# UNITED STATES DISTRICT COURT
# FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| Jason Kokinda,<br>Plaintiff, | : | **CIVIL ACTION** |
| | : | |
| vs. | : | Case No. 2:16-cv-01303 |
| Pennsylvania Department of Corrections, et al.<br>Defendant(s), | : | |

## MEMORANDUM IN SUPPORT OF OBJECTIONS TO BOGUS (ECF 173) R&R

## I. INTRODUCTION

### A. The R&R is Malicious on its Face

1. All the public needs to know is that the Federal Courts are profiting off mass incarceration and have a mutual benefit to deny prisoner civil rights. They are selling bonds on the stock market and filling their coffers when any prisoner is convicted. They use the revenue to build million-dollar offices and hire more underlings to kiss their asses and do them sexual favors. The entire West Virginia Supreme Court was recently impeached for this same corruption.

2. The R&R is a joke. It concludes that there is no more than a scintilla of evidence to suggest that the allergy symptoms were chronic and serious. Contrary to law, it gives no credence to anything reported by Mr. Kokinda in the prison or logical inferences from the confirmed IgE allergy.
3. It concludes that Byunghak Jin is a doctor and that weighing Mr. Kokinda and telling him to impossibly avoid soy is debatable medical advice that would indemnify him even if Mr. Kokinda died from anaphylaxis. Mr. Kokinda ridiculously needs an expert report filed in the state court (now time-barred) to detail how Dr. Death (AKA Byunghak Jin) failed to oblige a common-sense duty of providing any treatment or symptom-related diagnostics.
4. The underlying theme in all of Mr. Kokinda's litigation is that the corrupt officials can say whatever they want without evidence or consideration for logically applying comprehensive principles of law. The Courts will file an amicus brief in agreement and break every rule in the book to treat Mr. Kokinda like a nobody by even changing the record to hide the Truth.

## II. SCOPE AND STANDARD OF REVIEW

"Fed. Civ. R. P. Rule 72 requires a district judge to review objections to a magistrate's Report and Recommendation '**de novo'** on dispositive matters; and to review claims under '**clearly erroneous**' standard, if they are non- dispositive in nature. The local rule is the same, requiring filing of written objections in fourteen(14) days." Since the false magistrate is lawlessly attempting to dismiss all the claims and defendants, ***de novo*** applies.

## I. DISCUSSION

### A. Mr. Kokinda's Motion for Summary Judgment Was Ignored

1. Objection #1: Mr. Kokinda's Motion for Summary Judgment (ECF 158-160) should have been **GRANTED IN FULL** and is thus incorporated herein by reference. It Is the correct statement of material facts and law, especially when considered together with 8/14/18 Affidavit of Mr. Kokinda.
2. Objection #2: The R&R accepts the Defendants' arguments **book and verse** as the sum conclusion without any evidence or logical legal reasoning.
3. The R&R is not a judicial decision because it wholly ignores Mr. Kokinda's filings and sustains the Defendants arguments in a

*vacuum*. Constructively denying a litigant access to the court in such a manner is no different than the case of denying Dred Scott access because he was an African. *See Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). The presumption is that Mr. Kokinda is a nobody and has no means of enforcing his rights and obtaining justice.

4. SUMMARIZING THE STRENGTH OF MR. KOKINDA'S CASE

Mr. Kokinda has an IgE soy allergy that was known to the DOC since June 2, 2010.[1] All IgE soy allergies like Mr. Kokinda's can potentially lead to life-threatening anaphylaxis even if the current symptoms are not visible.[2] The prison writes nonsense policies that are never adhered to no matter how clear.[3] 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.[4] Chronic diarrhea, nausea, acid reflux, myalgia, medication-

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[1] *See* ECF 127, Appendix CounterExhibits, Exhibit-D, Pg. 101

[2] *See* Exhibits-A, B, attached hereto, and *Jackson v. Gordon*, CIVIL NO. 3:03-CV-1725, U.S. Dist. Ct. M.D. Penn. (Feb. 24, 2014), outlining the former convoluted policy in place during Mr. Kokinda's incarceration for all diets.

[3] *See* Statement of Material Facts, ECF 160, ¶33-34.

[4] *See Helling v. McKinney*, 509 U.S. 25 (1993) (Strong holding by the U.S. Supreme Court that even exposing prisoners to second-hand smoke by double celling can violate the Eighth Amendment when considering the future risk to their health).

intolerant hypertension, and just about any other treatable malady that would require medical treatment, all become severe over weeks and years. In lawsuits nationwide, prisons are admitting to high-concentrations of soy in their diets.[5] The Defendants now admit that they lied to Mr. Kokinda regarding the soy content as a non-medical reason to deny him proper diet. The Defendants have not produced any evidence regarding the soy content of the prison diet.[6] The fake magistrate concludes that Byunghak Jin can tell Mr. Kokinda to impossibly "avoid soy," verify that he was denied a soy allergy in the past because there is no soy in the hamburger, ignore the severe symptoms, refuse to schedule further appointments, and was at best *negligent* under a malpractice claim.[7]

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[5] ***See*** *Harris et al. v. Brown, et al.*, Case No. 3:07-cv-03225, (Central Dist. Ill.) 3:07-cv-03225-HAB # 477 Page 7 of 17, Defendants and Plaintiffs both accept range to be 53 to 72 soy protein grams per day. Statement of Material Facts, ECF 160, ¶11.

[6] *See* ECF 93 Motion to Compel Discovery ¶8-14. Mr. Kokinda has testimony and records regarding soy content that fits his proven allergy, described symptoms, and the national paradigm. *See* attached 8/14/18 Affidavit of Mr. Kokinda at ¶1., 5, 7-11, 13, and n.5 above.

[7] *See* ECF 160 Appendix, Exhibit-A, pgs. 12-13, Exhibit-I, pgs. 33-34

## B. The Defendants Are Held to No Burden of Proof in Demonstrating a Lack of Opposing Evidence Beyond a Scintilla or Metaphysical Doubt

STANDARD AND SCOPE OF REVIEW

The burden of proof is on Defendants to demonstrate that there is no *prima facie* case against them and no material evidence in opposition beyond a scintilla or metaphysical doubt.[8] *See also Pearson v. Prison Health Service*, No. 16-1140, (3d Cir. 2017) citing *See Bushman v. Halm*, 798 F.2d 651, 661 (3d Cir. 1986) (noting that in "the absence of any contrary medical evidence, plaintiff's sworn testimony must be taken as true for purposes of creating a fact issue.").

DISCUSSION

1. Objection #3: The burden was on the Defendants to prove that there was nothing greater than a scintilla of evidence to support Mr. Kokinda's claims. However, it is the Defendants who cannot present one scintilla of evidence whatsoever in support of their defenses. Mr. Kokinda has support from three doctors. The Defendants failed to

[8] *See Coltex v. Catrett*, 477 U.S. 317, 323-324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)

test or treat Mr. Kokinda and fail to cite any medical evidence to dispute the seriousness of his chronic IgE allergy symptoms.

(a) In fact, the sole evidence for their defenses are immaterial one page-long, evasive, uncorroborated, self-serving, and boilerplate affidavits of Byunghak Jin and Margaret Gordon.[9] The R&R also recites the arguments of their attorneys as if evidence, as if sworn testimony and facts of record. On top of this, the Magistrate treats the Defendants as if *pro se* litigants and develops claims on their behalf that were waived by failure to argue them.

5. The Defendants have zero relevant evidence to present to a jury for a defense. The Magistrate has not written a decisive and balanced R&R but rather a conspiratory *amicus* brief on their behalf.

6. Objection #4: Objection #4: The R&R uses boilerplate language to suggest tests, treatment, screenings, and all sorts of legitimate medical attention were given. There is no evidence that anything done at all by Dr. Death was remotely related to diagnosing, validating, or treating the symptoms described. The Medical Records

[9] *See* ECF 119 Exhibit 1 and ECF 106-1, Exhibit 5 pgs. 26-27.

simply reflect that Mr. Kokinda was denied a soy-free diet for non-medical reasons and had a history of hypertension for which there is no reason listed concerning discontinued medication. The grievance records reflect that this denial of care included refusing to see Mr. Kokinda even when he requested Sick Call. The grievances reflect that Mr. Kokinda was lied to and given no help whatsoever for the chronic symptoms that can reasonably be inferred from his IgE verified diagnosis and high soy content of prison diet and sodium in commissary diet.[10] Today, Mr. Kokinda does not have hypertension nor any symptoms, and only suffered them during and as a direct result of his unconstitutional conditions of confinement.[11]

(a) The R&R uses circular logic. It claims that <u>because the Defendants failed to make a sufficient depth of records on Mr. Kokinda's serious soy allergy</u> in the prison that <u>they could not have drawn the belief he had a *bona fide* soy allergy</u> from the records (which consistently noted

[10] *See* ECF 160, Mr. Kokinda's Statement of Material Facts, ¶10., ¶12-15
[11] *See* R&R, ECF 173, Pg. 13, "After taking vital signs, including blood pressure of 120/80, weight of 226, Dr. Lazarovich reported an allergy skin test positive to soy and wrote a prescription for an Epi-Pen." See also, 8/14/18 Affidavit of Mr. Kokinda, ¶14.

his SOY ALLERGY)[12] and are therefore absolved. They are absolved by being *deliberately indifferent* and denying him all access to health care for obvious non-medical reasons.

**C. The False Magistrate Fabricates Facts**

1. Objection #5: The R&R uses one critical big fat LIE to undermine all of Mr. Kokinda's Eighth Amendment claims.

   (a) It truncates the list of SERIOUS CHRONIC symptoms he was suffering for years of diarrhea, nausea, difficulty breathing, myalgia, abdominal pains, swelling, indigestion, acid reflux, medication-intolerant hypertension, and then fraudulently states that they were only "occasional" and thus not serious.[13] These are warning symptoms listed in Exhibits-A,B (attached hereto) of serious allergic reactions that can become even more serious and life-threatening at any time.

2. On pg. 22 of ECF 173, the false magistrate also states, "Other than Mr. Kokinda's own vague assertions and self-diagnoses, the record

[12] *See* ECF 47, Motion in Opposition, Exhibit-D

[13] *See* ECF 173, Pg. 10 (The R&R does not cite where this statement is found in the record because it is fabricated). *See* evidence of Statement of Material Facts, ECF 160, ECF ¶13. in comparison.

evidence indicates he received appropriate treatment and regular medical screenings." This is the most malicious thing ever written.

(a) There is nowhere in the record where Mr. Kokinda received any treatment for his soy allergy and symptoms from Byunghak Jin, nor that he received any medical screenings. These two so-called screenings were to check Mr. Kokinda's weight and tell him that he should just continue to suffer his chronic symptoms described in questionnaire.[14]

(b) The symptoms described by Mr. Kokinda were very specific, correlate with his current diagnosis, and must be accepted as true.[15] By contrast, the so-called diagnosic process of Byunghak Jin is an obvious ruse that is facially-illogical and therefore fails to descend to specific details.

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[14] *See* attached Affidavit of Mr. Kokinda, ¶4.

[15] *See* Statement of Material Facts, ECF 160, ¶13., citing App., Exhibit-G, Pgs. 30-32; *See also Pearson v. Prison Health Service*, No. 16-1140, (3d Cir. 2017) citing *See Bushman v. Halm*, 798 F.2d 651, 661 (3d Cir. 1986) (noting that in "the absence of any contrary medical evidence, plaintiff's sworn testimony must be taken as true for purposes of creating a fact issue.").

(c) The case-law requires that different standards be applied in a case of "denied or delayed care" to determine whether they were for non-medical reasons.[16]

(1) Here, the advice of Byunghak Jin was illogical on its face in light of Mr. Kokinda's reported need to avoid salt for his medication-intolerant hypertension and the forced reliance on commissary in avoiding the large volumes of soy in the prison diet.[17]

3. Objection #6: The corrupt magistrate helped the Defendants stonewall Discovery and threatened Mr. Kokinda with sanctions for citing express violations of the Discovery rules.[18] The fake magistrate now gives conclusive weight to Margaret Gordon's testimony regarding soy

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[16] *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.

[17] *See* R&R ECF 173, n.6, Mr. Kokinda's hypertension had escalated after an increased intake of salt from foods in what is reasonably inferred as the Commissary summer pack, see 8/14/18 Affidavit of Mr. Kokinda, ¶12.

[18] *See* ECF 120, Objection #2

content of prison diet even though it is evasive and reveals that the Defendants had lied about soy before to deny diet for non-medical reasons and obstruct further visits on issue.[19] The testimony is evasive and supported by absolutely no evidence. The greater evidence is the fact that the majority of prisons nationwide are being sued for high soy diets and admitting to high soy content for cost-savings and that Pennsylvania is no different.[20]

**D. The False Magistrate Absurdly Broadens the Concept of Professional Judgment to Include Anything Done by Dr. Death**

1. Objection #7: The R&R has refused to consider the obvious signs that the pretences of Byunghak Jin were a subterfuge to injure Mr. Kokinda with impunity and cover up for his colleagues:

(a) The advice to avoid soy was illogical and pretextual in the circumstances.

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[19] *See* ECF 106-1, Exhibit 5 pgs. 26-27

[20] ***See*** *Harris et al. v. Brown, et al.*, Case No. 3:07-cv-03225, (Central Dist. Ill.) 3:07-cv-03225-HAB # 477 Page 7 of 17, Defendants and Plaintiffs both accept range to be 53 to 72 soy protein grams per day. Statement of Material Facts, ECF 160, ¶11.

(b) Jin's wife is a lawyer who plainly instructs him in fabricating indemnification loopholes that save the prison money at the expense of prisoners.

(c) Jin refused to reschedule Mr. Kokinda for a visit after submission of questionnaire, in spite of Mr. Kokinda grieving the issue heavily.

(d) Mr. Kokinda suffered many other retaliations and abuses in the same vein that are being whitewashed and obstructed by the corrupt judges in this case. (*See* all cases filed in this Court, *generally*)

(e) Mr. Kokinda's weight had nothing to do with his symptoms.

(f) Without reference to Mr. Kokinda's former appearance, it would be impossible to say he was not swollen from soy allergy.

(g) The medical records would not provide any basis for a medical decision because the diet was formerly denied for non-medical reasons (i.e., the lie that there is no soy in the hamburger).

(h) The prison was making nearly one hundred dollars a week off Mr. Kokinda's forced commissary purchases.[21]

[21] *See* ECF 160, Statement of Material Facts, ¶12.

(i) Mr. Kokinda had explicitly documented in grievance and request slips that Byunghak Jin was trying to fabricate loopholes by having him fill out questionnaire and doing nothing to treat serious symptoms described.[22]

2. In *Pearson* supra above, the Third Circuit has spelled out the difference between medical malpractice and "deliberate indifference." When a so-called doctor **provides no treatment**, this is absolutely "deliberate indifference," especially if his advice is not even logical and medical in nature but pretextual in the circumstances. Here, there is even evidence that Byunghak Jin refused to see Mr. Kokinda again. There is no rescheduling despite many grievances on issue.[23]
3. The R&R is about as corrupt as you can get. Mr. Kokinda didn't go to Sick Call because he was anorexic. The weighing of Mr. Kokinda and subjectively looking at him are mere pretences of care.
4. The prison medical staff have a responsibility to make continual reassessments of care required. They cannot wholly rely on the

[22] *See* ECF 160, Appendix, pg. A.34
[23] *See* ECF 160, Mr. Kokinda's Statement of Material Facts, Appendix, at A.10-A.22.

records that denied Soy Allergy accommodation for non-medical reasons that were likewise pretextual and malicious (the now admitted lies that the hamburger had no soy in it).[24]

1. Objection #8: In *Helling v. McKinney*, 509 U.S. 25 (1993) the U.S. Supreme Court firmly held that "deliberate indifference" to the risk of developing serious illness in the future from even multiple issues of confinement is a form of **cruel and unusual punishment**. Here, the Defendants consciously took the risk of Mr. Kokinda developing even more serious injuries by acting "deliberately indifferent" towards his long-reported allergy and medication-intolerant hypertension symptoms.
2. Mr. Kokinda spelled out how he was suffering after Dr. Death's advice to "avoid soy," with no intervention to remedy the hypertension medication-intolerance and the inability to avoid soy triggering other serious symptoms.[25]

   (a) Dr. Death's advice was wholly illogical and sadistic, in light of Mr. Kokinda's long-documented reports and the extenuating

[24] *See* ECF 160, Pg. 11
[25] *See* ECF 160, Mr. Kokinda's Statement of Material Facts, ¶10., ¶12-15

circumstances of no longer being able to sustain himself even on commissary diet because of medication-intolerant hypertension intensifying from high sodium in commissary diet. It is illogical to compare it with the advice of Dr. Lazarovich in a free world situation where soy and salt can be avoided.[26]

(b) Although it is the subject of a separate grievance and separate lawsuit in U.S. Dist. Ct. W.D., 2:17-cv-217, *Kokinda v. Penn. Dep't. Corr.*, the denial of Dr. Death like the denials before him, altogether collaterally led to Mr. Kokinda starving for more than ten days in the RHU without access to commissary and suffering severe pain, exhaustion, and psychological trauma. The changed situations of this put the burden on Elon Mwaura PAC, a separate defendant, to reassess the facts under a new factual situation. It is pled that Mr. Kokinda was similarly retaliated against under pretextual reasons for gathering affidavits in support of his litigation to set up this injury.

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[26] *See* ECF 173, Pg. 17, "Dr. Lazarovich simply concluded that "[s]oy should be avoided." (ECF No. 106-1 at 33). This echoes Dr. Jin's conclusion: Mr. Kokinda should "avoid soy product." (ECF No. 106-1 at 5)."

3. As stated above, the R&R doesn't recognize nor discuss that the denial of medical care was retaliatory and pretextual like the many other denials of care and retaliations documented by Mr. Kokinda.

   (a) Byunghak Jin's wife is a lawyer.[27] From this fact alone, a jury could infer that his denial of care was pretextual and that he fabricates pretences as grounds for impunity to Federal claims in every situation.

   (b) The soy-diet was denied for non-medical reasons in the records. No one could have given weight to those records as being dispositive and put so much work into obstructing remedy instead of just ordering the diet.

   (c) Weighing Mr. Kokinda and saying he looked healthy without comparing the information to his civilian record is absolutely meaningless. These things also have nothing to do with the chronic symptoms he was complaining about. His face was noticeably

[27] See Mr. Kokinda 8/14/18 Affidavit ¶12.

swollen.[28] The fact that the symptoms described by Mr. Kokinda in attached Exhibit-A, B indicate a soy allergy proves that the two visits were anything but medical and were instead non-medical pretextual refusals of care like those carried out by SCI-Fayette.

(d) The fact that Byunghak Jin ultimately refused to see Mr. Kokinda anymore demonstrates that submitting a Sick Call slips does not guarantee an appointment or any medical attention. The full exhaustion of grievances on this subject removes any excuse for not seeing Mr. Kokinda. It is **impossible** to conclude Mr. Kokinda failed to request Sick Call appointments.[29] He didn't get one till they put him in the RHU in retaliatory assault.

(e) The fake magistrate simply refuses to make inquiry into <u>the full circumstances</u> as required by *Pearson v. Prison Health Service*, No. 16-1140, (3d Cir. 2017). Mr. Kokinda informed Byunghak Jin that he was suffering from medication-intolerant hypertension that was

[28] *See* Exhibit-C (attached hereto) compiling 1st pre-intake photo 2007 at 220lbs., 2nd post-release photo Nov. 3rd, 2015, 180lbs., and 3rd current photo at more than 220lbs.

[29] *See* ECF 160, Mr. Kokinda's Statement of Material Facts, Appendix, at A.10-A.22, A.34

escalating from the high sodium in the prison diet and that the prison diet was full of soy.[30]

(f) The fact that the advice to "impossibly avoid soy" is so illogical and sadistic that no normal person in their right mind would recommend it (in the situation Mr. Kokinda described to Dr. Jin and documented in grievances,) fully removes the possibility of it being anything other than a subterfuge.

**(g)** According to the principle in *Pearson*, Mr. Kokinda's medically supported testimony regarding his symptoms must be accepted as true.[31] All of Mr. Kokinda's filings are sworn, creating abundant testimony of record in support of his serious allergy symptoms.[32]

**E. The False Magistrate Refuses to Comprehend Anything that Supports Mr. Kokinda's Motion for Summary Judgment**

1. Objection #9: The R&R uses the word Epipen® without common knowledge of what an Epipen® is. An Epipen® is only prescribed to

[30] *See Id.* at A.30-A.34

[31] *See* attached 8/14/18 Affidavit of Mr. Kokinda at ¶9.

[32] *See Pearson supra* citing *Bushman v. Halm*, 798 F.2d 651, 661 (3d Cir. 1986) (noting that in "the absence of any contrary medical evidence, plaintiff's sworn testimony must be taken as true for purposes of creating a fact issue.").

prevent fatal anaphylaxis reactions that can occur suddenly with any IgE allergy even if the sufferer previously had less serious allergy symptoms. Failure to draw the reasonable inference that this is why Mr. Kokinda was prescribed an Epipen® is malicious on its face. (See Exhibit-B, Exerpt from Epipen® website).

2. By this principle, it is impossible for Mr. Kokinda to win in any degree. No matter how strong his case, the corrupt courts will simply lie, wholly ignore him, write digressive diatribes, act deliberately obtuse, recite any nonsense posited by the Defendants as if law by reciting them book and verse, slander him as delusional and rambling; decontextualize, fragment, and spin the facts to mean anything; and make up phony standards of law just for him.
3. This takes bureaucratic methods of relief off the table and creates a Wild Wild West anarchist scenario. Any American who is approached by police seeking to arrest him has no choice other than to use lethal force in self-defense to prevent being killed under the color of law. The Courts hold the prisons to no accountability or respect for human life or suffering. All of Mr. Kokinda's appeals fall

into this abyss and disappear as if the violations never occurred. It is not logical to live in such a fascist police state that is clearly operating under martial law and without a constitution. Mr. Kokinda has already been forced to leave the US altogether from the state of anarchy and exceedingly corrupt government.

"if the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States*, 277 U.S. 438 (1928).

4. Having proven that there is no remedy in the Courts, a private commercial lien process would be the only legitimate method for reclaiming debts owed. In this case, the officials are in no manner seeking to uphold their oath of office and are not immune. They are nothing more than compulsive liars.

**F. The False Magistrate Refuses to Discuss Allergy Policy Claims**

1. Objection #10: The Court was required to reconsider cursory dismissals of other defendants and policy-based legal theories pursuant to Fed.R.Civ.P. Rule 54(b) and the law of the case doctrine exceptions, even if this required amendment of Complaint or Case

Schedule Management order. This is because the former adjudications were manifestly erroneous. New evidence was inadvertently discovered and submitted in "good faith" to further strengthen theories that affect the life and death situations faced by all people with allergies. It is in public interest to recognize claims.

2. The R&R refuses to discuss Mr. Kokinda's IgE allergy as a disability even though the ADA was changed to reflect its status as a disability before these events. Considering that the U.S. Supreme Court has recognized **asymptomatic** HIV+ status as a disability for impairing the major life function of reproduction, it is impossible to find any reason to consider that food allergies that are triggered daily without relief or can suddenly become life-threatening at any time are not a disability that impairs the major life function of eating.[33]
3. Mr. Kokinda was under no obligation to amend his Complaint to avoid waiver because he pled sufficient facts underlying it to preserve

[33] *See Bragdon v. Abbott*, 524 U.S. 624 (1998)

the issue and more recently was able to bolster it with newly discovered evidence and additional research.[34]

(a) Nevertheless, he had good cause to amend it with more specific language if necessary. 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.* "

(b) 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

[34] *See* ECF 52 7-28-17 Objections and ECF 50 R&R, "the individual Commonwealth Defendants – Oppman, Stover, DiAlesandro, Vihlidal, and Gilmore – are also liable because they "failed to coordinate" with each other "to ensure that procedures were in place for persons with very common soy allergies, to obtain special soy-free diets, immediately, upon reception." (ECF No. 33 at ¶¶ 7-8).

As quoted from Mr. Kokinda's "All Supplement" (ECF 150): "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)."

> "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).

4. The unlawful denial of Discovery would have made the additional requirements of Fed.R.Civ.P. 16(b)(4) moot because the Scheduling Order would have been altered with sanctions against the Defendants for bad faith conduct in evading Discovery requests.
5. Nevertheless, there is no doubt that the additional "good faith" element would have been met in this instance.[35] But, as with all of Mr. Kokinda's litigation, the Defendants order the Courts to break every

[35] *See Cloud Farm Assoc., L.P. vVolkswagen Grp. Of Am., Inc.,* C. A. No. 10-502-LPS, 2012 WL 3069390, at *2 (D. Del. July 27, 2012); *Venetec Int'l, Inc. v. Nexus Med., LLC,* 541 F. Supp. 2d 612,618 (D. Del. 2008); *see also Eastern Minerals & Chems. Co. v. Mahan,* 225 F .3d 330, 340 & n.18 (3d Cir. 2000) (affirming district court's denial of plaintiff's motion to amend complaint where plaintiff failed to show good cause under Rule 16(b) to modify the scheduling order).

rule in the book and look for any semi-legitimate sophistry to deny relief.

6. Pursuant to the case-law above, it was a **manifest error** to dismiss claims because Mr. Kokinda's original claims were valid and a remand would have allowed for liberal amendment to bolster the claim with the ADA evidence and prison policy research inadvertently discovered.[36] Furthermore, the seriousness of the issue and need to correct it require societal interests to overcome any interests in finality.

   (a) The R&R in this procedural dismissal of several policy-maker defendants cites that the theory was conclusory, even though new

[36] *See* ECF 50 at pg. 10, "The third amended complaint asserts that CCS is liable for its "lack of policy or custom to prevent obvious allergy health risks" by failing "to ensure that prisoners with food allergies/intolerances are immediately accommodated with a proper diet, at reception; and/or tested and diagnosed properly" and failing to provide "proper training, in the absence of policy, to simply follow fundamental and scientific diagnostic methods." (ECF No. 33 at ¶¶ 7-8, 46).8/14/18 Affidavit of Mr. Kokinda, ¶15-16. (*See also*, ECF 160, App., Exhibit-D, pgs. 156-159).

evidence proves that the DOC had agreed and changed the policy itself in 2017.[37]

7. Mr. Kokinda was only allowed trivial amendments in this case. One amendment was a judicial trap which forced him to litigate an *equal protection* claim that hinged on records the Court refused to compel in Discovery.[38] The others were to correct the name of health care provider the Defendants were concealing in bad faith.[39]
8. Objection #11: In his Third Amended Complaint, Mr. Kokinda pled and preserved the fact that the prison did not have a policy in place that would logically eliminate the risk of people with self-reported IgE allergies from being served food that could kill or seriously injure

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[37] *See* former policy at Jackson v. Gordon supra at n.2 above, and new policy in ECF 160, Appendix, at Exhibit-P, Pgs. 130 ¶4., 131 ¶5.
[38] *See* ECF 93, Pg. 10, ¶13. "Judge Mark R. Hornak's entire basis for reversing "failure to plead *equal protection* claims," hinged upon the rationale — that other prisoners on normal blocks had received soy-free diet (most certainly CI's/rats and workers), and not Mr. Kokinda.
(a) It is **extremely prejudicial** that the Defendants are refusing to provide this very specific information, under the **impossible** *conclusion of law* that it is an overlybroad request." (It is now realized that this is part of nationwide problem, however, *See* ECF 160 App., Exhibit-D, pgs. 156-159).
[39] ECF 10, 15, 34, Health Care Provider changed from CORIZON, WEXFORD, CORRECT CARE SOLUTIONS

them nor adequate transparency into allergen content.[40] He had cited the health care provider and supervisors liable who should not be dismissed upon reconsideration.

(a) No matter what the prison's written policies are, they simply do not follow them as written. The only manner of holding them accountable from the risk of deviation is lawsuits like Mr. Kokinda's which are vanity before rogue actors who serve the Lord of Death.

(b) A cruel and unusual punishment occurs when the officials are "deliberately indifferent" to the risk of such a serious injury, not only when it is evident, but also in the future sense that there is a risk of developing it.[41]

(c) All IgE food allergies are serious and have the potential to produce anaphylaxis or to develop serious chronic symptoms in the forced feeding regiment of prisons.[42]

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[40] *See Jackson v. Gordon, supra* at n.2 above
[41] *See Helling v. McKinney supra*
[42] *See* Exhibits A-B, attached hereto

(d) Therefore, the former policy in place during Mr. Kokinda's incarceration was patently unconstitutional by the common-sense foreseeability to create injuries like those incurred herein.

(1) It has the inherent capability of leading to any prisoner's death or serious injury because it does not take the prompt need for accommodations seriously.[43]

(2) The new policy is likewise hollow and should be amended to mandate both IgE skin testing and blood testing for sake of cases where prisoner in intake may not have been yet exposed to the allergen to develop a blood level but requires affirmation to prevent a reaction. Dietary allergen content transparency is necessary.

(3) All this is of course meaningless without fearless civil rights litigants like Mr. Kokinda who do not back down to the bullying campaigns of the Pennsylvania Office of the Attorney General and their cohorts.

[43] *See* discussion of former policy in *Jackson v. Gordon supra*

9. The R&R refuses to reconsider how the formerly dismissed defendants are liable under supervisor liability for the unconstitutional food allergy policy issue.

   (a) Mr. Kokinda preserved this argument and improved upon the theory by bolstering it with ADA standards and new evidence he found of this being a policy problem nationwide. Only a sadistic corrupt excuse for a judge who is in no manner seeking to uphold their oath of office would try to obstruct this claim. How could it possibly be conclusory when the prison itself changed the policy? It doesn't even make sense.

**G. The False Magistrate Uses Incorrect ADA & Equal Protection Standards on Obviated Claims**

1. Objection #12: Mr. Kokinda cited the correct standard in his filings regarding the proper application of equal protection under the ADA. The R&R evaluates the ADA equal protection element standard disjunctively from the ADA claims by using the incorrect general *al carte* equal protection standard. The Third Circuit did not address

equal protection under the ADA but denied a different ADA claim for failure to argue.

2. The R&R merely writes **book and verse** everything the Defendants argued. The fake magistrate holds the Defendants' filings in a *vacuum* by refusing to acknowledge the controlling U.S. Supreme Court precedents cited by Mr. Kokinda in his MSJ Memorandum §§B-C regarding *Georgia* and *Johnson*, and likewise cited in response to their MSJ's.

(a) The discrimination against Mr. Kokinda was inherently due to his allergy, considering that the food allergy policy is unconstitutional and itself discriminatory because it does not mandate the right of people with food allergy handicaps to enjoy equal access to healthy food and medical care.

H. T**he False Magistrate Uses the Same Circular Logic and Lies to Absolve Grego**

1. Objection #13: Nurse Grego is part of the same method of the DOC obstructing the production of records that create accountability for their "deliberate indifference" to serious medical needs and their

systematic policy failures in preventing injury from serious IgE food allergies.

2. Mr. Kokinda was not seen the next day and was then denied accommodations altogether. Nurse Grego was not allowed to explicitly record what Mr. Kokinda said regarding his allergy and immediate need for diet because it is injurious to the Defendants.

(a) Nurse Grego did not create a record of what Mr. Kokinda said, as proof that the records are corrupted by the same principle by other medical staff refusing to document the problems.

(1) They instead ask if a prisoner is okay, besides the chief problems, and fabricate records to make them appear healthy and in good cheer.

(2) Yet, they simultaneously make a note of Mr. Kokinda's soy allergy on cover of records while the whole time being oblivious to it having any meaning at all whatsoever.

(3) The false magistrate, again, mechanically cites the Defendants filings **book and verse** without considering Mr. Kokinda's filings at all. The R&R claims that Mr. Kokinda was present for what is

listed as a "chart review" the following day; in order to undermine the reality that Grego helped delay and obstruct records for recommending treatment.[44]

## I. Monetary Sanctions Should have Been Granted

1. Objection #14: The whole of the Defendants litigation is immaterial and malicious attempts to convolute litigation. The bottom line is that Mr. Kokinda was given the run around and denied relief for his serious IgE allergy problem since day one. He expressed serious symptoms for which there was no symptom-related testing done or treatment given at all by anyone. This is incontrovertibly part of a systematic policy problem that also violates the ADA. The audacity that they would submit a Motion for Summary judgment without any evidence to support it further proves a conspiracy with the false judges and entitles Mr. Kokinda to monetary sanctions and criminal charges against the corrupt actors. The R&R follows the lead of the Defendants by making insane determinations that the symptoms are

[44] *See* ECF 162, Pg. 2 citing the blatant fraudulent representation in ECF 133 Statement of Material Facts filed by Grego.

not severe and that any nonsense is a valid excuse to deny relief with impunity.

**J. The Judges Are Thugs, the Lawyers Just Mug, their Criminal Conspiracy Puts All the Fear in Me:**

1. Objection #15: Any judge who does not believe that Cynthia Reed Eddy and her cohort Mark R. Hornak and their staff attorneys have demonstrated the minimum of deep-seated bias necessary for recusal, obviously is corrupt himself. This R&R and the malicious dismissals of all Mr. Kokinda's meritorious litigation demonstrates the unilateral evidence of corruption cited as an example in *Liteky infra*.

   (a) Although Mr. Kokinda may be granted procedural niceties in the same manner Byunghak Jin makes pretences of medical care, the overall design in their minds is to deny Mr. Kokinda substantive relief and fabricate records full of false excuses to do so. They are becoming more vulgar in their displays of

corruption because their ongoing retaliations outside the courts have failed to solve their mutual problem.[45]

(b) Anyone who would help the DOC whitewash, torture, and facilitate the path to torture and kill more people is a sadistic monster with no conscience. Such a person would chop the head off a baby for a bribe.

**K. The R&R Contains Far More Errors than Can Logically be Briefed and Requires Recusal**

7. Objection #16: Mr. Kokinda generally objects to any other adversarial conclusion implied or inferred in the bogus R&R. The R&R is malicious on its face and attempts to make it impossible to brief huge errors that are relevant to many cases. Citation to this

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[45] *See* Pearson *supra* at n.10, citing *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 162 (3d Cir. 1993)(holding that a judge should disqualify himself s*ua sponte* in a proceedings where deep-seated bias is demonstrated by stereotyping *pro se* litigation as frivolous). *See also Jackson Hewitt, Inc. v. National Tax Network, LCC*, 2012 U.S. Dist. LEXIS 59162 (D.N.J., April 27, 2012) ("in the absence of extrajudicial bias, a party seeking recusal must show that a judge has a deep-seated and unequivocal antagonism that would render fair judgment impossible' to obtain recusal." *Meza-Role*, 2011 U.S. Dist. LEXIS 69503, 2011 WL 2579884, at *2 (citing *Liteky v. United States*, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 127 L.Ed.2d 474 (1994)(deep-seated bias warranting recusal demonstrated when a judge holds unilateral proceedings that agree with one party all the time, citing insurance company as an example).

memorandum as evidence proves a total lack of due process and no desire by the fake officials to uphold their oaths of office.

**SWORN STATEMENT TO THE FOREGOING FACTS**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of August, 2018. /s/ Jason Kokinda 3208

## III. CONCLUSION

**THEREFORE**, for each of the foregoing reasons, Mr. Kokinda has provided sufficiently specific counter-evidence to remove any chance of ambiguity or error in reviewing these claims *de novo*. His Motion for Summary Judgment must be granted in full. The Defendants should be assessed with monetary sanctions and the magistrate Cynthia Reed Eddy recused *sua sponte* from all litigation concerning Mr. Kokinda for blatant deep-seated bias. The only reason for denying relief would be that the judges fear retaliations from the Penn. OAG, reprimand from corrupt

superiors and/or have other personal monetary incentives contingent upon denying relief such as promotions or bribes.

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: August 15th, 2018 /s/ Jason Kokinda acct-308

Authorized Representative

## PROOF OF SERVICE

Date: August 15th, 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: August 15th, 2018

/s/ Jason Kokinda acct-308

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