

AUG 03 2023

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Joshua Stockton (ADC [REDACTED]), Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____
Date Filed _____
(Month) (Day) (Year)
Amount of Claim \$ _____
Fund _____

COMPLAINT

Joshua Stockton (ADC [REDACTED]), the above named Claimant, of _____
(Name) (Street or R.F.D. & No.) (City)
_____ County _____ represented by _____
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of _____ says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Thirty Five (Fax No.) Thousand)

State agency involved: Arkansas Division of Correction Amount sought: \$35,000.00

Month, day, year and place of incident or service: 03/23/2023 to current ADC

Explanation: STATE Employee LT. Kurtis Holcomb (ADC) was given a emergency grievance
at [REDACTED] on 3-23-2023. STATE defendant did sign and date grievance (see - Grievance #1).
Defendant had ability to turn in the grievance for processing to the grievance
officer Carmel Steward (see Grievance #2). Defendant did not turning in the
emergency grievance as reported [REDACTED] of inmate according to the
grievance officer Carmel Steward (see Grievance 2) dated 6/7/23 from her
Response. NOT turning in a report of injury to inmate is negligent conduct by
the LT. Kurtis Holcomb (ADC) and injured inmate claimant's redress
administrative rights as a result as a inmate of the state afforded him by the
State Constitution and Ark Code 5: 004-03-01 - 035 (1)(1) (1) and the
duties owed to claimant by Ark Code 5: 12-27-103 (B)(1)(b), (7). Refuse is
sought to compensate in a tangible way the negligent acts of the State
Employees conduct in inmates injury report that was threatened as unable
to be redressed due to time expirations, and thus injured the
claimant's redress ability for the incident on 3/23/2023. LT Holcomb had
the duty to intervene, the opportunity to intervene and failed to intervene by his
negligent Acts in responding to a grievance and not turning it in for inmate.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

Yes _____; when? 06/07/23; to whom? Carmel Steward - A.D.C. Pine Bluff
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: She stated she didn't receive the
3-23-23 grievance in question on response 6/7/23.

and that \$ 0.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? NO; if so, state name and address

_____ (Name) _____ (Street or R.F.D. & No.) _____ (City) _____ (State) _____ (Zip Code)

and that the nature thereof is as follows: _____

_____ and was acquired on _____, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Joshua Stockton # _____
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Pine Bluff Arkansas
(City) (State)

on this 28th day of July, 2023
(Date) (Month) (Year)

(SEAL) **GEORGE DUNCAN JR**
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 06-19-2025
Commission # 12695904

George Duncan Jr
(Notary Public)

SF1- R7/99

My Commission Expires: 06/19/2025
(Month) (Day) (Year)

Duty: under State Code of Arkansas § 12-27-103 Establishment - Powers and duties (B)(1), The Department of Corrections (Arkansas Division of Corrections) shall have exclusive Jurisdiction over the Care, Charge, Custody, Control, Management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary; (6) The Department of Corrections shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the department of Corrections. (7) The Department of Corrections shall receive all offenders committed to the Department of Corrections for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to the policies established by the Board of Corrections.

STATE Employee LT. Kurtis L. Holcomb ID# [REDACTED] of A.D. [REDACTED] complex, under state code § 12-27-103 (B)(1), (6), (7) has such duty over the claimant and claimant was owed under his care and custody the rights afforded the states policies regarding grievance procedures processing of Arkansas Admin. Code 004.03.1-§35: (I) Authority - The Board of Corrections and Community Punishment (B.C.C.P.) is vested with the authority to promulgate this administrative rule by Ark. Code Ann. - §§ 12-27-105, 16-93-1203 and 16-93-1205 (Michie Supp. 1995). (II) Applicability -

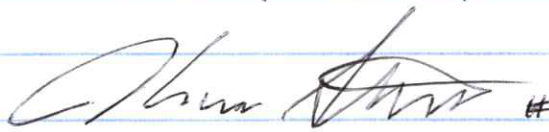
This policy applies to employees and offenders of the Department of Corrections (DOC) and the Department of Community Punishment (DCP) staff, inmates and residents of Community Punishment Centers. (III) Policy - It is the policy of the Board of Corrections and Community Punishment that offenders are provided an opportunity to submit grievances regarding policy, conditions, incidents or actions related to incarceration/confinement which directly impact them. —

(IV) Guidelines - A) Administrative Directives establishing procedures will be set forth by each agency. B) Procedures shall, at minimum provide for the following: offender notice of grievance process: Timely, effective and impartial processing of grievances; An appeals process; appropriate documentation of grievance activity; and speedy dispositions of emergency situations, with security and safety the paramount concern. C.) use of the grievance procedure shall occur without restraint, coercion, discrimination, interference or reprisal. Violation of this guideline shall result in prompt and decisive action. Current with Amendments reviewed through NOV. 15, 2022. Ark. Admin. Code 004.03.1-835.

Breach of Duty - STATE Employee LT. Kurtis L. Holcomb ID# [REDACTED] did breach his duty owed as a officer of the State bestowed by STATE Code § 12-27-103 the duty of Care of Claimant, and the duty he owed under (II) Applicability And (III) of Policy that offenders are provided an opportunity to submit grievances. And also regarding Policy, Conditions, incidents or actions related to his incarceration. STATE Employee Holcomb received Emergency grievance Dated 3-23-2023 of which he did state 'yes' to Step one/Emergency - grievance determinations on 3-23-2023. But STATE Employee failed to do his duty owed to claimant found in Ark. Code 004.03.1-835 (IV)(B) Procedures, and did not timely process through the unit level the Emergency grievance report of inmate harm occurred on 3/22 upon dated grievance 3/23/2023. In effect, restraining the use of and violating Section (C) of STATE Code - Ark. Admin. Code 004.03.1-835 (IV)(C) as result.

Causation - Claimants injury by Policy violations are a direct result of LT. Holcomb's Breach of the duty owed to the victim and would not have occurred if he would have turned in the Emergency Grievance to the Grievance officer Carmel Steward on 3-23-2023 as a Emergency Grievance should have been turned in for processing. Defendant as a STATE Employee failed to do so and was negligent in their Acts and omissions to follow state policy owed to the claimant.

Respectfully Submitted,



Joshua Matthew Stuckton

DATE : 7-26-2023

Negligence Standard Authority :

In the Eastern District of Arkansas, case : Gary v. Langley, - 2:17-CV-00117-LPR (E.D. ARK. SEP. 13, 2021) STATES, "To Prevail on a claim of negligence", in Arkansas, "The plaintiff must prove that the defendant(s) owed a duty to the plaintiff, that the defendant Breached that duty, and that the breach was the proximate cause of the plaintiff's injuries." (1.) Duty 2.) Breach of Duty 3.) Causation).

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center

Name Joshua Stockton

ADC#

Brks #

Job Assignment

Sanitation

FOR OFFICE USE ONLY

GRV. #

Date Received:

GRV. Code #:

(Date) STEP ONE: Informal Resolution

(Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why:

3-23-2023 (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the

Inmate Signature

Date

3-23-2023

If you are harmed, threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLYThis form was received on 3-23-23 (date), and determined to be **Step One** and/or an Emergency GrievanceYes (Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____Kurtis L. Holcomb
PRINT STAFF NAME (PROBLEM SOLVER)

ID Number

Staff Signature

Date Received

Describe action taken to resolve complaint, including dates:

Staff Signature & Date Returned

Inmate Signature & Date Received

This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).

Staff Who Received Step Two Grievance: _____ Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; **BLUE** - Grievance Officer; **ORIGINAL** - Given back to Inmate after Completion of Step One and Step Two.

Inmate Request Form

This form is to be used to contact staff with requests on issues you may have. You should allow five (5) working days to receive a response to your request. This is the in-house form.

Print Name: Joshua Stockton ADC Number: [REDACTED] Barracks & Bed #: [REDACTED] Date: 6-1-23

Staff Member Directed to: Carmel Steward Office or Department: Grievance Officer

My request is directed to the following area (Check only one):

- ☐ Chaplain
 ☐ General Library
 ☐ Law Library
 ☐ Property
- ☐ Classification
 ☐ Hobby Craft
 ☐ Mail Room
 ☐ Records
- ☐ Commissary
 ☐ Issuance
 ☐ Medical
 ☐ Security
- ☐ Deputy Warden
 ☐ Key Control
 ☐ Mental Health
 ☐ Visitation
- ☐ Food Service
 ☐ Laundry
 ☐ Parole
 ☐ Warden
 ☒ Other: Grievance Officer

Give a detailed reason for your request:

Please look this grievance up and put it in Grievance #, Date Received, and Grievance Code or a copy of the one you have on file on your computer.

Thanks - I have to locate it as it's not back from the Director's finding and in the mail to me yet.

Have you talked to any staff about your request?

☒ No

☐ Yes If yes, who did you talk to and when?

[Signature] 6-1-23
Inmate's Signature Date

Responding Staff: Mrs. Steward

Date: 6-7-23

All grievances received in the PBU grievance office are indicated incomplete, acknowledged or rejected. There is no record of your attached yellow receipt of 1st Level Grievance form (Attached) dated 3/23/23. Response recorded.

I am referring this to:

cc: GRIEVANCE OFFICE

Departmental File

JUN 02 2023

RECEIVED

[Signature]
Staff Member's Signature

6/7/23
Date

Please send me another Claim form to

Arkansas

State Claims Commission

Joshua Stokson

AUG 03 2023

RECEIVED

Mika Tucker

From: ASCC New Claims
Sent: Friday, August 11, 2023 9:07 AM
To: Thomas Burns (DOC)
Cc: Kathryn Irby; Mika Tucker; Bilenda Harris-Ritter
Subject: CLAIM: Joshua Stockton v. ADC, Claim No. 240164
Attachments: Joshua Stockton ADC agency ltr 240164.pdf; Joshua Stockton _Claim form and supporting docs 240164.pdf; Joshua Stockton_Requested Claim form mailed to Cl.pdf

Please see attached. Contact Kathryn Irby with any questions.

Thank you,
Caitlin

Caitlin McDaniel

Administrative Specialist II

Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410

Little Rock, Arkansas 72201

(501) 682-1619

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

August 11, 2023

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602

(via email)

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240164

Dear Mr. Burns,

Enclosed please find a copy of the above-styled claim filed against the Arkansas Division of Correction. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Mika Tucker

ES: cmcdaniel

cc: Joshua Stockton (ADC [REDACTED]), *Claimant* (w/ encl.)
Bilenda Harris-Ritter, *counsel for Ark. Dept. of Corrections* (w/encl.) (via email)

<p>Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.</p>
--

Mika Tucker

From: Thomas Burns (DOC)
Sent: Monday, August 14, 2023 10:13 AM
To: ASCC Pleadings
Subject: Joshua Stockton v ADC 240164
Attachments: 0449_001.pdf

Answer

Thank you,
-TB



THOMAS BURNS
PENITENTIARY WARDEN
Arkansas Department of Corrections
2044 Prisoners Plz
Ft. Smith, Arkansas 72344
Phone: (501) 281-1000 ext. 2000
Fax: (501) 281-1000
Email: Burns@adoc.state.ar.us

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON ([REDACTED])

CLAIMANT

v.

NO. 240164

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

ANSWER TO COMPLAINT

COMES NOW the Respondent, Arkansas Department of Corrections, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.

2. The applicable account information required by the Commission is:

a. Agency number: 0480

b. Cost Center: HCA 0100

c. Internal Order: 340301

d. Fund Center: 509

WHEREFORE, for the reasons cited above, the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing or, in the alternative, that the matter be held in abeyance until completion of the investigation by Internal Affairs.

Respectfully submitted,



Thomas Burns (02006)

Legal Support Unit

Division of Correction

6814 Princeton Pike

Pine Bluff, AR 71602-9411

(870) 267-6845 Office

(870) 267-6373 Facsimile

thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 14th day of August 2023 on the Claimant by placing a copy of the same in the U. S. Mail, regular postage, to:

Joshua Stockton ([REDACTED])
[REDACTED]


Thomas Burns

Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Wednesday, September 6, 2023 4:10 PM
To: Thomas Burns (DOC)
Cc: ASCC Pleadings; Mika Tucker
Subject: CORR: Joshua Stockton v. ADC, Claim No. 240164
Attachments: Joshua Stockton v. ADC164.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240164

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)

Mika Tucker

From: Thomas Burns (DOC)
Sent: Monday, October 2, 2023 4:17 PM
To: ASCC Pleadings
Subject: Joshua Stockton v ADC 240164
Attachments: 1043_001.pdf

MSJ

Thank you,
-TB



THOMAS BURNS
PENITENTIARY WARDEN
Arkansas Department of Corrections
2044 Prisoners Plz
Ft Smith, Arkansas 72530
Phone: (501) 281-1000 ext. 2000 (501) 281-1000
Fax: (501) 281-1000
Email: Burns@adoc.state.ar.us

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

v

NO. 240164

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

MOTION FOR SUMMARY JUDGMENT

Come now the respondent, Arkansas Department of Corrections (ADC), by and through their attorney, Thomas Burns, and for their Motion for Summary Judgment pursuant to Ark. R. Civ. P. 56, states:

1. The pleadings filed herein reveal that the facts in this case are undisputed or are settled.
2. As a result thereof, the ADC is entitled to summary judgment.
3. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of their pleadings, but their response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial.
4. The inmate has not cited any legal authority that the summary judgment is inappropriate because the inmate has failed to exhaust his administrative remedies.
5. The Inmate filed a grievance but that grievance was not appealed to step 2.
See attached Ex A.
6. The Arkansas State Claims Commission does not have jurisdiction when an inmate fails to exhaust. "The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity." Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015).

7. Pursuant to the Prison Litigation Reform Act (PLRA), “no actions 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, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C § 1997e. In 1997, the Arkansas legislature adopted the PLRA’s exhaustion requirement by enacting Ark. Code Ann. §16-106-202. That statute follows the PLRA by adopting a grievance exhaustion requirement for state actions:

- (a) A civil action **or claim** initiated against...Department of Correction...by an inmate in a penal institution or incarcerated person appearing pro se may be:
 - (1) Dismissed without prejudice by the court on its own motion or on a motion of the defendant, if all administrative remedies available to the inmate have not been exhausted.

8. The inmates grievance was not appealed therefore, the inmate has failed to exhaust. “A basic rule of administrative procedure requires that an agency be given the opportunity to address a question before a complainant resorts to the courts. Where a party has failed to exhaust his or her administrative remedies, the trial court lacks jurisdiction over the suit” *Ark. HHS v Smith*, 370 Ark. 490. One must exhaust their administrative remedies before they may proceed in Court. *See Johnson v Johnson*, 385 F.3d 503 (2004).

9. Proper exhaustion requires the inmate to have completed “the administrative review process in accordance with the applicable procedural rules.” *Jones v. Bock*, 549 U.S. 199, 218 (2007) (quoting *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)). While the level of detail needed in a grievance will vary between systems, “it is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion.” *Jones*, 549 U.S. at 218. “[P]roper exhaustion demands compliance with an

agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Woodford*, 548 U.S. at 90-91. The Supreme Court has held that exhaustion is no longer left to the discretion of the district court, but is mandatory." *Id.* at 85.

10. The inmate sent an inmate request form, seeking information about his grievance. This is not a proper appeal avenue, but that request response shows he did not appeal. *See attached Ex B.*

11. The [REDACTED] grievance coordinator never received a step 2 appeal from the inmate, because of that the inmate has failed to exhaust. *See attached Ex C.*

12. A review of the inmates grievance filings does not show anything from March 23, 2023. *See attached Ex D.* That is because a number was never given the grievance because that happens at Step 2.

13. What did happen on March 23, 2023 is that Sgt. Kurtis Holcomb received an emergency grievance that the inmate was injured. Sgt. Holcomb took the grievance, as the step 1 problem solver, and immediately took the inmate to medical. *See attached Ex E.*

14. The inmate fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company*, 362 Ark. 317, 208 S.W. 3d 153 (2008). The inmate's claim, even if true, does not support a claim for monetary relief.

15. Even if the inmate were to plead with more specificity, he would still not be able to prevail. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett*, 308 Ark. 291, 824 S.W. 2d 377 (1992). Even taking the inmate's allegations true as pleading, and giving him the benefit of every possible inference, his mere inconvenience of alleged wrongdoing can never render a claim that is anything but speculation.

16. The inmate has failed to follow the rules of the Claims Commission. The correspondence sent to the inmate on September 6, 2023 states "If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Commission for failure to respond." *See attached Ex F*.

17. In *Turner v. Baptist Medical Center*, 275 Ark. 424, 427, 631 S.W.2d 275, 277-278, (1982), it states . . . "that opposing affidavits that consist merely of general denials, without any statement of specific facts, are insufficient to defeat a summary judgment motion."

18. The inmate has failed to demonstrate the existence of a genuine issue of any fact material to ADC's alleged culpability of failure to follow procedure and has failed to rebut the ADC's prima facie evidence of its entitlement to judgment as a matter of law.

19. Once the moving party makes a prima facie showing of entitlement to summary judgment, the responding party must meet proof with proof in order to demonstrate that there is remaining a genuine issue of material fact. The response and supporting material must set forth specific facts showing that there is a genuine issue for

trial. See Ark. R. Civ. P. 56(e) *Hampton v. Taylor*, 318 Ark. 771, 776-777, 887 S.W.2d 535, 538-539 (1994). The inmate has failed to identify any genuine issues of material fact that would preclude a summary judgment in favor of the ADC. Therefore, this Commission should grant the Motion for Summary Judgment.

20. The ADC has attached all the documentation and has demonstrated a prima facie entitlement to Summary Judgment. To overcome this, the inmate must meet proof with proof and demonstrate the existence of a material issue of fact. *Gonzales v. City of DeWitt*, 357 Ark. 10, 14-15, 159 S.W.3d 298 301 (*emphasis added*).

21. The ADC, is entitled to judgment as a matter of law for the following reasons:

- (a) First, the inmate has failed to exhaust his administrative remedies
- (b) Second, the inmate has no damage.
- (c) Third, the inmate failed to respond to the Commission.
- (c) Fourth, the inmate fails to cite any legal authority for his contention that summary judgment is inappropriate.

22. The ADC should be awarded fees and costs for this action.

WHEREFORE, The ADC, prays that their Motion for Summary Judgment be granted; for their attorney's fees and costs; and for all other just and proper relief to which they may be entitled.

Respectfully submitted,



Thomas Burns (02006)
Legal Services Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 2 day of October 2023, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Joshua Stockton ([REDACTED])
[REDACTED]



Thomas Burns

UNIT LEVEL GRIEVANCE (Form I)
Unit/Center

FOR OFFICE USE ONLY

GRV. #

Date Received:

GRV. Code #:

Name

ADC# Brks # Job Assignment

(Date) STEP ONE: Informal Resolution

(Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)
If the issue was not resolved during Step One, state why:

3-23-2023 (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem solver (staff) immediately.

Inmate Signature

Date

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 3-23-23 (date), and determined to be Step One and/or an Emergency Grievance Yes (Yes or No). This form was forwarded to medical or mental health? (Yes or No). If yes, name of the person in that department receiving this form: Date

PRINT STAFF NAME (PROBLEM SOLVER)

Staff Signature

Date Received

Describe action taken to resolve complaint, including dates:

Staff Signature & Date Returned

Inmate Signature & Date Received

This form was received on (date), pursuant to Step Two. Is it an Emergency? (Yes or No).

Staff Who Received Step Two Grievance: Date:

Action Taken: (Forwarded to Grievance Officer/Warden/Other) Date:

If forwarded, provide name of person receiving this form: Date:

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; **BLUE** - Grievance Officer; **ORIGINAL** - Given back to Inmate after Completion of Step One and Step Two.

Inmate Request Form

This form is to be used to contact staff with requests and have. You should allow five (5) working days to receive a response to your request. This is the [redacted] in-house form.

Print Name: <u>Joshua Storkton</u>	ADC Number: [redacted]	Barracks & Bed #: [redacted]	Date: <u>6-1-23</u>
Staff Member Directed to: <u>Carmel Steward</u>	Office or Department: <u>Grievance Officer</u>		

My request is directed to the following area (Check only one):

- | | | | |
|---|--|--|-------------------------------------|
| <input type="checkbox"/> Chaplain | <input type="checkbox"/> General Library | <input type="checkbox"/> Law Library | <input type="checkbox"/> Property |
| <input type="checkbox"/> Classification | <input type="checkbox"/> Hobby Craft | <input type="checkbox"/> Mail Room | <input type="checkbox"/> Records |
| <input type="checkbox"/> Commissary | <input type="checkbox"/> Issuance | <input type="checkbox"/> Medical | <input type="checkbox"/> Security |
| <input type="checkbox"/> Deputy Warden | <input type="checkbox"/> Key Control | <input type="checkbox"/> Mental Health | <input type="checkbox"/> Visitation |
| <input type="checkbox"/> Food Service | <input type="checkbox"/> Laundry | <input type="checkbox"/> Parole | <input type="checkbox"/> Warden |

[X] Other: Grievance Officer

Give a detailed reason for your request:

Please look this grievance up and put it in Grievance #, Date Received, and Grievance Code or a copy of the one you have on file on your computer.

Thanks - I have to locate it as its not back from the Directors finding and in the mail to me yet.

Have you talked to any staff about your request?

☒ No

☐ Yes If yes, who did you talk to and when?

[Signature] 6-1-23
Inmate's Signature Date

Responding Staff: Mrs. Steward

All grievances received in the PBU Grievance Office are indicated complete, acknowledged or rejected. There is no record of your attached yellow receipt of Unit Level Grievance Form (Attachment) dated 3/5/23. Response recorded.

I am referring this to:

C: GRIEVANCE OFFICE

Departmental File

JUN 02 2023

RECEIVED

[Signature]
Staff Member's Signature

6/7/23
Date

EXB

AFFIDAVIT OF CARMEL STEWARD

BEFORE ME, the undersigned authority, on this day personally appeared Carmel Steward, who being of sound mind and legal age, and after being duly sworn, deposes and states as follows:

1. I am the grievance coordinator for the [REDACTED] and I have personal knowledge and belief of the facts set out herein.

2. On or about June 2, 2023, Inmate Joshua Stockton sent me an inmate request relating to his grievance on March 23, 2023.

3. I responded to the request on June 7, 2023, advising that there is no record of a grievance number for the yellow receipt he attached.

4. By not having a grievance number the inmate did not proceed to step 2 of the grievance appeals procedure.

5. Inmates Stockton's use of the inmate request is not a proper step in the grievance appeals process.

6. Inmate Stockton never elevated the grievance to level two, that is the inmate's responsibility not the problem solvers.

7. The inmate has failed to exhaust his administrative remedies.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 2nd day of October ~~September~~ 2023.



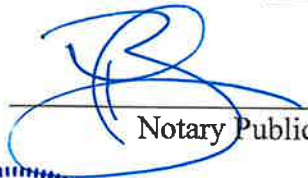
Signature of Affiant



Printed Name of Affiant

State of Arkansas }
 }ss
County of Jefferson }

Subscribed and sworn to before me, this 2nd day of ~~September~~ ^{October}, 2023.



Notary Public

My Commission Expires:

9/21/2032



Inmate Grievances

▼ Grievances (41 - 56 of 56)

Received Date	Grievance #	Zone	Type	Merit	Status	Status Date	Latest Action
<u>03/31/2023</u>	23-00095	Zone 1		No	Appeal Denied	05/10/2023	Appeal Denied
<u>03/30/2023</u>	23-00090	Zone 1		No	Appeal Denied	05/10/2023	Appeal Denied
<u>03/14/2023</u>	23-00071	Zone 1		No	Appeal Denied	05/01/2023	Appeal Denied
<u>03/13/2023</u>	23-00070	Zone 1		No	Appeal Denied	04/06/2023	Appeal Denied
<u>03/13/2023</u>	23-00069	Zone 1		No	Appeal Denied	04/27/2023	Appeal Denied
<u>03/02/2023</u>	23-00061	Zone 1		No	Appeal Denied	03/28/2023	Appeal Denied
<u>03/02/2023</u>	23-00057	Zone 1		No	Appeal Denied	04/24/2023	Appeal Denied
<u>03/02/2023</u>	23-00058	Zone 1		Other	Appeal Denied	04/24/2023	Appeal Denied
<u>02/24/2023</u>	23-00050	Zone 1		Yes	Appeal Denied	04/14/2023	Appeal Denied
<u>02/13/2023</u>	23-00035	Zone 1		No	Appeal Denied	02/27/2023	Appeal Denied
<u>02/07/2023</u>	23-00030	Zone 1		No	Appeal Denied	02/24/2023	Appeal Denied
<u>12/21/2022</u>	22-00335	Zone 1		No	Appeal Denied	01/20/2023	Appeal Denied
<u>10/12/2022</u>	22-00294	Zone 2		No	Appeal Upheld	12/14/2022	Appeal Upheld
<u>09/17/2019</u>	19-00117	Zone 3		No	Responded	10/14/2019	Health Services Responded
<u>08/26/2019</u>	19-00106	Zone 3		No	Appeal Denied	09/05/2019	Reject Grievance Appeal
<u>08/05/2019</u>	19-00100	Zone 3		No	Appeal Denied	09/19/2019	Reject Grievance Appeal

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (ADC) [REDACTED]

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240164

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)

Ex. F.

Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Wednesday, November 8, 2023 2:37 PM
To: Thomas Burns (DOC)
Cc: ASCC Pleadings; Mika Tucker
Subject: ORDER: Joshua Stockton v. ADC, Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378
Attachments: Joshua Stockton v. ADC2.pdf; Stockton-order163.pdf; Stockton-order164.pdf; Stockton-order211.pdf; Stockton-order233.pdf; Stockton-order234.pdf; Stockton-order266.pdf; Stockton-order285.pdf; Stockton-order378.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

November 8, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Joshua Stockton v. Arkansas Division of Correction***
Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378

Dear Mr. Stockton and Mr. Burns:

Enclosed please find the Orders entered today by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 240164

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is the claim filed by Joshua Stockton (the “Claimant”) against Arkansas Division of Correction (the “Respondent”).

Respondent filed an answer denying liability.

The Commission sent correspondence to Claimant on September 6, 2023, advising that Respondent recommended that the claim be denied. In that correspondence, Claimant was given fifteen (15) calendar days to request a hearing and advised that if Claimant did not do so within the specified time frame, Claimant’s claim would be dismissed for failure to respond. To date, Claimant has not responded to the Commission’s September 6, 2023, correspondence.

As such, the Commission hereby unanimously DENIES and DISMISSES this claim for Claimant’s failure to prosecute the claim.

The Commission notes that, as of the date of this Order, eight (8) claims filed by Claimant within a two-year period have been dismissed: (1) Claim No. 240163 was filed on August 3, 2023, and dismissed on November 8, 2023; (2) the instant claim, Claim No. 240164, was filed on August 3, 2021, and dismissed on November 8, 2023; (3) Claim No. 240211 was filed on August 9, 2023, and dismissed on November 8, 2023; (4) Claim No. 240233 was file on August 12, 2023, and dismissed on November 8, 2023; (5) Claim No. 240234 was filed on

August 12, 2023, and dismissed on November 8, 2023; (6) Claim No. 240266 was filed on August 17, 2023, and dismissed on November 8, 2023; (7) Claim No. 240285 was filed on August 23, 2023, and dismissed on November 8, 2023; and (8) Claim No. 240378 was filed on September 9, 2023, and dismissed on November 8, 2023.

Ark. Code Ann. § 19-10-221 provides,


An inmate in the Division of Correction or the Division of Community Correction who has filed more than three (3) unsuccessful claims or actions under this subchapter within a period of two (2) years may have his or her subsequent claims or motions dismissed by the Arkansas State Claims Commission upon receipt as abuse of process, for one (1) year from the date of dismissal of the inmate's third unsuccessful claim.

Accordingly, the Commission bars Claimant from filing any claims for one year from the date of this Order. Any claims submitted by Claimant within a year from the date of this Order will be dismissed upon receipt pursuant to Ark. Code Ann. § 19-10-221. The Commission notes that this statute does not authorize the Commission to dismiss any pending claims that Claimant may have filed before the date of this Order.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: November 8, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Arkansas State Claims Commission

Joshua Stockton ADC# [REDACTED]

CLAIMANT

V.

Claim no. 240163, 240164, 240211, 240233, 240234

Arkansas Department of Corrections 240266, 240285, 240378

Division of Corrections

Respondent
Arkansas
State Claims Commission

NOV 17 2023

NOTICE OF APPEAL

RECEIVED

pursuant to Ark. Code ann. § 19-10-211 (supp. 1997), claimant Joshua —

Stockton Appeals to the General assembly For his appeal of this cited claim against Defendants in their official capacities as STATE Employees.

The Arkansas State Claims Commission's denied all at one time, after claimant did responses to Respondents motions for summary judgments and/or Motion for dismissals of which claimant Responded to. The Claims Commission sent Correspondence's To claimant That he had 15 days to respond to request a hearing After Notices were served to Respondents Counsel, of which claimant did in Letter formats (incorporating multiple claim numbers) in a response for claimant's wanting a trial. The Claimant did Respond to Each Claim Notice and did put Attu: Mikea Tucker in

his requests for trial Responses, all sent in prior to the 15 day response period of expiration. Inside one or more of these claim numbers have the response letters in their Records. All someone has to do is look for them! perhaps The General assembly will do so in their investigation of appellate to their Authority

This appeal of claims nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285 - and 240328 are disputed. As claimant met criteria 1) and 2) on Exhibit 1

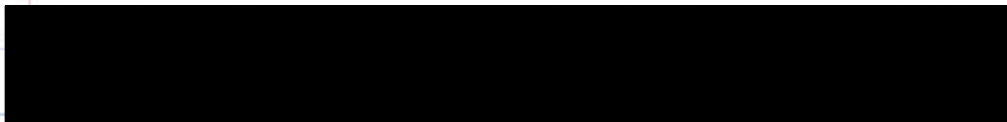
Claimant appeals to the General Assembly According to Ark. Code Ann. § 19-10-211 -

(2) (1).

under Oath sworn, and Respectfully Submitted -

 Adc # 

Joshua Stockton



Dated 11-14-2023

Exhibit 1

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]

RE: *Joshua Stockton v. Arkansas Division of Correction*
Claim No. 240164

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

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It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)