

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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2007

**FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)**

07CV6077 Lfe

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

**1. CAPTION OF ACTION**

**A. Full Name And Prisoner Number of Plaintiff:** *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. JOHNATHAN JOHNSON  
2. ~~XXXXXXXXXX~~

-VS-

**B. Full Name(s) of Defendant(s)** *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. B. CONNALLY-Doctor 4. Johnathan Nurse-Smith  
2. JOHN ALVES-Doctor 5. JOHN BURGE-Superintendent  
3. Nurse-miles 6. Several John + James Does of  
Dr. Lucien Leckie Jr. 7. Classification and Placement  
Brian Fischer

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Johnathan Johnson  
Present Place of Confinement & Address: Upstate Correctional Facility  
P.O. Box 2001 Malone New York 12953

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: B. CONNOLLY / Smith / Atkinson / Mullerhill

(If applicable) Official Position of Defendant: Doctor / nurse / nurse / nurse

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: Upstate Correctional Facility P.O. Box 2001 - Malone, New York 12953

Name of Defendant: JOHN ALVES / Nurse Miles

(If applicable) Official Position of Defendant: Doctor

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: Elmira Correctional Facility P.O. Box 500 Elmira New York 14902

Name of Defendant: JOHN Burges /

(If applicable) Official Position of Defendant: superintendent of Elmira

(If applicable) Defendant is Sued in ☒ Individual and/or ☐ Official Capacity

Address of Defendant: Elmira Correctional Facility P.O. Box 500, Elmira New York 14902

#### 4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): JOHNATHAN JOHNSON

Defendant(s): State of New York

2. Court (if federal court, name the district; if state court, name the county): Court of Claims

Albany New York 12224

3. Docket or Index Number: 113075

4. Name of Judge to whom case was assigned: Unknown

# DEFENDANT'S INFORMATION

Name of Defendant: Lucien LeClair Jr.  
Official Position: Acting Commissioner of DOCS  
Defendant is sue in: Individual Capacity  
Address of Defendant: State of New York Department of Correctional Services - 1220 Washington Ave  
State Office Campus Building Albany NY 12226

Name of Defendant: D.O.C.s Classification and movement employee JOHN-N-June Does  
Official Position: Classification and movement  
Defendant is sue in: (Individual) and (Official) Capacity  
Address of Defendant: Department of Correctional Services  
1220 Washington Ave. Albany New York 12226

Name of Defendant: Brian Fischer  
Official Position: Acting Commissioner of DOCS  
Defendant is sue in: Individual Capacity  
Address of Defendant: State of New York Department of Correctional Services - 1220 Washington Ave.  
Albany New York 12226

5. The approximate date the action was filed: November 30, 2006

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun **any other lawsuits** in **federal court** which **relate to your imprisonment**?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. District Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☒

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

\_\_\_\_\_ Dismissed (check the box which indicates why it was dismissed):

- \_\_\_\_\_ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- \_\_\_\_\_ By court for failure to exhaust administrative remedies;
- \_\_\_\_\_ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- \_\_\_\_\_ By court due to your voluntary withdrawal of claim;

\_\_\_\_\_ Judgment upon motion or after trial entered for

- \_\_\_\_\_ plaintiff
- \_\_\_\_\_ defendant.

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## 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

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## Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

**A. FIRST CLAIM:** On (date of the incident) November 16, 2006  
defendant (give the **name and position held** of each defendant involved in this incident) B. Connolly  
Doctor, John Alres, doctor, Nurse miles, and  
JOHN Burger Superintendent  
did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

See annexed page  
5(a)

The constitutional basis for this claim under 42 U.S.C. § 1983 is: deliberately indifference  
to medical needs - retaliatory U.S. Const. Amend 8  
The relief I am seeking for this claim is (briefly state the relief sought): Injunction relief  
and money damages compensatory and punitive  
damages

**Exhaustion of Your Administrative Remedies for this Claim:**


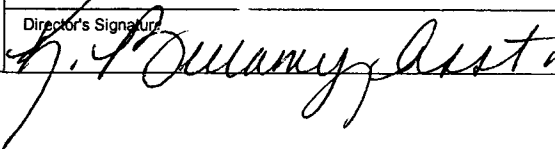
Did you grieve or appeal this claim? X Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what was the result? (see) Annexed  
Grievance complaint Ust-28903-06  
Did you appeal that decision? X Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what was the result? See annexed

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: ~~Ø~~

**A. SECOND CLAIM:** On (date of the incident) November 13 and 16, 2006  
defendant (give the **name and position held** of each defendant involved in this incident) JOHN W.  
Burger Superintendent of Elmina Correctional  
Facility Brian Foster, Lucien Leclair etc.

Johnson, J 89A1642

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES  INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Grievance Number UST-28903-06	Desig./Code I/22	Date Filed 11/20/06
	Facility Upstate Correctional Facility		
	Title of Grievance Transferred Medications Not Forwarded		
	Director's Signature 		Date 1/24/07

1/24/07

**GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART**

Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

With regard to the grievant's appeal, CORC notes that the physician reviewed the grievant's medical records and ordered the prescriptions.

CORC asserts that, consistent with Health Services Policy Manual Item #1.21 - Health Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care.

CORC advises the grievant to address any further medical concerns through facility sick call procedures.

JH/rp

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JAN 31 2007

# FACTS [First Cause of Action]

- a) On November 16, 2006 Plaintiff were transfer from Elmira Correctional Facility to Upstate Correctional Facility. Plaintiff's is prescribed by Doctor (John Alves) numerous prescription medications to date.
- b) Nurse (Niles) is the assigned Nurse at Elmira Corr. Facility special housing unit on November 15, 2006 And is responsible ~~for~~ for the transfer medications that was never forward with plaintiff's on November 16, 2006, to date.
- c) Plaintiff had informed nurse (Niles) on or about November 16, 2006, that he was being transfer from Elmira Correctional. And to make sure that all his prescription medications are transfer with him.
- d) Nurse (Niles) contended that he would make sure that the medication are transfer with plaintiff.
- e) When Plaintiff arrived at Upstate Corr. Facility none of the plaintiff's medication were transfer with him for his allergy to water, skin problem milk allergic etc. to date.
- f) Plaintiff had informed Nurse (Atkinson) and Nurse (Mulvihill) and administrative nurse (Smith) of Plaintiff allergic to water on his face, skin problem etc. Whom all refused to administered the prescription medications prescribed at Elmira and Southport Corr. Facility by Doctor (Alves).
- g) Doctor (Connolly) contended that the prescription medications are not indicated within plaintiff's medical chart and nurse (Smith) also to agree.



- H) To date Doctor (Connell) has discontinued ALL allergic prescription medications prescribed to Plaintiff from Elmira correctional facility.
- I) Plaintiff to date is having problem (breathing) from the lack of sinus spray etc. And lead doctor
- J) Plaintiff's (face) is (disfigurement) from the lack of medications for his allergy to water. And (burning) and (painful) each and everyday to date.
- K) Plaintiff is (weak) and (dizzy) for the lack of proper vitamins multi. to date
- L) Plaintiff's (skin) on his face is (swollen) and has (hives) without the proper skin medications to date.
- M) These ailments are brought to nurses (Atkins) and (Mulvihill) and (Smith) continuously everyday to date. The (pains) and difficult (breathing)

## SECOND CAUSE OF ACTION

- (a) ON November 13, 2006, Plaintiff were thrown on with (fleeces) by an inmate that locked in Elmira Corr. Facility Special Housing Unit (19 Cell).
- (b) This incident occurred during plaintiff's schedule showers.
- (c) ON November 13, 2006, plaintiff wrote a letter to (John Burge) informing him that (video tapes) footage was requested to be preserved for prior lawsuit for the fleeces throwing incident.
- (d) On November 15, 2006, Superintendent, (C. W.

3) (e) Came threw Special Housing Unit and told Plaintiff that he was getting Rid of him for him getting ready to file his lawsuit for the November 13, 2006 incident.

e) On November 16, 2006 plaintiff was transfer by Van with two prison guards to Upstate Correctional Facility. To date as a retaliatory transfer.

f) That retaliatory transfer request was submitted by Superintendent (Burge) to one of the Acting Commissioner's (Luellen Leclair Jr) or (Brian Fischer) Acting Commissioner.

g) Whom subsequently submitted that order to the (John) or (Gale) Does, who are in charge of the Department of Correctional Services Classification and movement.

h) Whom ~~had~~ had plaintiff transfer from Elmina Correctional Facility on November 16, 2006, 350 miles or more from family and friends to the Upstate Correctional Facility amongst plaintiff's many enemies gang members. After plaintiff was transfer from Upstate Correctional Facility. Because of the threats made by numerous gang member to plaintiff in 2006, at this present facility plaintiff is housed at present.

i) And are force to have to be placed on the visit room with these enemies to date here at Upstate Correctional Facility. As plaintiff is in immediate (danger) of being attacked by these gang members and no visit - weekend with his family etc.

S (c)

did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

See annexed pages  
5(B)

The constitutional basis for this claim under 42 U.S.C. § 1983 is: U.S. Constitutional Amendment First and Eight Amendment

The relief I am seeking for this claim is (briefly state the relief sought): Money damages punitive damages / Injunctive Relief

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? X Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what was the result? \_\_\_\_\_

Did you appeal that decision? X Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what was the result? None (See) annexed  
Grievance Complaint US 28905-06

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

**If you have additional claims, use the above format and set them out on additional sheets of paper.**

**6. RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above.*

money damages  
Compensatory \$250,000.00 [first] Cause of Action  
punitive damages \$250,000.00 [first and second]  
Injunctive Relief [first and second Action]

Do you want a jury trial? Yes X No \_\_\_\_\_

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on 2/7/07  
(date)

**NOTE:** *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Paul Li Rose  
Johnathon Johnson 89A104K

Signature(s) of Plaintiff(s)