

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN 27 2022

JEFFREY P. COLWELL
CLERK

Civil Action No. 1:22-cv-01312-GPG
(To be supplied by the court)

LARON ANTONIO DONALD, Plaintiff

v.

Jury Trial requested:
(please check one)

XX Yes No

DR. DOUGLAS L. PEARSON, DENTIST,

WARDEN MARK FAIRBAIRN,

LINDSAY GOUTY, H.S.A.,

DR. MICHAEL HALE, CHIEF OF DENTISTRY, Defendant(s).
(see attached)

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

Defendants continued...

Michelle Brodeur, Director of Clinical and Correctional Services,
Christopher Maul, Chief Medical Officer,

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

LaRon A. Donald #166995, 12750 Hwy., 96 at Lane 13 Ordway, CO 80134

(Name, prisoner identification number, and complete mailing address)

N/A

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☒ Convicted and sentenced state prisoner

☐ Convicted and sentenced federal prisoner

☐ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Dr. Doug Pearson, Dentist, Arkansas Valley Correctional Facility
(Name, job title, and complete mailing address)

12750 Hwy., 96 at Lane 13 Ordway, CO 81034

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ☐ No (check one). Briefly explain:

Dr. Doug Pearson is responsible for assessing the dental needs of inmate patients and insuring that appropriate medical care is rendered to them.

Defendant 1 is being sued in his/her ☒ individual and/or ☒ official capacity.

B. DEFENDANT(S) INFORMATION

Defendant 4: Dr. Michael Hale, Chief of Dentistry, Colorado Department of Corrections 1250 Academy Park Loop, Colorado Springs, CO 80910

At the time the claim(s) in this complaint arose, this defendant was acting under the color of state or federal law.

Dr. Michael Hale is responsible for assessing the dental needs of inmate patients and insuring that appropriate medical care is rendered to them. Also the supervision and training of all dental staff.

Defendant 4 is being sued in his individual and official capacity.

Defendant 5: Michelle Brodeur, Director of Clinical and Correctional Services CDOC 1250 Academy Park Loop, Colorado springs, CO 81034

At the time the claim(s) in this complaint arose, this defendant was acting under the color of state or federal law.

Michelle Brodeur is responsible for the adequate training and supervision of all CDOC staff. Also making them aware that they are obligated to immediately respond with appropriate action if they observe inmates with serious needs.

Defendant 5 is being sued in her individual and official capacity.

Defendant 6: Christopher Maul, Chief Medical Officer, Colorado Department of Corrections 1250 Academy Park Loop, Colorado Springs, CO 80910

At the time the claim(s) in this complaint arose, this defendant was acting under the color of state or federal law.

Christopher Maul is responsible for assessing the medical needs of inmate patients and insuring that appropriate medical care is rendered to them. Also the supervision and training of all CDOC medical staff.

Defendant 6 is being sued in his individual and official capacity.

Defendant 2: Mark Fairbairn, Warden, Arkansas Valley Correctional Facility
(Name, job title, and complete mailing address)

12750 Hwy: 96 at Lane 13 Ordway, CO 81034

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No (*check one*). Briefly explain:

Warden Fairbairn is responsible for the adequate training and supervision of all staff at the facility. Also making them aware that they are obligated to immediately respond with appropriate action if they observe inmates with serious needs.

Defendant 2 is being sued in his/her XX individual and/or XX official capacity.

Defendant 3: Lindsay Gouty, H.S.A., Arkansas Valley Correctional Facility
(Name, job title, and complete mailing address)

12750 Hwy. 96 at Lane 13 Ordway, CO 81034

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No (*check one*). Briefly explain:

Lindsay Gouty is responsible for assessing the medical needs of inmate patients and insuring the appropriate medical care is rendered to them. Also the supervision and training of all medical staff.

Defendant 3 is being sued in his/her XX individual and/or XX official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

XX 42 U.S.C. § 1983 (state, county, and municipal defendants)

___ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
(federal defendants)

___ Other: (please identify) _____

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

Defendant Douglas L. Pearson was deliberately indifferent as he failed to provide medical treatment for Plaintiff's serious medical
CLAIM ONE: needs in violation of the Eighth Amendment of the U.S. Constitution

Supporting facts: Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

1. Plaintiff LaRon Donald is and was an inmate within the Colorado Department of Corrections, confined at the Arkansas Valley Correctional Facility in Ordway, Colorado. In April of 2021 he began to experience increased sensitivity and discomfort in his teeth.

2. On 4-17-21, Plaintiff submitted a "Request for Sick Call" to Defendant Pearson stating "need for repair from grinding while sleep and cleaning. Possibly a couple fillings". see exhibit(ex.)1

3. Under the Eight Amendment, "prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates'". Farmer v. Brennan, 511 U.S. 825, 832(1994)(quoting Hudson v. Palmer, 468 U.S. 517, 526-27(1984)). Defendant Pearson is obligated by this standard.

4. On 5-3-21 Plaintiff received an appointment to the dental clinic where x-rays were taken and he verbally told Defendant Pearson about the discomfort and sensitivity he was experiencing.

5. Defendant Pearson diagnosed Plaintiff as having "a number of dental needs, among which were a few teeth with early routine decay needing feelings...". see ex.10 Plaintiff was told he'd receive treatment on a later date. Plaintiff did not receive any treatment whatsoever during this visit.

6. Defendant Pearson scheduled a dental appointment for Plaintiff about 14 weeks later in August of 2021.

7. During the dental appointment in August of 2021, Plaintiff told Defendant Pearson that the discomfort he had previously endured had transformed into very severe pain each time he would eat or drink.

8. During this appointment Plaintiff informed Defendant Pearson that the 17 year old filling in his front tooth was worn down and loose so he asked that it be refilled. Defendant Pearson denied the request but offered to file down the rest of Plaintiff's tooth to match the worn state of the existing filling.

9. During this visit Defendant Pearson performed a quick examination of Plaintiff's teeth and stated, "your cavities can go longer before I'm going to fill them".

D. STATEMENT OF CLAIMS

10. Defendant Pearson told plaintiff that he does not clean teeth at all.

11. Defendant Pearson told Plaintiff that he would not provide him with a mouth guard and that it was up to Mr. Donald to wake up during sleep to stop himself from grinding his teeth.

12. During the August 2021 appointment Plaintiff verbally begged Defendant Pearson to please fill the tooth cavities that were giving him the most pain at that time. see Ramos v. Lamm, 639 F.2d 559, 566(10th Cir. 1980)(extending the right to avoid deterioration established in Battle to medical care context) Defend Pearson refused to do so.

13. Defendant Pearson had deliberately left another inmate's namely Tyler Johnson, degenerative cavities untreated around the same time that he denied Plaintiff any treatment.(see ex.28) As a result, inmate Tyler was subjected to an unnecessary and wanton infliction of pain, so Defendant Pearson was well aware of the infliction of severe pain that Plaintiff was facing.

14. Defendant Pearson did inform Plaintiff that he noticed a wisdom tooth coming in so if Mr. Donald put in another medical kite, he could request that it be pulled even though it was not giving him any pain or discomfort. This statement gave credence to what others had told Plaintiff after the August visit about Defendant Pearson's preference to pull teeth rather than fix them.

15. The Eighth Amendment is violated when prison officials act with deliberate indifference to a substantial risk of serious harm to an inmate. Farmer Id. at 825,828. The right to adequate medical care has been extended to include dental care in some cases. See Boyd v. Knox, 47 F.3d 966, 969(8th cir.1995)(finding that a three week delay in dental care, coupled with knowledge of the prisoner's suffering, can support a finding of "deliberate indifference"). In Dean v. Coughlin, the Court held that prisoners had raised an Eighth Amendment claim against prison officials for refusing to give the prisoner serious dental treatment such as fillings and crowns. Id at 23 F. Supp. 392, 404(S.D.N.Y. 1985). Specifically the Court held:"A prisoner is entitled to treatment only for conditions that cause pain, discomfort, or threat to good health...." Defendant Pearson was deliberately indefferent as he provided Plaintiff with no treatment during the August 2021 appointment.

16. Plaintiff sought help by discussing the failure to treat his tooth pain with others and he was told that Defendant Pearson has a reputation for wanting to pull teeth instead of fixing or filling them. Mr. Donald was advised to file formal grievances to get the necessary dental treatment from Pearson.

17. On 10-18-2021 Plaintiff filed a Step 1 grievance(C-AV21/22-00200487-1 seeking medical treatment as he requested that Defendant Pearson be required to fill the cavities that were causing him to suffer sever and debilitating pain and suffering.(see ex.10) Defendant Pearson denied the grievance. There was no answer to Plaintiff's informal grievance. No treatment was provided.

18. On 10-12-21, Plaintiff submitted another "Request for Sick Call" informing Defendant Pearson that the cavities were causing him pain by hurting so bad.(see ex.2) He also requested a mouth guard because when he wakes up his jaws are very painful and the grinding continues to erode his teeth. No medical treatment was provided to alleviate his pain. Due to severe headaches and depression caused by the chronic pain, Plaintiff had to stop doing physical exercise.

D. STATEMENT OF CLAIMS

19. On 10-18-21, Plaintiff went to his case manager seeking to file his step 2 grievance but was told that his step 1 grievance had disappeared. As a result his case manager, Ms. Hackler, informed him that she was required to turn his step 2 grievance into a step 1 grievance before he would be allowed to proceed. Even though he was upset that his first grievance had been destroyed, Mr. Donald allowed her to do so.(see ex.10)

20. On or about 10-22-21, Plaintiff submitted another "Request for Sick Call" to Defendant Pearson informing him that the cavities were hurting so bad until he felt like it was "killing me". Defendant Pearson did not respond or provide treatment.(see ex.3)

21. On or about 10-28-21, Plaintiff submitted another "Request for Sick Call" to Defendant Pearson stating, "I really really need my cavities filled. The pain is so extreme I can't think. Please respond!! ASAP."(see ex.4) Defendant Pearson did not respond or provide any treatment.

22. On 10-28-21, Plaintiff initiated another grievance process to address the delay that the destruction of his first grievance had caused as it would prevent him from receiving medical treatment for his cavities. The pain was getting worse and worse by the day so he filed a step 1 grievance.(see ex.13)

23. On 11-8-21, Plaintiff filed his step 2 grievance #C-AV21/22-00200487-2 in which he again complained that Defendant Pearson would not provide any treatment for the severe tooth pain that he was suffering.(see ex.10) Defendant Michael Hale denied the grievance and no treatment was provided.

24. On 11-18-21 while eating, Mr. Donald felt a sharp pain and crunch. When he spit out the contents of his mouth he discovered a tooth fragment. He went to Officer Langdon to declare a medical emergency but was told if he's not bleeding or swelling he won't be seen, he'll just wait \$5. Plaintiff submitted another Request for sick call stating, "I've been waiting on an appointment but haven't been told when I'll be seen. I can't eat and I'm losing weight because the pain is so bad when I do. Please let me know why it's taking so long to be seen. See ex.5

25. Defendant Pearson did not respond and he did not provide any treatment.

26. On 12-8-21, Plaintiff filed his step 3 grievance #C-AV21/22-00200487-3 in which he exhausted his administrative remedies as he complained that Defendant Pearson would not provide any treatment for the dental cavities that were causing him to experience severe pain.(see ex.12) Marshall Griffin denied the grievance and no medical treatment was provided.

27. On 12-17-21, Plaintiff submitted yet another "Request for Sick Call" to Defendant Pearson which stated in part, "since you are refusing to see me, can I at least get a tube of orajel. I'm getting some sort of headache from the tooth pain and can't take it. Be civilized please!" See ex.6 Defendant Pearson never responded or provided any treatment.

28. On 12-29-21, Plaintiff was given a dental appointment but when he arrived, Defendant Pearson did not provide any medical treatment. Instead, he assaulted Plaintiff as he stated, "Do you think it was wise to write something like this (grievance) when I'm the one who is going to perform a surgical procedure on you?"

29. During this time Defendant also committed a battery as he shoved a hand held mirror into Plaintiff's hand so forcefully it caused pain in his hand.

D. STATEMENT OF CLAIMS

30. Plaintiff left the dental visit and immediately complained that he was afraid that Defendant Pearson would follow through on his threat to harm him if he allowed Defendant Pearson to perform a surgical procedure on him as Defendant Pearson had threatened, twice.

31. Following his 12-29-21 dental appointment, Plaintiff wrote letters to various CDOC and medical officials to tell them that he was still in need of medical treatment to fix his cavities because they were causing him severe and debilitating pain. see ex. 20,22,23,24, and 26.

32. Plaintiff began to increase his intake of motrin and naproxen to reduce the severe and debilitating pain that his teeth were causing him to suffer. This medication was not prescribed by Defendant Pearson, but by another medical provider for his lower back pain long before Mr. Donald ever felt tooth pain.

33. On about January of 2022, Plaintiff began using Lidocaine patches prescribed for his back pain to help alleviate the severe and debilitating pain that was growing worse due to a lack of dental treatment.

34. On or about February 2022, Plaintiff began to experience severe abdominal pain that was being caused by the increased dosage of Naproxen, forcing him to discontinue taking extra dosis which had decreased the severe pain being caused by his teeth.

35. On 5-2-22, Plaintiff Donald submitted another Request for Sick Call requesting medical treatment for his cavities as he stated " the pain has not subsided, it has only gotten worse." (see exhibit 8) He requested a different dentist perform the procedure as well.

36. as of 6/22/14 Plaintiff still has not received any dental treatment and still suffers from very severe pain.

37. At all times relevant to the allegations in this complaint, Defendant Pearson knew or should have known of Mr. Donald's serious medical conditions.

38. Nevertheless, with deliberate indifference to Mr. Donald's Constitutional right not to be denied necessary medical care, protected under the Eighth Amendment to the U.S. Constitution, Defendant Pearson failed to treat and care for Mr. Donald's worsening condition. He did so despite his knowledge of Mr. Donald's serious medical needs, placing him at risk of substantial physical harm.

39. Defendant Pearson's acts or omissions are the legal and proximate cause of Mr. Donald's injuries.

40. The acts or omissions of Defendant Pearson caused Mr. Donald damages in that he suffered extreme physical and mental pain during the time period described in this complaint and is ongoing. The actions or inactions of Defendant Pearson as described herein intentionally deprived Mr. Donald of his right to be free of cruel and unusual punishment and of rights, privileges, liberties and immunities secured by the Constitution of the United States of America and caused him other damages.

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Defendant Pearson retaliated against Plaintiff for filing formal grievances against him in violation of Mr. Donald's U.S.

CLAIM TWO: Constitutional rights under the First and Fourteenth Amendments

Supporting facts: Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

41. On 12-29-21, Plaintiff arrived in the medical department for a dental appointment. He encountered Sgt. Reed and voiced his concerns that Defendant Pearson was angry at him for filing formal grievances and asked if he could possibly see another dentist. She replied that Defendant Pearson was the only dentist at Arkansas Valley Correctional Facility.

42. Prison officials may not retaliate against an inmate for exercising his Constitutional rights. See Peterson v. Shanks, 149 F.3d 1140, 1144(10th Cir. 1998) Filing grievances is a Constitutionally protected activity. see Williams v. Meese, 926 F.2d 994, 998(10th Cir.1991); Leek v. Miller, 698 F.App'x 922, 925(10th Cir. 2017). see ex 34

43. Plaintiff Donald entered the Dental clinic and noticed Defendant Pearson rifling through some paperwork in his office. As he continued to enter, the Dental assistant, Jacquie Martin, escorted him to the dental chair and placed a dental bib around his neck.

44. After approximately ten minutes had passed Defendant Pearson exited his office but instead of walking towards Mr. Donald, he walked outside the dental clinic and Mr. Donald watched him pace back and forth in front of the clinic through the glass windows while reading the papers in his hand.

45. Defendant Pearson reentered the dental clinic, and he was very upset as he began waiving the papers in his hand in front of Plaintiff and then asked "did you write this?" Mr. Donald noticed that he held one of the grievances and a stack of the Request for Sick Call slips that Plaintiff submitted. Plaintiff reluctantly answered, "Yes sir".

46. Defendant Pearson stated "Do you think it was wise to write something like this when I'm the one who's going to perform a surgical procedure on you?" Plaintiff took this statement to be an assault in violation of CDCR AR 850-04 (IV)(A)(3) and Mr. Donald's First Amendment right under the U.S. Constitution.

47. Plaintiff told Defendant Pearson that he filed the grievances because the pain from his cavities had increased significantly since his last visit but Defendant Pearson refused to schedule an appointment despite of the fact that he continued to submit numerous Request for Sick Calls complaining about the severe and debilitating pain the cavities were causing him.

48. Defendant Pearson then showed the written grievance and Kites into Plaintiff's hand and demanded he read them.

49. Plaintiff was scared and visibly shaking as he began to read them to himself.

50. Defendant Pearson barked in a raised voice, "Read them out Loud!" Plaintiff did as he was instructed out of fear and he felt humiliated as the dental assistant watched him cower to Defendant Pearson's demands.

51. As Plaintiff was reading the grievance aloud, Defendant Pearson once

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again threatened in a raised voice, "Do you think it was wise to write what you did when I'm the one whose going to perform a surgical procedure on you!?"

52. Plaintiff responded to Defendant Pearson by stating, "Please calm down, I felt it was the only route I could take to get treatment and everything I put in the grievances was true".

53. Defendant Pearson stated in response, "I dont care, you don't write things like that, do you think you're clever, and do you think I need someone to tell me how to do my job?". Plaintiff answered, "No sir, that's not what I meant. I just wanted someone to tell you to provide me treatment but I didn't mean it disrespectfully, I just need help.

54. Defendant Pearson asked Plaintiff, "why did you not declare an emergency if you needed so much help?" Mr. Donald responded, "I tried but the officer told me that you would not do anything because of your definition of an emergency so any how , what is your definition of an emergency?"

55. Defendant Pearson went into his office to retrieve a sheet of paper and stated, "This is from the ADA, a medical emergency is considered to be life threatening; squirting blood, abscess, or infected." Plaintiff responded, "okay the officer was right because you wouldn't have seen me then."

56. Defendant Pearson continued to use threatening language as he told Plaintiff what he would do if he were his son, for writing the grievances.

57. Plaintiff noticed the H.S.A., Defendant Gouty, walk by the dental clinic so he called out to her but she didn't hear him. Defendant Pearson quickly snapped at him as he stated, "Shut up!! Don't call her in here. She doesn't know dentistry she's a nurse. Don't get her involved".

58. Plaintiff just stared down at his feet while feeling helpless and then Defendant Pearson snapped at him again as he stated, "Look at me when I'm talking to you, that's the least you can do after you disrespected me with all of these kites. Why did you put in more than one? you dont do that!" Plaintiff stated, "I'm sorry, I just needed help. If you could just please calm down. I'm sorry."

59. Defendant Pearson continued to chastise Mr. Donald until Mr. Donald interrupted to ask if he could receive dental treatment as he asked, "What are you going to do for me today sir?".

60. Defendant Pearson told Mr. Donald, "I'm going to pull three teeth and fill one."

61. Defendant Pearson did not take any new x-rays or examine Plaintiff's mouth in this visit to support his decision to pull three teeth.

62. Since the last x-rays of his teeth nearly eight months prior to this visit , Plaintiff only had cavities in early stages of decay. He stated to Defendant Pearson, "if you check the x-rays that you previously took, I dont think I need three teeth pulled but I am sure that I need at least two filling."

63. Defendant Pearson stated, "Oh, you're gonna tell me how to do my job, you know everything" while waiving the grievance in Plaintiff's face.

64. Prisoners have a right known as "Informed Consent" and it means that you have the right to learn about all treatment options and the risks associated

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with each option BEFORE you allow caregivers to treat you. see Clarkson v. Coughlin, 898(S.D.N.Y. 1995); Pabon v. Wright, 459 F.3d 241,246(2nd Cir. 2006)

65. Plaintiff stated to Defendant Pearson, "I'm not trying to tell you how to do your job. I just want to know why you feel you need to do these things when these are my problems. During my last visit, you told me that my cavities could go longer, now you're saying you have to pull the teeth?"

66. Defendant Pearson replied, "Cuz you're the expert, you know everything."

67. Plaintiff informed Defendant Pearson that he could see the cavities and the broken tooth that was causing the tremendous pain.

68. Plaintiff asked Defendant Pearson to show him the tooth that he would fill. Defendant Pearson moved closer, his finger trembling from what Plaintiff believed to be anger, Defendant Pearson pointed to Mr. Donald's upper right cheek and said, "right there".

69. Plaintiff told Defendant Pearson that he did not have any pain in that area. The pain is in the back where I need the fillings.

70. Plaintiff became concerned that Defendant Pearson was attempting to pull his good teeth and not fix his cavities with fillings to punish him for filing grievances so he asked Defendant Pearson to give him a mirror so that he can use it to see what tooth Defendant Pearson was referring to.

71. Defendant Pearson retrieved a small, black-framed mirror and shoved it into Plaintiff's hand so violently until Plaintiff jerked back in pain.

72. Defendant Pearson's outrageous conduct motivated by the grievances Plaintiff filed caused Mr. Donald to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity. see Shero v. Grove, 510 F.3d 1196, 1203(10th Cir. 2007).

73. Plaintiff told defendant Pearson, "You are clearly mad and want to hurt me . I gotta go" As Plaintiff removed the bib as he stood from the chair to depart. He handed the mirror and bib to Defendant Pearson.

74. Defendant Pearson stood and he tried to block the path to the doorway with his body to prevent Plaintiff from leaving the dental clinic because if Plaintiff touched him in any way while leaving, Defendant Pearson could subject Donald to disciplinary proceedings for the charge of assault on staff.

75. Plaintiff Donald signaled for the security officer to come to his aid but Sgt. Reed was oblivious to the situation so he had to shimmy sideways and carefully maneuver between the dental chair and Pearson to get out.

76. Once Plaintiff escaped, he collapsed onto the Nurses counter, over taken by emotions.

77. Sgt. Reed came over and asked Plaintiff, "whats wrong? Whats going on?" Donald tried to explain but he was so traumatized that all he could say, was, "This man just threatened me and is tripping." Sgt. Reed guided Plaintiff into her office and after he became less traumatized, he told her what had occurred. She stated, "so we clearly need to end this visit, right?"

78. Plaintiff asked to speak to Mrs. Gouty but Sgt. Reed told him he had to put in a kite to speak with her then advised Plaintiff to file a grievance.

D. STATEMENT OF CLAIMS

79. Plaintiff went immediately to the shift commander's office and told Captain Hext what had happened during the Dental visit and informed him that he wanted to press criminal charges of Assault and Battery against Dr. Pearson. Captain Hext said there's nothing he can do about that then advised Plaintiff to file a grievance.

80. Plaintiff returned to his living unit and told Sgt. Doss and case manager Herrera, " Dr. Pearson just threatened and assaulted me". Sgt. Doss could see that Plaintiff was still traumatized so she instructed him to go drink some water and try to relax while she made some phone calls. When he returned she stated, "we wont be able to go that route. I'm sorry, just put in a grievance".

81. Plaintiff then telephoned several of his family members and friends to tell them what occurred and that he is afraid that the dentist is really going to hurt me physically real bad if he works on my teeth". His family immediately called the prison to express concerns for his safety.

82. Plaintiff has experienced anxiety attacks that caused him to suffer migraine headaches so he reached out to mental health. He reported having nightmares and body cramps when he reflected back on Defendant Pearson's acts of aggression, humiliation and assault. Clinician Ms. Medina provided treatment and techniques for Donald to reduce the number of anxiety attacks he was having.

83. Defendant Pearson made it clear that he was extremely upset with Donald for filing the grievances against him as he verbally chastised him for doing so throughout the 12-29-21 dental visit. If not for Plaintiff filing grievances, Defendant Pearson would not have subjected him to such outrageous conduct.

84. Defendant Pearson provided no dental treatment on 12-29-21 due to his retaliation for the grievances Plaintiff filed.

85. Mr. Donald reluctantly filed another grievance for said retaliation on 12-30-21. See ex. 16

86. In violation of AR (IV)(A)(3)(a) which forbids officials from answering grievances in which they are the alleged perpetrator of retaliation, Defendant Pearson answers to sink his heels in and attempt to cover his actions by blaming Plaintiff as being the aggressive one in the visit. see ex.16

87. Defendant Gouty performed an investigation of the incident and found Defendant Pearson's claims to be without merit and refunded Plaintiff's money for the terminated appointment that was not his fault.

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Defendants Fairbairn, Gouty, & Hale were deliberately indifferent as they failed to provide medical treatment for Plaintiff's serious medical needs in violation of the Eighth Amendment of the U.S.

CLAIM THREE: Constitution

Supporting facts: Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

88. Under the Eighth Amendment, "Prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)) Defendants Fairbairn, Gouty, and Hale are held to this obligation.

89. At approximately 1300 hrs on 12-29-21 Plaintiff encountered Defendant Fairbairn and explained the entirety of the events that transpired that morning and made him aware that he has been trying to get treatment since 4-2021.

90. Defendant Fairbairn called Defendant Gouty and told her "I have Donald here who was in the dental clinic this morning....Check the cameras and see what you see and get back to me".

91. He then told Mr. Donald that "Dr. Pearson's failure to care isn't anything new but I'm going to look into the allegations, I'd say still go ahead and file the grievance but if you don't hear back from me within a few days get ahold of me". Plaintiff received no medical treatment from Defendants Fairbairn or Gouty.

92. On 12-30-21 Mr. Donald turned in his Step 1 grievance alleging retaliation by Defendant Pearson. see ex.16

93. On 12-31-21 Plaintiff sent a kite to O.I.G. Kory briefly explaining what happened on 12-29-21 and requested that the O.I.G. save ALL video footage of Mr. Donald between the hours of 10AM to approximately 1045AM on 12-29-21. see ex.19. Plaintiff never got a response back from O.I.G. Kory.

94. On 1/2/22 Plaintiff was charged for 12-29-21 Dental visit. see ex.33

95. On 1-14-22 Mr. Donald sent Defendant Fairbairn a kite asking for an update on getting treatment and asking him to preserve the video of the encounter on 12-29-21. see ex.20. Plaintiff was provided with no treatment from Defendant Fairbairn.

96. On 1-14-22 Plaintiff received an answer to his step 1 grievance he submitted on 10-28-21. see ex.13

97. On 1-14-22 Plaintiff also received an answer to his Step 1 for retaliation answered by Defendant Pearson in violation of CDCR AR 850-04. see ex.16 Plaintiff received no medical treatment from any of the defendants.

98. On 1-14-22 Plaintiff turned in his step 2 for the retaliation. ex.17

99. Plaintiff also received answers to his step 1 & 2 for the denial of medical treatment(outside AR timeline). see ex. 11 & 12

100. Step 2 was answered and denied by Defendant Hale who would have been obligated to perform a thorough investigation of the claims made therein.

D. STATEMENT OF CLAIMS

101. Defendant Hale admits he has reviewed Plaintiff's dental history, becoming aware of his serious medical needs.

102. Defendant Hale read Plaintiff's detailed statements in the grievance, becoming aware of Plaintiff's severe pain and denial of medical treatment, also Plaintiff's claim of his Eight Amendment right being violated. Defendant Hale did nothing to intervene or provide Plaintiff with medical treatment. (Here, Plaintiff only relies on the grievance as evidence of Defendant Hale having adequate knowledge of Plaintiff's claims. Plaintiff does not maintain that simply because Hale answered the grievance that he is culpable.)

103. The step 3 was denied by Marshall Griffith in violation of CDOC AR 850-04(IV)(D)(1) as the grievance only states 1 issue; Denial of treatment. Also Griffith could have exercised AR 850-04(IV)(C)(2) allowing Plaintiff to cure deficiencies in the serious matter. see ex.12. Plaintiff received no treatment.

104. On 1-26-22 Plaintiff had an in-person exchange with Defendant Gouty, making her aware that he is still in pain and hasn't received any treatment and requested that she save all video of the 12-29-21 incident.

105. She responded saying she'd meet with him in the very near future but provided him with no medical treatment.

106. On 1-29-22 Mr. Donald received a note from Defendant Gouty letting him know that the kite he sent to Defendant Fairbairn had been forwarded to her. see ex.21. Plaintiff received no medical treatment from Fairbairn or Gouty.

107. On 2/5/22 Plaintiff met with Defendant Gouty and went over every issue contained in his grievances, the fact that he still needs treatment, and is still experiencing severe pain from his teeth.

108. Plaintiff express to Defendant Gouty that he was suffering depression due to the changes the pain has made in his life, explained nightmares he was having about Defendant Pearson in detail. He told her about his fear of Pearson.

109. She explained that she had interview the dental assistant, Jacquie Martin & Sgt. Reed, and that they both corroborated Plaintiff's version of events from 12-29-21.

110. Defendant Gouty made copies of documents Plaintiff had pertaining to his dental history and a couple affidavits from other prisoners complaining about Defendant Pearson. see ex.30 and 31.

111. In closing she said she'd get Plaintiff treatment for his teeth, do something about Defendant Pearson, and refund Plaintiff's money. Defendant Gouty did not provide Plaintiff with any medical treatment whatsoever.

112. On 2/11/22 Mr. Donald received the refund. see ex.33

113. On 2-17-21 Plaintiff submitted his step 3, exhausting his administrative remedies for his claims of retaliation by Defendant Pearson. see ex.18

114. On 3-10-22 Plaintiff received an answer for his step 2(retaliation) denied by Defendant Hale. Once again stating he has researched Plaintiff's dental chart. Defendant Hale provided Plaintiff with no medical treatment.

115. On 3-14-22 Plaintiff sent very detailed letters to Defendant Fairbairn and Defendant Gouty begging for help.(see ex.22 & 24)

D. STATEMENT OF CLAIMS

116. On 3-15-22 Plaintiff met with Defendant Gouty so that she could have him sign for his OCA II certification. In this brief encounter Mr. Donald asked her about the progress on getting him treatment and the situation with Defendant Pearson. All she said was I'm working on something but I cant give you any details. Defendant Gouty provided Plaintiff with no medical treatment at all.

117. 3-25-22 Plaintiff had a medical appointment where he had to have his blood drawn by nurse Amanda because he complained about his stomach issues. He asked Ms. Amanda if she could get him some orajel, she said she could not.

118. On 3-25-22 Plaintiff received a letter from Defendant Gouty stating that Defendant Fairbairn had forwarded her the letter Plaintiff sent him and that Plaintiff's complaints haven't fallen on deaf ears. see ex.25 Plaintiff did not receive any medical treatment from Defendants Fairbairn or Gouty.

119. On 4-1-22 Plaintiff sent 2 copies of a detailed letter to Defendant Hale begging for help. see ex.26. One letter was sent to AVCF and one to DOC headquarters. Plaintiff never heard back from Defendant Hale or received any medical treatment firm him.

120. The Eighth Amendment is violated when a prison official acts with deliberate indifference to a substantial risk of serious harm to an inmate. Farmer v. Brennan, Id. at 825, 828.

121. As a result of the pain and depression this experience has caused him, Plaintiff reached out to Mental Health providers on about 4-2-22 and met with Clinician Tina Madina who taught him techniques to combat fears and nightmares of Defendant Pearson. She told Plaintiff she cant do anything about his physical pain as dental is not her department.

122. At all times relevant to the allegations in this Complaint, Defendants Fairbairn, Gouty, and Hale knew or should have known of Mr. Donald's serious medical conditions.

123. Nevertheless, with deliberate indifference to Mr. Donald's Constitutional right not to be denied necessary medical care, protected under the Eighth Amendment to the U.S. Constitution, Defendants Fairbairn, Gouty, and Hale failed to treat and care for Mr. Donald's worsening condition. They did so despite their knowledge of Mr. Donald's serious medical needs, placing him at risk of substantial physical harm.

124. Defendants Fairbairn, Gouty, and Hale's acts or omissions are the legal and proximate cause of Mr. Donald's injuries. Each defendant had a duty to respond to Mr. Donald's serious medical needs and none did.

125. The acts or omissions of Defendants Fairbairn, Gouty, and Hale caused Mr. Donald damages in that he suffered extreme physical and mental pain during the time period described in this Complaint and is ongoing. The actions or inactions of Defendant Fairbairn, Gouty, and Hale as describe herein intentionally deprived Mr. Donald of his right to be free of cruel and unusual punishment and of rights, privileges, liberties and immunities secured by the Constitution of the United States of America and caused him other damages.

D. STATEMENT OF CLAIMS

§1983-Eighth Amendment violation-Creating or allowing an unconstitutional Policy or Custom. (against Michelle Brodeur, CLAIM FOUR: Christopher Maul, Michael Hale, and Mark Fairbairn)

Supporting facts: Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

126. In the relevant timeframes outlined in this Complaint, Plaintiff contacted numerous prison officials including Defendants Brodeur, Maul, Hale and Fairbairn through direct interactions, letters, grievances, ect., seeking help after Defendant Pearson violated Plaintiff's First and Eighth Amendment rights. Each of their failures to supervise their subordinates harmed Plaintiff.

127. Plaintiff was told by several officials, including LT. J. Wallace, that any given official's supervisor would inevitably be made aware of any grievances being filed against their subordinates. Defendants Brodeur, Maul, Hale and Fairbairn knew or should have known of Mr. Donald's claims.

128. Every single one of them have been deliberately indifferent to Mr. Donald's health and safety, choosing not to intervene or remedy the issues.

129. Upon belief and information Defendants Brodeur, Maul, Hale, and Fairbairn have created or are allowing an unconstitutional Policy or Custom designed to encourage all prison officials into inaction or "look the other way" and to quell prisoner's serious complaints.

130. This unconstitutional Policy or Custom is so well settled and pervasive it is acknowledged by both prisoners and officials alike.

131. It is demonstrated throughout all levels of the prison grievance system as officials stonewall prisoners' serious complaints by denying their grievances for cureable or petty reasons without ever investigating or answering the substance of the grievances; no matter how egregious or obvious the issue, in violation of their own Administrative Regulations. e.g. see ex.10-18 and 29

132. Once the Policy or Custom is carried out and the step 3 is denied, it sends a message throughout the entire prison system that says "this prisoners' complaints are moot and you need not assist him even if the issue seems to persist as in the instant matter.

133. The claims alleged in this Complaint aren't simply things that have only occurred once. This conduct has been perpetuated for at least a decade here at A.V.C.F.. See ex. 34, 35, 28, 29, 30, 31, 32, ect..

134. This Policy or Custom is a moving force and proximate cause that has led to damages and violations of the U.S. Constitutional rights of Mr. Donald in the instant matter and may others before him and is ongoing.

135. With all the officials Mr. Donald made aware of his serious medical needs, to include, but not limited to, captains, the warden, and administrators, he still has not received treatment and continues to suffer severe pain.

136. The Policy or Custom is perpetual and the only way it might end, is with heavy actions taken by the Court.

D. STATEMENT OF CLAIMS

§1983- Eighth and First Amendment violations-Supervisory Liability
for Failure to Train and Supervise.(against Defendants Maul,
CLAIM FIVE: Brodeur, Hale, and Fairbairn)

Supporting facts: Plaintiff hereby incorporates all other paragraphs of
this Complaint as if fully set forth herein.

137. Defendants Maul, Brodeur, Hale, and Fairbairn each had a duty to train and/or supervise correctional officers, medical staff, and/or mental health staff in order to ensure the safety and well being of prisoners confined at the facility.

138. In the timeframe outlined in this Complaint each of these defendants failed to discharge these duties as each have subordinates, described in this Complaint, that violated Mr. Donald's First and/or Eighth Amendment rights under the U.S. Constitution.

139. Defendants Maul, Brodeur, Hale, and Fairbairn acted with deliberate indifference to Mr. Donald's serious medical needs and safety in failing to adequately train and supervise correctional officers, medical staff, and/or mental health staff.

140. These Defendants failure to properly train and/or supervise their subordinate employees was a moving force and proximate cause of the violation of Mr. Donald's Constitutional rights.

141. The acts or omissions of Defendants Maul, Brodeur, Hale, and Fairbairn caused Mr. Donald damage in that he suffered and continues to suffer from extreme physical and mental pain since August of 2021.

142. The actions and inactions of these Defendants as described herein deprived Mr. Donald of rights, privileges, and immunities secured by the Constitution of the United States of America, and caused him other damages.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ___ Yes xx No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

xx Yes ___ No (check one)

Did you exhaust administrative remedies?

xx Yes ___ No (check one)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

See Attached

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



(Plaintiff's signature)

6-20-22

(Date)

(Revised February 2022)

G. REQUEST FOR RELIEF

Wherefore, Plaintiff respectfully request that this Court enter judgment in their favor and against Defendants, and grant:

IN ALL DEFENDANTS' INDIVIDUAL CAPACITIES

- (a) Declaratory relief and other appropriate equitable relief;
- (b) Economic losses on all claims allowed by law;
- (c) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Legal fees and the cost associated with this action, including expert witness fees, on all allowed by law;
- (f) Pre- and post-judgment interest at the highest lawful rate;

IN ALL DEFENDANTS' OFFICIAL CAPACITIES

- (g) A Preliminary Injunction ordering Defendants to immediately get Plaintiff the dental care he needs (**NOT** from Defendant Pearson) without delay and from a party without a history of abuse or malpractice and to refrain from further retaliation.
- (h) A Permanent injunction ordering Defendants to ensure the adequate training of all CDC staff, both medical and security as follows:
 - 1) Adequate training of how to recognize serious medical needs and how to respond with appropriate actions designed to address those medical needs as an obligation of their duties.
 - 2) Adequate training on how to assess & respond to allegations of unreasonable physical assault by staff onto prisoners.
 - 3) Adequate training on how to properly investigate and respond to formal grievances with a meaningful answer that addresses the substantial issue of the grievance.
 - 4) End any and all Policies or Customs in violation of the Constitution of the United States of America.

IN ALL DEFENDANTS' OFFICIAL AND INDIVIDUAL CAPACITIES

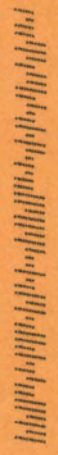
- (i) Appropriate relief at law and equity;
- (j) Any further relief that this Court deems just and proper, and any other relief as allowed by law.

Plaintiff hereby demands a jury trial on all issues so triable.



Colorado Department of Corrections
Name Lafayette A. Donald Sr.
Register # 166995
Unit _____
Address 12750 Hwy 96 @ Lane 13
City/State/Zip Ordway, CO 81034

Office of the Clerk
United States District Court
Alfred A. Arroy Courthouse
901-19th St., Room A105
Denver, CO 80294 - 3589



FACILITY		AULF	
STAFF LAST NAME		Laurie	
DOC#	166995	OFFENDER NAME	Donald
DATE RCVD	21722	ID#	INT
	INT		INT

