. However, in this case, they have no corrupt segway for falsely reasoning that the submitted Exhibits-A,B, which demonstrate the seriousness of an IgE allergy and prescription of an EpiPen®, are inadmissible.
8. In light of the risk of serious injury or death, and prison conditions that no modern-day society would tolerate,[10] the former DOC/CCS food service policies were unconstitutional and in violation of the Eighth Amendment and ADA.

[10] *See Helling v. McKinney*, 509 U.S. 25, 36, 113 S. Ct. 2475 (1993)

9. Even more egregious, the Defendants in this case all knew that Mr. Kokinda had a soy allergy and were in conspiracy to injure or kill him.

10. There is clear retaliatory force behind the denial, the rigging of the scale, the attempts to fabricate paperwork that Mr. Kokinda was eating just fine, the attempts to fabricate evidence Mr. Kokinda sent his case-file home, and now the attempts by the Penn. OAG to manipulate the public with these public records to believe that Mr. Kokinda was never held in the RHU at all, *inter alia*.

11. The Defendants were all in conspiracy to carry out the retaliatory case-file theft because it was important to the megalomaniacs using the Koch Network, in order to protect their fragile manipulation of the government by oppressing anyone with adversarial interests in exposing the corruption of their chief pawns and the crimes they hatched together to hoodwink the public.

C. <u>Core Eighth Amendment Standards</u>

In order to establish an <u>Eighth Amendment</u> claim, the plaintiff must show that (1) he was incarcerated under conditions which posed a

substantial risk of serious harm, and (2) prison officials acted with *deliberate indifference* to his health or safety. *See* Farmer, 511 U.S. at 834. *See Helling v. McKinney*, 509 U.S. 25 (1993) (A cruel and unusual punishment violation is often based on the likelihood of future risks to a prisoner's health and requires no current symptoms. Mere exposure to second hand smoke in double celling can violate the Eighth Amendment.) In order for a prison official to act with *deliberate indifference*, he must know of and disregard an excessive risk to an inmate's health or safety. *Hathaway*, 37 F.3d at 66. *See also Laufgas v. Speziale*, 263 F. App'x 192, 198 (3d Cir. 2008) ("[P]risoners are guaranteed a *nutritionally adequate diet* under the Eighth Amendment.") (emphasis added) (citing *Ramos v. Lamm*, 639 F.2d 559, 571 (10th Cir. 1980) ("This includes providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it.")); *Jackson*, 145 Fed. App'x 774, 776 (3d Cir. 2005) (inmate stated a claim under the Eighth Amendment when he alleged that prison officials knew that he was severely lactose intolerant and allergic to eggs but denied him a therapeutic diet). (emphasis added). *Caldwell v. Caesar*, 150 F.Supp.2d 50, 64-65 (D.D.C.

2001) (evidence that defendants did not provide a vegetarian diet, but just removed the meat and provided no alternative source of protein, supported a claim of nutritional inadequacy). *See Pearson v. Prison Health Service*, No. 16-1140, (3d Cir. 2017) ("extrinsic proof is not necessary for the jury to find deliberate indifference in a delay or denial of medical treatment claim. All that is needed is for the surrounding circumstances to be sufficient to permit a reasonable jury to find that the delay or denial was motivated by non-medical factors. See, e.g., *Durmer*, 991 F.2d at 68-69; *United States v. Michener*, 152 F.2d 880, 885 (3d Cir. 1945) ("[I]t is for the jury to determine the weight to be given to each piece of evidence . . . particularly where the question at issue is the credibility of the witness."). The District Court erred in holding otherwise.

1. Applying these standards, it is plain that Mr. Kokinda did not receive a nutritionally adequate diet. The jury is free to believe that his diet was loaded with concentrated isolated soy proteins that cross-contaminated everything on the trays and made them toxic.
2. Because Mr. Kokinda had reported his Soy Allergy to the DOC medical staff from day one and persistently sought relief, it is plain

that he was denied the medical care for non-medical retaliatory reasons and unconstitutional allergy policy deficiencies.

3. The Defendants calculated in conspiracy to injure Mr. Kokinda. They knew that he was suffering chronic serious symptoms from his soy allergy and could not eat the food. This was compounded by the risk of suffering a fatal or more serious IgE allergic reaction at any time. The seriousness of Mr. Kokinda's soy allergy is supported by Exhibits-A,B and the other exhibits referenced in his ECF 175 objections brief in *Kokinda v. Penn. Dep't. of Corr.*, 2:16-cv-1303, U.S. Dist. Ct. W.D. Penn.

V. DISCUSSION - PART III

A. Core ADA Standards/*Monell* Violations

1. Mr. Kokinda thoroughly expounded the correct standards and evidence to prove these violations in his ECF 159 Brief in Support of Motion for Summary Judgment in *Kokinda v. Penn. Dep't. of Corr.*, 2:16-cv-1303, U.S. Dist. Ct. W.D. Penn. Quoted and adapted herein in the sections below:

"(1) Mr. Kokinda has a qualified disability of soy allergy; (2) he was excluded from participation in prison food services; (3) such exclusion was based on his disability — the allergy.

Under Title II, the plaintiff must allege that: (1) he is a qualified individual with a disability; (2) he was either excluded from participation in or denied the benefits of some public entity's services, programs, or activities; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability. Brown v. Deparlos, 492 Fed. App'x 211, 215 (3d Cir. 2012).

More detailed analysis

2. Mr. Kokinda is part of a class of people with severe IgE allergies, who were discriminated against by the Penn. DOC and Correct Care Solution's mutual lack of a specific brightline rule allergy policy.[11]

   (a) Severe Allergies are recognized as disabilities under the 2008 Amendment to the American with Disabilities Act.[12]

[11] Mr. Kokinda has tested positive for an IgE soy reaction that is generally associated with asthmatic reactions, possible anaphylaxis; and particularly with soy, severe diarrhea and muscle cramps. This is not a self-diagnosis. He was prescribed an epi-pen for possible anaphylaxis, with the allergy specialist agreeing that these symptoms fit the diagnosis for someone with a serious IgE soy allergy. (*See* attached Exhibits-A,B and Appendix ECF 160 of U.S. Dist. Ct. W.D. Penn., Case No. 2:16-cv-1303, Kokinda soy allergy case *supra*, Pgs. 4-8).

(b) Failure to create a specific brightline allergy policy is *per se* proof of intentional discrimination.[13] It creates the certainty that violations of the ADA and Eighth Amendment will result. (*See* said ECF 160 App. Pgs. 156-159, Exhibit-D, especially Prison Legal News article, a treatise concerning detailed national policy failures analyzed in all 50 states).[14]

> See *Natale v. Camden Cty. Corr. Fac.*, 318 F.3d 575, 583-84 (3d Cir. 2003) (citing *Monell v. Dep't of Social Servs.,* 436 U.S. 658, 691 (1978)). In order to state a § 1983 claim against CCS, Plaintiff must "identify a [CCS] policy or custom, and specify what the custom or policy was," *McTernan v. City of York, Pa.*, 564 F.3d 636, 658 (3d Cir. 2009), or, in the absence of an affirmative policy or custom, allege facts suggesting that CCS "turned a blind eye to an obviously inadequate practice that was likely to result in the violation of constitutional rights." *Natale*, 318 F.3d at 584.

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[12] See *Knudsen v. Tiger Tots Cmty. Child Care Ctr.*, No. 12-0700, 828 N.W.2d 327 (unpublished table decision), 2013 WL 85798 (Iowa Ct. App. Jan. 9, 2013); and *Lopez-Cruz v. Instituto de Gastroenterologia de P.R.*, 960 F. Supp. 2d 367 (D.P.R. 2013). (Holding that the ADAA has explicitly overruled the reasoning behind former *Land* standard with 2008 Amendments.)

[13] See App. 181-199, The Lesley University settlement proved this very issue.

[14] *Munson v. Butler*, 2016 U.S. Dist. LEXIS 124817, at *conclusion (S.D.Ill. 2016) (holding that *deliberate indifference* to chronic diarrhea itself is an Eighth Amendment violation; the Defendants noted this symptom, *inter alia*).

3. Mr. Kokinda meets the criteria for an ADA violation by having a qualified disability of proven soy allergy. The allergy is not infrequent and manageable, considering how he was reliant on the prison diet which was almost entirely soy-based.[15]
4. The Defendants did everything possible to ignore Mr. Kokinda and intentionally discriminated against him by reason of his disability; and the intentionally discriminatory lack of **specific brightline rule allergy policy**, which prevented him from obtaining mandatory testing and the right to a soy-free nutritiously adequate diet.[16]
5. Mr. Kokinda was denied access to the prison food and medical services by Defendants first lying to him that the food does not

[15] This would qualify the soy allergy as a disability even under former *Land* standards. **See** *Land v. Baptist Med. Ctr.*, 164 F.3d 423 (8th Cir. 1999). In *Land*, if the Plaintiff was forced to survive on a peanut-based mandatory diet, then he certainly would have been disabled by saint of circumstance even under the old ADA definitions of disability.

[16] There is no realistic way to confirm a soy allergy other than actual testing. If the Doctor is allowed to lie and say he doesn't believe the Defendants symptoms are associated with allergy. This does not then transform it into medical diagnosis.

contain soy and perpetually denying him a "nutritionally adequate healthy diet" under prison **food service**.[17]

6. Mr. Kokinda wasn't simply subjected to a practice that unpredictably affected his disability or a disabled victim of medical malpractice, he was discriminated against by reason of his disability because policy makers decided that people with food allergies do not deserve the same right to health as others if we can save money and manipulate the public to whitewash any incidents. This was compounded by a desire of the Pennsylvania Office of the Attorney General to retaliate like there is $24 billion on the line to protect the favored pawn of the Koch Brothers, Tom Corbett.
7. Both the ADA and Eighth Amendment use the same standard of *deliberate indifference*. Therefore, when the **denial of services** and **discrimination** reaches threshold of constitutional magnitude in injury, both standards are met.

[17] **Medical care** is one of the "services, programs, or activities" covered by the ADA. See Georgia, 126 S. Ct. at 881 (stating that the "deliberate refusal of prison officials to accommodate [the plaintiff's] disability-related needs in such fundamentals as ... medical care ... constituted `exclu[sion] from participation in or ... den[ial of] the benefits of' the prison's `services, programs, or activities'" (quoting 42 U.S.C. § 12132)).

See *Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 260-264 (3d Cir. 2013) (intentional discrimination, based in substantive part upon disability, is proven by same deliberate indifference standard as Eighth Amendment violations). See also United States v. Georgia, (04-1203) 546 U.S. 151 (2006) 120 Fed. Appx. 785, reversed and remanded (prison case recognizing ADA violation when there is invidious discrimination compounding the 8th Amend. violation.)

8. Because Eighth Amendment violations and ADA violations both use the same standard of *deliberate indifference*, it is plain that the U.S. Supreme Court has excluded the *Turner* rational-basis logic from such analysis (which inherently undermines the seriousness of the violation).

   (a) In *Johnson v. California*, 543 U.S. 499 (2005), the U.S. Supreme Court expressly stated that *Turner* doesn't apply in Eighth Amendment context and that the logic of *Turner* is limited.

   (b) In any regard, there is no *rational basis* for failing to streamline mandatory food services to accommodate those with serious (easy to test) IgE allergies.

9. Unlike the RA, the ADA only requires that the ***invidious discrimination*** against the handicap be a "significant factor," not the "sole factor." (A *proximate cause*, not the *sole proximate cause*).[18]

(a) Most discrimination against the handicapped has some sort of monetary force at the root.

(1) It is expensive to build wheel chair ramps, and to provide sign language interpreters, and other infrastructure — such as large doors that open automatically to accommodate, and elevators.

(2) There is no logical basis for finding under the ADA that such a **mixed** (economic-rooted discrimination) **motive** is not liable.

A. <u>DOC Liability Under the ADA</u>

[18] ***See*** <u>*Kokinda*</u>, 2:16-cv-1303, *supra*, Pg. 8, n.14 of Motion to Quash, Brief (ECF 122), (Unlike the RA, the ADA only requires that disability be "significant factor" in discrimination not the "sole factor.") ***see also*** *Price Waterhouse*, 490 U.S. at 242; *Head*, 413 F.3d at 1065 ("[W]e conclude that 'solely' is not the appropriate causal standard under any of the ADA's liability provisions."); *McNely*, 99 F.3d at 1074 ("[W]e believe that importing the restrictive term 'solely' from the Rehabilitation Act into the ADA cannot be reconciled with the stated purpose of the ADA.").

1. The DOC is liable for actions of third parties that it contracts with under the ADA. Contracting with private parties is expressly barred as a defense (*See* Title II Regulation 28 §35.130(b)(1)).[19]
2. And in this case, Mr. Kokinda was wholly dependent upon the DOC for food (being regulated through contracted parties), and was being tortured, eating much less than usual, and feeling like he quite possibly could die from fatal symptoms of either allergic reaction or hypertension symptoms every single day.

Ind. Prat. & Advocacy Servs. Comm'n v. Comm'r, Ind. Dep't of Corr., 2012 U.S. Dist. LEXIS 182974 (Prisoners are dependent upon the State for food, clothing, and necessary medical care. A prison's failure to provide sustenance for inmates "may actually produce physical 'torture or a lingering death.'" *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *In re Kemmler*, 136 U.S. 436,447,

[19] *Hahn ex rel. Barta v. Linn County*, the court explained that a public entity must, "ensure that the private entities with which it contracts comply with the public entity's Title II obligations." 191 F. Supp. 2d 1051, 1054 n.2 (N.D. Iowa 2002). The court in *James v. Peter Pan Transit Management* also held that public entities must ensure that private entities comply with title II, even if the private entity is an independent contractor. *See* No. 5:97-CV-747, 1999 WL 735173, at *9-10 (E.D.N.C. Jan. 20, 1999).

10 S. Ct. 930, 34 L.Ed. 519 (1890)). Adams v. Mathis, 458 F.Supp. 302, 308 (M.D. Ala. 1978), add'd, 614 F.2d 42 (5th Cir. 1980); see also Leeds v. Watson, 630 F.2d 674, 676 (9th Cir. 1980) (questioning adequacy of diet of TV dinners); Keenan v. Hall, 83 F.3d at 1091 (prison food must be "adequate to maintain health"); Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir. 1996); Hazen v. Pasley, 768 F.2d 226, 228 n.2 (8th Cir. 1985) (diet causing "notable weight loss and mildly diminished health" was unconstitutional); Dearman v. Woodson, 429 F.2d 1288, 1290 (10th Cir. 1970) (two days' deprivation of food stated a constitutional claim). We think that evidence of the hunger pangs caused by 24 hours without food would demonstrate "the wanton and unnecessary infliction of pain' and the "unquestioned and serious deprivations of basic human needs" forbidden by the Eighth Amendment. Rhodes v. Chapman, 452, U.S. 337, 346, 101 S. Ct. 2392 (1981); see Willis v. Bell, 726 F. Supp. 1118, 1123-24 (N.D. Ill. 1989) (12 hours without food in police custody was "obviously" unlawful).

3. The foregoing case-law also makes it plain that defendants are liable for what the jury is free to believe was a malicious retaliation to force

Mr. Kokinda to choose between starving or harming himself with food that was heavily contaminated with soy.

4. Because this is a mutual policy failure that was somewhat corrected in publication, definitely not in practice, the DOC is certainly at fault here in any regards.

   (a) The newly revised policy would create brightline liability for acting outside the scope of duties and medically established standard of care by failing to test and immediately accommodate self-declared allergy sufferers.

VI. DISCUSSION - PART IV

A. Due Process Violations

DUE PROCESS STANDARD

It is well established that "[p]risoners . may not be deprived of life, liberty or property without due process of law." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). … This analysis as to liberty parallels the accepted due process analysis as to property. The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived for his property interests. We

think a person's liberty is equally protected [as that of his or her property]." 418 U.S. at 557–58.

1. The jury is free to find that the character of the events was maliciously motived and that the issuance of the misconduct and disciplinary procedures were a sham.
2. Mr. Kokinda suffered from the theft of his case-file and an invaluable work of art. The defendants worked in conspiracy outside the scope of their duties to retaliate against him on behalf of the crony capitalism corruption infecting the prison Administration and Pennsylvania Office of the Attorney General from the malignant Koch Network (that secretly throws Republican candidates to accommodate special interest cronies).

B. All Defendants Played Variable Roles in the Retalitory Conspiracy

RETALIATION STANDARD

See Watson v. Rozum, 834 F.3d 417,422 (**3d Cir**. 2016), *citing Rauser v. Horn*, 241 F.3d 330 (3d Cir. 2001) In order to establish illegal retaliation for engaging in protected conduct, Watson must prove that: (1) his conduct was constitutionally protected; (2) he suffered an

adverse action at the hands of prison officials; and (3) his constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him. Because motivation is almost never subject to proof by direct evidence, [the Plaintiff] must rely on circumstantial evidence to prove a retaliatory motive. He can satisfy his burden with evidence of either (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing that suggests a causal link.

1. Mr. Kokinda was plainly engaged in Constitutionally protected conduct when he filed grievances, attempted to secure his case-file, and also attempted to gather the attached Exhibit-C affidavits in support of his lawsuits against Defendants.
2. The Third Circuit found that the mere loss of Watson's radio was sufficiently adverse enough for someone to be deterred from exercising their constitutional rights. Throwing Mr. Kokinda in the RHU, trying to see if they can trigger a fatal allergic reaction, starving and torturing him, fabricating records, and creating

severe psychological trauma, surpass the threshold to a malicious degree of depravity.

3. Finally, Mr. Kokinda's conduct was protected and the entire reason why they decided to injure him so maliciously. They would not have done this to anyone else and coordinated the theft of an important case-file in the process. They also threatened to lock up anyone who signed Mr. Kokinda's affidavits unless they recanted their testimony and claimed they didn't read it or were manipulated into signing it. The scriptural prophecy, "Smite the shepherd and scattered is the flock," proves itself true here.
   (a) They knew that they would be held accountable and immediately changed the prison policy after Mr. Kokinda's release to prevent anyone else from the Mental Health block from being detained in the RHU for alleged unauthorized group activity. This is the same M.O. they used with the prison food allergy policy demonstrating coordinated attacks and steps by the Penn. OAG to suppress Mr. Kokinda's lawsuits.

4. The threats against filing malicious prosecutions against Mr. Kokinda for quoting the Bible are additional grounds for retaliation that would obviously deter a person of ordinary firmness from accessing the Courts. Mr. Kokinda refuses to even send many filings to the Penn. OAG to this very day as a result.

VII. CONCLUSION

THEREFORE, for each of the foregoing reason a real Court would reconsider previously dismissed claims/defendants and deny the motion to dismiss filed by defendants. Since the Eddy and Hornak are co-conspirator puppets who are in no manner seeking to uphold their oaths of office, we can rest assured that no substantive relief will ever be provided or given justifiable credence.

The only true lover of humanity,

/s/ Jason Kokinda-308

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SWORN CERTIFICATION

I, Jason Kokinda, certify under penalty of perjury that the facts set forth in the foregoing documents are true and correct to the best of my personal knowledge and belief.

Date: September 10th, 2018 /s/ Jason Kokinda-308

Authorized Representative

PROOF OF SERVICE

Date: September 10th, 2018

I, Jason Kokinda, hereby certify under penalty of perjury that this day I am serving the foregoing documents in the manner listed below, which service satisfies the civil rules of procedure applicable to a civil rights action under 42 U.S.C.S. §§ 1983, 1985(3), and 1986.

Service by Online/ECF Mail to all of the following parties:

Plaintiff has rarely served filings on the Office of the Attorney General, since they began extorting him and criminalizing his filings in 2015. Because the criminalization of filings, implicates Fifth Amendment Rights; plaintiff is not able to seek appropriate redress in the Courts on this issue. The OAG attempts to fabricate evidence through discussion of malicious claims, as if they have merit. Seeking qualified language on words in filings to pursue irrational legal theories. The indelible record of corruption is their ultimate undoing.

Date: September 10th, 2018

/s/ Jason Kokinda-308

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