

ATTACHMENT G

Records
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NOLAN KLEIN,

Plaintiff,

vs.

TONY CORDA, *et al.*,

Defendants.

3: 09-cv-0387-LRH-RAM

ORDER

Plaintiff's civil rights action pursuant to 42 U.S.C. § 1983 was filed July 22, 2009. On November 18, 2009, the court entered an order granting a motion for substitution of parties and substituting Tonja F. Brown, Special Administrator of the Estate of Nolan E. Klein, in the place of Nolan E. Klein as the plaintiff in this action.

I. Screening Pursuant to 28 U.S.C. § 1915A

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. *See West v.*

1 *Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
3 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of
4 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief
5 may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28
6 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be
7 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same
8 standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint.
9 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
10 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
11 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
12 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
14 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
15 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
16 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In
17 making this determination, the Court takes as true all allegations of material fact stated in the
18 complaint, and the Court construes them in the light most favorable to the plaintiff. *See Warshaw v.*
19 *Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less
20 stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9
21 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard under Rule
22 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels
23 and conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic
24 recitation of the elements of a cause of action is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S.
25 265, 286 (1986).

26 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
27 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal
28 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims

1 of infringement of a legal interest which clearly does not exist), as well as claims based on fanciful
2 factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319,
3 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

4 **II. Screening of the Complaint**

5 This case contains three counts. In count 1, plaintiff claims that he has been denied
6 accommodation of his Wiccan religious practices in violation of the settlement which was reached
7 in *Klein v. Crawford*, 3:05-cv-0463-RLH-RAM. He claims that his right to freely exercise his
8 religion under the First Amendment and the Religious Land Use and Institutionalized Persons Act of
9 2000 ("RLUIPA") has thereby been violated. The docket of the earlier case indicates that it was
10 closed after a stipulated dismissal with prejudice following a settlement.

11 In count 2, plaintiff alleges breach of the agreement entered into by the parties to *Klein v.*
12 *Benedetti*, 3:05-cv-0390 PMP VPC. Plaintiff alleges specifically that the defendants breached the
13 agreement by interfering with his medical treatment, and that this breach was violative of the Eighth
14 Amendment. The docket sheet of the referenced case indicates that the parties stipulated to dismiss
15 the case with prejudice on December 7, 2007.

16 In count 3, plaintiff again alleges breach of the agreement in *Klein v. Crawford*, 3:05-cv-
17 0463-RLH-RAM, in violation of his First Amendment rights. Specifically, plaintiff claims that the
18 defendants have treated him uncqually in regard to the exercise of his religion by transferring him
19 when he sought to exercise his Wiccan religious beliefs.

20 As set forth above, to state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
21 essential elements: (1) that a right secured by the Constitution or laws of the United States was
22 violated, and (2) that the alleged violation was committed by a person acting under color of state law.
23 *See West v. Atkins*, 487 U.S. at 48. In the present case, plaintiff claims that the terms of settlement
24 agreements he entered into in two earlier cases have been violated. Such claims cannot properly
25 form the basis of a new, separate civil rights action pursuant to 42 U.S.C. § 1983. That is, the
26 violation of a settlement agreement entered into in a civil rights action is not itself a separate civil
27 rights violation. This court has inherent authority under federal law to enforce a settlement
28 agreement in an action pending before it. *See Marks-Foreman v. Reporter Publishing Co.*, 12

1 F.Supp.2d 1089, 1092 (S.D.Cal.1998) (citing *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957
2 (9th Cir.1994); *Callie v. Near*, 829 F.2d 888, 890 (9th Cir.1987); *TNT Marketing, Inc. v. Agresti*, 796
3 F.2d 276, 278 (9th Cir.1986)). Thus, if plaintiff wishes to pursue her claims in federal court, the
4 proper procedure for doing so is through a motion in the prior cases to enforce the settlement
5 agreement. Before doing so, plaintiff should consider whether she has standing to pursue such a
6 remedy in light of the death of the original plaintiff to this action, particularly in regard to injunctive
7 relief.

8 **IT IS THEREFORE ORDERED** that this civil rights complaint is **DISMISSED** for failure
9 to state a claim upon which relief can be granted. The dismissal is without prejudice to plaintiff's
10 right to bring a motion in each of the prior cases to enforce the settlement agreement. The Clerk of
11 the Court is directed to enter judgment accordingly and to close this case.

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13 DATED this 14th day of July, 2010.

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LARRY R. HICKS
17 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TONJA BROWN, administratrix of the
Estate of NOLAN KLEIN and TONJA
BROWN, as an Individual;

Plaintiff,

vs.

STATE OF NEVADA ex rel. the
DEPARTMENT OF CORRECTIONS, and
HOWARD SKOLNIK, DIRECTOR OF THE
DEPARTMENT OF CORRECTIONS;

Defendant.

Case No. 3:10-cv-00679-HDM-
VPC

**AMENDED CIVIL
COMPLAINT**

Comes now, Plaintiff TONJA BROWN on behalf of the estate of NOLAN KLEIN,
by and through her attorneys, HAGER & HEARNE and alleges as her complaint the
following:

Statement of the Case

This is a civil rights claim under 42 U.S.C. § 1983, with a pendent state claim for
wrongful death. Nolan Klein was convicted of stealing \$198.00 and a rape where there
was little evidence that any rape had occurred. The DNA evidence that could have
exonerated him was compromised while in the custody of the Washoe County evidence

1 room. Nolan Klein was condemned to death by incarceration because of the policy and
2 practice of the Nevada State Department of Corrections in operating its prison facility
3 and in punishing those inmates who are successful at litigation. The State of Nevada
4 refuses to provide reasonable medical care to its inmates proven by a recent history of
5 unnatural deaths and suffering by inmates within the Nevada prison system litigated by
6 the American Civil Liberties Union. The negligence and reckless disregard to the health
7 of the inmates is in violation of their civil rights pursuant to the federal and state
8 constitutions as a matter of policy.

9 Nolan Klein suffered from a congenital disease called hemochromatosis which
10 Nevada Department of Corrections was acutely aware of during his incarceration
11 because of the efforts of and communications from the Plaintiff. The outright disregard
12 for Nolan Klein's health and safety resulted in his untimely death. As a result of the
13 Defendants' egregious inattention and substandard care in failing to attend to Mr.
14 Klein's basic needs, Mr. Klein died a miserable and suffering death knowing that the
15 Department of Corrections had intentionally or with reckless disregard caused him to
16 die over a disease that is easily treatable, but not for him since he was the victim of a
17 policy to ignore the serious medical needs of inmates and as a result of a policy to
18 punish inmates who successfully litigate against the State.

19 Jurisdiction and Venue

20 1. This Court has subject matter jurisdiction over this action pursuant to 28
21 U.S.C. § 1343 in that the claims herein arise under 42 U.S.C. § 1983, the Fourteenth
22 and Eighth Amendments and, thus, pursuant to 28 U.S.C. § 1331, in that federal
23 questions exist. Supplemental jurisdiction exists over state law claims pursuant to 28
24 U.S.C. § 1331.

25 2. The venue of this action is properly placed in the District of Nevada
26 pursuant to 28 U.S.C. § 1391 because the incidents that gave rise to this claim occurred
27 in Carson City, Nevada.
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1 exculpatory evidence had not been produced during the course of his trial, namely the
2 fact that a second suspect had been considered by the police and who had the same
3 pattern of criminal behavior as had been exhibited in the crime for which Mr. Klein
4 was convicted and that information was not turned over to Klein.

5 13. Mr. Klein further alleged that certain of the evidence in his case had been
6 tampered with by the District Attorney's office or the Judge in his trial, in that the DNA
7 evidence was opened, contaminated, destroyed and no longer available to him for
8 testing, which denied him his rights in violation of the law. In fact, the witnesses had
9 testified that the perpetrator of the crime had left two cigarettes at the scene of the
10 crime which consisted of the butts of the cigarettes and a bit more of the cigarette
11 attached which had obviously been lit and consumed.

12 14. Those cigarette butts contained the only trace samples of DNA left by the
13 perpetrator of the crime. In 1988 when Nolan Klein was tried, DNA analysis could not
14 test minute traces of DNA such as would have been contained in the cigarette butts.

15 15. Throughout the trial, incarceration and subsequent appeals, Nolan Klein
16 maintained his innocence and his sister, Plaintiff herein, worked tirelessly to find a
17 means to have the DNA tested.

18 16. By 2010, over 265 detainees had been released in the United States
19 because of the efforts of the Innocence Project to test DNA that had been preserved in
20 earlier cases prior to the availability of testing.

21 17. In fall of 1995, the Plaintiff contacted the Innocence Project who, at first,
22 agreed to test the DNA and then refused when they determined that the DNA had been
23 compromised while in the custody of the evidence room at the Washoe County
24 Courthouse.

25 18. Tonja Brown, Mr. Klein's sister, staged public protests about the loss of
26 the DNA evidence and the misstatements by the public defender from 1996 - 2008
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1 indicting both Ronald Rachow, the District Attorney who represented the State in the
2 criminal prosecution of Nolan Klein, and Mills Lane the elected District Attorney
3 during the criminal prosecution of Nolan Klein.

4 19. Tonja Brown also protested publicly the failure of Dorothy Nash Holmes,
5 District Attorney, because she failed to prosecute Nolan Klein's public defender for
6 perjury and defended the public defender in the slander suit filed by Nolan Klein
7 against the public defender.

8
9 20. Tonja Brown has protested publicly against Richard Gammick the present
10 District Attorney for Washoe County for attempting to cover up the theft of the DNA
11 evidence, making misstatements about the loss of the DNA, making misstatements
12 about the testing of the DNA and for his statements to the Parole Board requesting that
13 Nolan Klein not be released during his lifetime from the prison. Tonja Brown also
14 made known to the media that Richard Gammick also made misstatements about the
15 integrity of the evidence room at the Washoe County Courthouse and, further, made
16 the completely incorrect and unsupported statement that Nolan Klein had confessed to
17 the crime, in an attempt to minimize the damage that the compromise of the DNA
18 caused for Mr. Klein.

19 21. Tonja Brown endeavored to have all the Justices of the Nevada Supreme
20 Court removed from office for malfeasance after the appeal of Nolan Klein was
21 dismissed.

22 22. In short, Tonja Brown has made public, through protests, media
23 interviews, blogging, lobbying the legislature and any other means available to her, the
24 grave and unfair injustice to her brother and his wrongful incarceration and
25 prosecution, including but not limited to the tampering with the DNA evidence and the
26 failure to disclose the exculpatory evidence to Mr. Klein or his counsel.
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1 23. Nolan Klein was sentenced to two life terms for theft of \$198.00 and a
2 sexual assault, far in excess of the sentences imposed for other similar crimes in 1989.

3 24. Nolan Klein was repeatedly denied parole for the exclusive reasons that he
4 was litigating against the State and the Department of Corrections and that he
5 maintained his innocence, additional vindictive punishment by the Department of
6 Corrections and the State of Nevada carried out with the intent to keep him behind
7 bars and to intentionally deny him needed medical treatment.

8 25. Nolan Klein was denied a pardon when the pardon was requested for
9 humanitarian reasons in 2008 because of his deteriorating medical condition. Upon
10 information and belief, the denial was based on the fact that Mr. Klein continued to
11 maintain his innocence, additional vindictive punishment by the State of Nevada
12 carried out with the intent to keep Mr. Klein behind bars and intentionally deny him
13 needed medical treatment.

14 26. During his incarceration, Mr. Klein had several medical problems,
15 including but not limited to Hemochromatosis, Hypertensive and arteriosclerotic
16 cardiovascular disease, Hepatitis C and a long and serious bout of infection referred to
17 commonly as MERSA which was acquired in the prison.

18 27. The medical condition of Mr. Klein deteriorated within the last two years
19 of his incarceration due to the aggravation of his MERSA infection by the non
20 treatment of Hemochromatosis and his cardiovascular disease.

21 28. Mr. Klein amazingly recovered from the MERSA infection, but was still
22 not treated for Hemochromatosis.

23 29. Mr. Klein was transferred from the Northern Nevada Medical Center
24 because of alleged improper influence of an elderly inmate.

25 30. Both Mr. Klein and the inmate denied the allegations until the elderly
26 inmate became incompetent.
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1 31. Mr. Klein was transferred from the Northern Nevada Medical Center
2 where he received oversight from a doctor familiar with his medical history to the
3 Warm Springs facility where medical care was not readily available. This transfer was
4 to intentionally deprive Mr. Klein of reasonable medical care and attention.

5 32. The Plaintiff repeatedly contacted the Director of Prisons and other
6 personnel informing them of the chronic condition suffered by Mr. Klein for the year
7 preceding Mr. Klein's death.

8 33. On September 20, 2009, Nolan Klein died from respiratory arrest, hepatic
9 Coma, Cirrhosis, Hepatitis C, all aggravated and made critical by the failure to treat his
10 Hemochromatosis and hypertensive and arteriosclerotic cardiovascular disease.

11 34. The Department of Corrections had known of the medical condition of Mr.
12 Klein for more than ten years.

13 35. The medical staff of the Department of Corrections knew that Mr. Klein
14 had Hemochromatosis and hypertensive and arteriosclerotic cardiovascular disease
15 and that those conditions required treatment.

16 36. The Department of Corrections knew that the failure to treat Mr. Klein's
17 Hemochromatosis and hypertensive and arteriosclerotic cardiovascular disease would
18 result in his premature death and excruciating suffering just prior to his death.

19 37. The Nevada Department of Corrections has a pattern and practice of
20 failing to treat the critical medical needs of prisoners that results in their death for the
21 last decade that is known.

22 38. The Nevada Department of Corrections has adopted a policy of failing to
23 treat the critical medical needs of prisoners that results in their death.

24 39. Tonja Brown, Plaintiff herein, personally and repeatedly informed
25 Howard Skolnik that her brother was not receiving the treatment for his
26 Hemochromatosis and hypertensive and arteriosclerotic cardiovascular disease that
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1 would save his life. She made these communications to Skolnik repeatedly in the last
2 years of Mr. Klein's life. Further the Plaintiff reported the lack of medical care for
3 Nolan Klein and other inmates to the Board of Prison Commissioners but they failed
4 and refused to investigate this matter.

5 40. The Defendant Department of Corrections failed and refused to
6 administer to, examine, refer for medical attention or treat Nolan Klein for
7 Hemochromatosis and hypertensive and arteriosclerotic cardiovascular disease while
8 he was incarcerated.

9 41. Inmates, guards and medical personnel observed that Mr. Klein was
10 suffering from the lack of treatment and the Department of Corrections failed and
11 refused to provide the treatment.

12 42. All the Defendants had malice and disdain for the litigation filed by Mr.
13 Klein and with malice and disdain for the protests of Ms. Brown and intentionally,
14 vindictively or with reckless disregard, failed to provide medical treatment to Mr. Klein
15 to save his life.

16 43. Ms. Brown and the family of Nolan Klein were devastated at the death of
17 Mr. Klein at the age of 54 years old and before Mr. Klein was able to request a new trial
18 based upon the evidence found in 2009 that could have been considered exculpatory
19 and would have supported the innocence that he maintained throughout his
20 incarceration.

21 44. Ms. Brown and the family of Nolan Klein were further devastated at the
22 death of Mr. Klein because of his loss of the right to spend even five minutes outside
23 the prison walls before he died.

24 Statement of Damages

25 45. As a result of the acts and/or omissions of Defendants, Nolan Klein was
26 deprived of various constitutional and statutory rights; and was further hurt and
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1 injured in his health, strength, and activity, sustaining injury to his person, all of which
2 injuries caused Nolan Klein great mental, physical and nervous pain and suffering and
3 severe emotional distress. The injuries resulted in Nolan Klein's death.

4 46. As a further result of the acts and/or omissions of defendants, Nolan
5 Klein's sister has been deprived of the care, companionship, and support of her brother
6 and has experienced and continues to experience great mental and emotional pain and
7 suffering.

8 47. For all the claims, Plaintiff was required to expend costs and incur
9 attorneys' fees and these are costs and fees that should be compensated to her by the
10 Defendants.

11 **CLAIMS ON BEHALF OF THE ESTATE OF NOLAN KLEIN**

12 **FIRST CLAIM FOR RELIEF**

13 **(42 U.S.C. § 1983 – Cruel and unusual punishment; deliberate indifference**
14 **to serious medical needs)**

15 48. Plaintiff incorporates by reference and realleges each allegation made in
16 all the paragraphs of this complaint as if alleged in full in this claim.

17 49. In committing the acts and omissions alleged herein, Defendants were
18 deliberately indifferent to the serious medical needs of Nolan Klein, which caused
19 unnecessary and wanton infliction of pain and physical injury to Mr. Klein resulting in
20 his death and resulted in the violation of his rights under the Eighth Amendment.

21 50. By failing to properly screen, train, supervise and/or discipline its
22 personnel, Defendant State of Nevada subjected Nolan Klein to unnecessary and
23 wanton infliction of pain and physical injury resulting in his death; thereby, violating
24 his rights under the Eighth Amendment of the United States Constitution.

25 51. By authorizing, ratifying and/or condoning the acts and omissions of their
26 employees, the State of Nevada subjected Nolan Klein to the unnecessary and wanton
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1 infliction of pain and physical injury, resulting in his death, thereby violating his rights
2 under the Eighth Amendment of the United States Constitution.

3 52. The acts and omissions complained of herein were done pursuant to
4 customs and policies authorized, condoned, ratified and carried out by Defendants that
5 resulted in delayed and denied medical care for the purposes of saving money at the
6 risk of the inmate's health and/or for intentionally inflicting physical and mental abuse
7 on the inmate as retribution in furtherance of a policy of misuse of power over inmates
8 who are involved in litigation against the State or their relatives who protest the unfair
9 acts of the State and its local political subdivisions.

10 53. The wanton and callous disregard of Nolan Klein's obvious and known
11 serious medical needs – including, but not limited to, unreasonable delays in providing
12 treatment; the refusal to transfer and release him to an appropriate medical facility in a
13 timely manner even after his continued degeneration in the prison all caused the
14 premature death of Nolan Klein. All Defendants subjected Nolan Klein to cruel and
15 unusual punishment in violation of his rights under the Eighth Amendment to the
16 United States Constitution.

17 **SECOND CLAIM FOR RELIEF**

18 **(42 U.S.C. § 1983 Deprivation of Basic Necessities of Life)**

19 54. Plaintiff incorporates by reference and realleges each allegation made in
20 all the paragraphs of this complaint as if alleged in full in this claim.

21 55. In addition to failing to respond to Nolan Klein's serious need for medical
22 care and treatment, Defendants were deliberately indifferent to his health and safety in
23 neglecting his fundamental human need for adequate food and water. The staff of the
24 prison knew that Nolan Klein required a specific diet and specific treatment for
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1 hemachromatosis and hypertension to retain his health and that request was denied,
2 refused and ignored.

3 56. As a result, all Defendants and their employees and agents subjected
4 Nolan Klein to unnecessary and wanton infliction of pain and physical injury in
5 violation of his rights under the Eighth Amendment.

6 57. Deliberate indifference and failure to provide minimal and adequate
7 medical care by the defendants subjected Mr. Klein to cruel and unusual punishment
8 in violation of the Eighth Amendment of the United States Constitution.

9 58. As a direct and proximate result of the Defendants' deliberate
10 indifference, Mr. Klein suffered serious pain and an agonizing death and his estate is
11 entitled to compensation for the aforementioned damages and the Plaintiff is entitled
12 to damages for the loss of her brother and the Defendants, and each of them, have
13 subjected themselves to liability for those damages pursuant to the laws of the United
14 States and the State of Nevada.

15 59. As a direct and proximate result of the Defendants' acts and omissions
16 and deliberate indifference toward Mr. Klein, Defendants are liable in an amount to be
17 more fully determined at trial.

18 60. Plaintiff was required to retain counsel and expend costs to prosecute this
19 claim.
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21 THIRD CLAIM FOR RELIEF

22 (42 U.S.C. § 1983 – Deprivation of Life without Due Process)

23 61. Plaintiff incorporates by reference and realleges each allegation made in
24 all the paragraphs of this complaint as if alleged in full in this claim.

25 62. By the acts and omissions described hereinabove, including but not
26 limited to allowing Nolan Klein to degenerate, suffer and die instead of adopting
27 simple life saving measures and procedures and simple medical treatment, the
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1 Defendants deprived Nolan Klein of his health, strength and activity and ultimately his
2 life, without due process of law in violation of the Fourteenth Amendment to the
3 United States Constitution.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Denial of first amendment right to expression)**

6 63. Plaintiff incorporates by reference and realleges each allegation made in
7 all the paragraphs of this complaint as if alleged in full in this claim.

8 64. The State of Nevada deprived Nolan Klein of the right to seek probation,
9 parole or pardon because of his refusal to admit to the crimes for which he was
10 charged.

11 65. The State of Nevada deprived Nolan Klein of the right to seek probation,
12 parole or pardon because of he was litigating against the State of Nevada to prove that
13 he was innocent of the charges for which he was convicted.

14 66. As a direct and proximate result of exercising his right to speech and his
15 right to address his grievances to the court, Nolan Klein was denied probation, parole
16 or pardon in violation of his First Amendment rights and in retaliation against him for
17 exercising his rights. This denial of probation, parole and pardon denied him the right
18 to seek medical treatment for the reasons stated hereinbefore and the retaliation
19 against him for exercising his right to redress his grievances to the court, caused his
20 premature death.

21 **FIFTH CLAIM FOR RELIEF**

22 **(42 U.S.C. § 1983 against the Department of Corrections)**

23 67. Plaintiff incorporates by reference and realleges each allegation made in
24 all the paragraphs of this complaint as if alleged in full in this claim.
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1 intent to deprive him of his constitutional rights or was committed in willful and
2 wanton disregard for those rights.

3 97. The Department of Corrections under the direction of Defendant Howard
4 Skolnik and its employees have a pattern and practice and have adopted a policy of
5 violating the Constitutional rights of inmates and others.

6 98. The Eighth Amendment protects inmates incarcerated, without freedom
7 to protect themselves, from suffering cruel and inhuman treatment as a part of the
8 inherent humanity expected of a civilized society.

9 99. The Defendants inflicted upon Nolan Klein cruel and inhuman suffering
10 by failing to administer and treat his medical condition and failing to respond to his
11 pleas for help.

12 100. The Defendants inflicted upon Nolan Klein cruel and inhuman suffering
13 by failing to treat the aggravating diseases of Hemochromatosis and hypertensive and
14 arteriosclerotic cardiovascular disease which would have preserved his life.

15 101. Nolan Klein suffered an agonizing death knowing that he would die
16 without treatment and knowing that with treatment he could live and he reported this
17 to his sister who visited with him when he was in extremis.

18 102. Nolan Klein was immobile and not able to fend for himself nor save
19 himself because of his condition of incarceration and died helpless as a prisoner who
20 intended to continue to fight for his freedom, prove his innocence and fight for the
21 rights of all Americans to have any exculpatory evidence disclosed and to have DNA
22 preserved for proof of innocence as so many prisoners have been able to achieve for
23 exoneration.

24 103. Plaintiff has been required to retain counsel and expend costs to prosecute
25 this matter.

26 WHEREFORE, Plaintiff prays this Court enter an order providing as follows:
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AO 450 (Rev. 5/85) Judgment in a Civil Case Ⓢ

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NOLAN KLEIN,

Plaintiff,

V.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 3:09-CV-00387-LRH-RAM

TONY CORDA, et al.,

Defendants.

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Decision by Court. This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this civil rights complaint is **DISMISSED** for failure to state a claim upon which relief can be granted. The dismissal is without prejudice to plaintiff's right to bring a motion in each of the prior cases to enforce the settlement agreement.

July 15, 2010

LANCE S. WILSON
Clerk

/s/ D. R. Morgan
Deputy Clerk



**State of Nevada
Department of Correction
Inmate Issue History**

ISSUE ID	DATE REPORTED	ISSUE TYPE	ISSUE REASON
20062860588	02/13/2009	GRIEVANCE	RELIGION
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
02/25/2009	IF	NOT ACCEPTED	CORDA, TONY
Proposed Response: ...[MWHITTINGTON, 02/13/2009 16:43:42] INMATES COMPLAINT: He claims he was treated differently at NNCC then other inmates based on his religious request and retaliated against for some reason Also, two separate Federal Court Settlement Agreements were violated in accomplishing the unequal treatment and retaliation, leaving him to have to endure unnecessary pain and suffering as well as general conditions incompatible with his medical treatment, needs and restrictions.			
Official Response:			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
02/26/2009	IF	NOT ACCEPTED	CORDA, TONY
Proposed Response:			
Official Response: 3098- Addresses multiple issues to include court cases, religion, and medical. Only medical issue could still be considered within timeframe.			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
04/22/2009	1		BENEDETTI, JAMES
Proposed Response: The only issue is based on retaliation for pursuing my religious exercise which falls under civil rights, therefore timely. (see page 3 of 3) The facts leading up to the retaliation acts are simply supporting facts. The medical factor following the retaliation claim are to show the harm caused by the retaliatory acts, etc..			
Official Response:			
DATE RETURNED	LEVEL	FINDING	ASSIGNED TO
05/14/2009	1	DENIED	BENEDETTI, JAMES
Proposed Response:			
Official Response: The rejection at the Informal level is upheld. You were advised via the informal rejection form that only the medical claim was within the timeframe of six months and that you could pursue this at the time first level. In addition, your grievance contains multiple issues and court decisions which was another reason for rejection. In your first level appeal, you decline to pursue any medical claim and also state that you are not grieving a court decision, but an agreement between yourself and the NDOC. This agreement is considered a court case. You have refused to remove the multiple issues from this grievance, and continue to attempt to grieve a court case. In addition, as you are not pursuing a medical claim, this grievance is also considered untimely. In accordance with AR 740, there will be no further response forthcoming.			