EXHIBIT C.3

Arkansas State Claims Commission
NOV 07 2016
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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr.
☐ Mrs.
☒ Ms.
☐ Miss Deserae Deer, **Claimant**

vs.

~~State of Arkansas, Respondent~~
ACC / DOC

Do Not Write in These Spaces
Claim No. 17-0335-CC
Date Filed November 7, 2016 (Month) (Day) (Year)
Amount of Claim $ 50,000.00
Fund ADCC
~~Negligence, Failure to Follow~~ Procedure

COMPLAINT

AR Dept. of Community Correction
Deserae Deer (Name), the above named Claimant, of 306 Church Street (Street or R.F.D. & No.) DeQueen (City)
Arkansas (State) 71832 (Zip Code) 870-582-3109 (Daytime Phone No.) County of Sevier represented by Josh Sanford & Stacy Gibson (Legal Counsel, if any, for Claim)
of 1650 S. Shackleford, Suite 411 (Street and No.) Little Rock (City) AR (State) 72211 (Zip Code) 501-221-0088 (Phone No.) 888-787-2040 (Fax No.), says:

State agency involved: Arkansas Department of Community Correction Amount sought: $50,000

Month, day, year and place of incident or service: December 2012 in Sevier County, Arkansas

Explanation: please see attached original complaint for Negligence and failure to follow procedure, NOT a claim for sexual misconduct or sexual harassment.

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? No (Yes or No); when? _____ (Month) (Day) (Year); to whom? _____ (Department); and that the following action was taken thereon: _____

and that $ _____ 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.

Deserae Deer
(Print Claimant/Representative Name)

Deserae D Deer
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock (City) Arkansas (State)
on this 22nd (Date) day of August (Month), 2016 (Year)

Cynthia Williamson
(Notary Public)

(SEAL) CYNTHIA WILLIAMSON No. 12696259 NOTARY PUBLIC EXPIRES 12-01-2025 PULASKI COUNTY - ARKANSAS

My Commission Expires: 12 (Month) 01 (Day) 2025 (Year)

SF1-R7/99

ARKANSAS STATE CLAIMS COMMISSION

DESERAE DEER **CLAIMANT**

vs. Case No. 2016-_____

STATE OF ARKANSAS, ARKANSAS DEPARTMENT OF CORRECTION, and ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION **RESPONDENTS**

ORIGINAL COMPLAINT

COMES now Claimant Deserae Deer, by and through her attorneys Stacy Gibson and Josh Sanford of Sanford Law Firm, PLLC, and for her Original Complaint before the Arkansas Claims Commission against Respondents State of Arkansas, Arkansas Department of Correction, and Arkansas Department of Community Correction, states as follows:

I.

JURISDICTION AND VENUE

1. This Complaint alleges negligence under the laws of the State of Arkansas, including negligent hiring, retention, training and supervision, and asserts Claimant's rights to damages based on such negligence.

2. This Complaint also alleges violations of the laws of the State of Arkansas and the Arkansas Civil Rights Act, codified at Ark. Code Ann. § 16-123-101, *et seq* (hereinafter referred to as the "ACRA"), and violations of the

Constitution and laws of the United States pursuant to Title 42 U.S.C. §1983. The ACRA claims and the Section 1983 claims arise out of a common nucleus of operative facts and are part of the same case or controversy.

3. This Complaint also seeks relief under Ark. Code Ann. § 16-118-107.

4. The Arkansas Claims Commission has jurisdiction of the parties hereto and of the subject matter pursuant to Ark. Code Ann. § 19-10-201, et seq.

5. Venue is proper in the Arkansas Claims Commission pursuant to Ark. Code Ann. § 19-10-201, et seq.

6. The acts and events giving rise to this action occurred within Sevier County, Arkansas.

7. All of the events alleged herein occurred within the State of Arkansas, and all of the parties were residents of Arkansas at the time of the events which give rise to this litigation.

II.

PARTIES

8. Claimant Deserae Deer (hereinafter "Claimant") is and has been at all times referred to herein, a resident of Arkansas and domiciled in the State of Arkansas.

9. During the relevant time period, Ms. Deer was a parolee under the supervision of Arkansas Department of Community Correction (ADCC) and the Arkansas Department of Correction (ADC).

10. Respondent ADCC is a state agency, and has a mailing address of 105 West Capitol Avenue, Little Rock, Arkansas 72201.

11. Respondent ADCC, was at all times relevant to this action, and still is, an Arkansas state agency with its principal place of operation in Little Rock, Arkansas, but it also owns and/or operates multiple offices throughout the state, including an office in the Sevier County Circuit Courthouse where the injuries giving rise to this claim occurred, located in at 115 North 3rd Street, De Queen, Arkansas 71832.

12. Respondent ADC is a state agency, and has a mailing address of P.O. Box 8707, Pine Bluff, Arkansas 71611-8707.

13. Respondent ADC, was at all times relevant to this action, and still is, an Arkansas state agency with its principal place of operation in Pine Bluff, Arkansas, but it also owns, operates and/or oversees multiple offices throughout the state, including an office in the Sevier County Circuit Courthouse where the injuries giving rise to this claim occurred, located in at 115 North 3rd Street, De Queen, Arkansas 71832.

III.

FACTUAL ALLEGATIONS

14. Claimant fully adopts and incorporates each and every allegation set forth herein above.

15. At all times relevant to the subject matter of this litigation, Claimant was a parolee under the supervision of the ADCC and the ADC.

16. At all times relevant to the subject matter of this litigation, Anthony Lawrence was employed as a parole officer with the ADCC.

17. Claimant was released from prison and placed on parole in 2012.

18. Claimant's initial assigned parole officer was Ms. Davenport, an employee of ADCC.

19. When Ms. Davenport left her position for maternity leave later in 2012, Anthony Lawrence was designated by ADCC as Claimant's parole officer.

20. At that time, Anthony Lawrence had only been a parole officer for two to three weeks.

21. As a parole officer, Anthony Lawrence held individual meetings with his parolees.

22. Anthony Lawrence was supervised by other employees of ADCC.

23. Anthony Lawrence was trained by other employees of ADCC.

24. During his first meeting with Claimant, Anthony Lawrence asked Claimant inappropriate questions regarding flashing her breasts. He also said to Ms. Deer, "I feel like we can have an open relationship," while alone in his small office with Claimant.

25. Anthony Lawrence then attempted to kiss Claimant and groped her genitals through her clothing.

26. Ms. Deer told Anthony Lawrence to stop, but he persisted in exerting physical control over Ms. Deer's body against her will and without just cause.

27. Anthony Lawrence made additional inappropriate comments to Claimant, such as "I could bend you over right here."

28. Anthony Lawrence had a private office in the courthouse.

29. There was not a supervisor or any other ADCC employee in Anthony Lawrence's office during his meeting with Ms. Deer.

30. Within the next few days, Anthony Lawrence repeatedly called Claimant's mother and told her that Claimant would be in violation of her parole if she did not report to his office at the courthouse in DeQueen after hours, when the courthouse and offices inside the courthouse were closed.

31. Claimant contacted police, and the Arkansas State Police set up video and audio surveillance at Claimant's next meeting with Anthony Lawrence.

32. At this meeting, Anthony Lawrence again made unwanted sexual contact with Claimant.

33. Anthony Lawrence was convicted of sexual assault in the fourth degree and criminal attempt to commit sexual assault in the third degree based on his interaction with Claimant.

34. Anthony Lawrence's supervisors knew, or should have known, that Anthony Lawrence was violating the rights of Claimant, because of the lack of training and lack of supervision of Anthony Lawrence by ADCC. As a direct and proximate result of her injuries, Claimant suffered damages as set forth herein.

35. As a direct and proximate result of her injuries, Claimant suffered damages as set forth herein.

IV.

STATEMENT OF CLAIMS FOR RELIEF

A.

FIRST CLAIM FOR RELIEF
Violations of Arkansas Civil Rights Act, A.C.A. § 16-123-101, *et seq.*

36. Claimant fully adopts and incorporates each and every allegation set forth herein above.

37. ADCC was acting under color of state law in their actions and inactions at all times relevant to this action.

38. ADCC had a custom, policy, or practice of acting knowingly and with deliberate indifference to the constitutional rights of parolees by failing to take reasonable measures to protect Ms. Deer and other parolees from the known risk of sexual abuse by the parole officers within ADCC.

39. The acts or omissions of ADCC amounted to deliberate indifference to the substantial risk of sexual assault to Ms. Deer and other parolees, violating her and their Eighth Amendment rights to be free from cruel and unusual punishment.

40. ADCC knowingly, intentionally, willfully and with wanton disregard to the obvious serious risk of sexual assault, failed to provide humane conditions of supervision, resulting in substantial harm to Ms. Deer and other parolees.

41. The acts or omissions of ADCC were the legal and proximate cause of Ms. Deer's damages in that she suffered mental and physical pain and anguish, resulting from physical intrusion into her bodily privacy.

42. ADCC's unconstitutional policies, customs, and/or practices, as described herein, were the legal and proximate cause of Ms. Deer's injuries.

43. ADCC's actions and omissions violated Ms. Deer's right to be free from cruel and unusual punishment while under the supervision of ADCC and intentionally deprived Ms. Deer of due process and the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, in addition to causing Ms. Deer's other damages.

44. ADCC's deliberate, intentional, willful, and wanton disregard to the serious risks posed to Ms. Deer by ADCC's failure to protect parolees from the known threat of sexual assault by parole officers, and specifically from Anthony Lawrence, violated Ms. Deer's rights under the Eighth and Fourteenth Amendments to the United States Constitution.

45. ADCC's conduct in violating Ms. Deer's rights as described herein shocks the conscience and is intolerable to society's standards of fundamental fairness.

46. By supervising Ms. Deer's parole, and thereby depriving her of her liberty, ADCC created a special relationship with Ms. Deer that required ADCC to provide reasonable protection for Ms. Deer, and required ADCC to provide reasonable supervision of parole officers in order to protect Ms. Deer's safety.

47. ADCC knew or reasonably should have known that Anthony Lawrence posed a serious threat to Ms. Deer's safety; yet ADCC failed to take reasonable measures to protect Ms. Deer and other parolees from Anthony Lawrence.

48. ADCC knew of the inherent risks of sexual abuse of parolees by parole officers as a result of the unequal balance of power in the relationship, yet ADCC failed to take reasonable measures to train parole officers to avoid abuse of parolees.

49. ADCC knew, or had reason to know, that its employees would foreseeably use their authority and influence to sexually assault parolees, thereby violating parolees' constitutional rights.

50. ADCC knew, or had reason to know, that their employees would foreseeably not be able to protect parolees from physical injury by parole officers because of lack of parole officer supervision and training, thereby violating parolees' constitutional rights.

51. ADCC knew, or had reason to know, that their parole officers would foreseeably cause physical injury to parolees because of lack of parole officer supervision and training, thereby violating parolees' constitutional rights.

52. ADCC knew of regular, recurring, and/or ongoing sexual abuse of parolees by parole officers such that ADCC knew that its training and/or supervision program was inadequate and required a change in order to protect parolees from abuse.

53. In the years and months leading up to the incident complained of herein, ADCC received sufficient complaints of sexual abuse by other parolees such that ADCC knew that its training and/or supervision program was inadequate and required a change in order to protect parolees from abuse.

54. In addition or in the alternative, ADCC permitted Anthony Lawrence to supervise the parole of Ms. Deer without having completed the necessary training programs related to sexual abuse normally required by ADCC and without adequate supervision, thereby deliberately subjecting Ms. Deer to a known and unreasonable risk of abuse.

55. The acts or omissions of ADCC were the legal and proximate cause of Ms. Deer's damages in that she suffered physical pain and injury, including physical intrusion into bodily privacy, and mental pain and anguish.

56. ADCC developed and maintained policies, procedures, customs, and/or practices, including a failure to adequately hire, train and/or supervise parole officers regarding the protection of inmates from sexual assault, exhibiting or resulting in deliberate indifference to the constitutional rights of persons under the supervision of ADCC, which was the proximate cause of the violation of Ms. Deer's constitutional rights as set forth herein, as well as the rights of others similarly situated.

57. ADCC failed to properly hire, train, supervise and/or discipline its employees regarding the protection of parolees, including Ms. Deer, from sexual assault, and other violations as described herein.

58. The inadequate hiring, training and/or supervision provided by ADCC resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to ADCC.

59. In light of the duties and responsibilities of parole officers and other ADCC personnel who exercise control over persons on parole with ADCC, the

need for specialized training, supervision, and proper discipline is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional rights, such as those described herein, that ADCC is liable for its failure to appropriately hire, train, and/or supervise parole officers and other ADCC personnel.

60. ADCC could have pursued reasonable methods for the hiring, training and supervision of employees, but failed to do so.

61. ADCC's policies and customs in failing to properly train and supervise its employees, and in failing to create and enforce preventative policies or policy manuals, were the moving forces and proximate cause of the violation of Ms. Deer's constitutional rights, and the rights of those similarly situated.

62. ADCC, through its acts and/or omissions, ratified the unconstitutional conduct described herein, causing such conduct to be legally attributable to itself.

63. The acts or omissions of ADCC were the direct result of the official policies, procedures, customs, and/or practices of ADCC; in addition or in the alternative, those individuals within the ADCC with power and authority to enact policy, make decisions, or otherwise supervise the ADCC were aware of the facts alleged above that the acts or omissions of the agents and employees of ADCC became the official policies, procedures, customs, and/or practices of ADCC that resulted in Plaintiff's damages.

64. The ADCC is subject to the control and oversight of the ADC. The ADC had the same knowledge of all of the attenuating facts and circumstances

described above as the ADCC and the same authority and obligation to act as the ADCC, yet the ADC acted or failed to act with the same level of willful and intentional disregard as the ADCC.

65. The deliberate, intentional, willful and wanton disregard of Respondents to the obvious, serious risks to Ms. Deer posed by their failure to protect parolees, including Ms. Deer, from the known threat of sexual assault by parole officers, violated Ms. Deer's rights under the Arkansas Constitution.

66. The acts and/or omissions of Respondents caused Ms. Deer such damages that she suffered physical injury, as described above, and mental pain from which she still suffers.

67. As a direct and proximate cause and consequence of the unconstitutional policies, procedures, customs, and/or practices described above, Ms. Deer suffered and continues to suffer damages and losses as set forth herein.

68. The foregoing acts and omissions of Respondents described above, constitute a violation of the Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101, *et seq.*

69. The foregoing acts and omissions of Respondents violate Ms. Deer's constitutional rights under Article 2, Section 8 of the Arkansas Constitution to not be deprived of life, liberty or property without due process of law.

70. The foregoing acts and omissions of Respondents violate Ms. Deer's constitutional rights under Article 2, Section 9 of the Arkansas Constitution to be free from cruel and unusual punishment.

71. Because of the violations of the ACRA by Respondents, Plaintiff is entitled to compensatory damages, together with attorneys' fees and costs.

B.

SECOND CLAIM FOR RELIEF
42 U.S.C. §1983 Eighth Amendment and Fourteenth Amendment Violations

72. Claimant fully adopts and incorporates each and every allegation set forth herein above.

73. The actions of Respondents as described herein intentionally deprived Ms. Deer of due process and the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

74. Such policies, as well as Respondents' actions and inactions violated Ms. Deer's Eighth Amendment right to reasonable protection of her safety while being a parolee of ADCC, and intentionally deprived Ms. Deer of due process and the rights, privileges, and immunities secured by the Constitution of the United States of America and caused her other damages.

75. Respondents' deliberate, intentional, willful and wanton disregard to the obvious, serious risks to Ms. Deer posed by their failure to protect parolees, including Ms. Deer, from the known threat of sexual assault by parole officers, violated Ms. Deer's Eighth Amendment and Fourteenth Amendment rights under United States Constitution.

76. Plaintiff is entitled to compensatory damages, together with attorneys' fees and costs.

C.

THIRD CLAIM FOR RELIEF
Supervisory Liability for Negligent Hiring, Training, Retention and/or Supervising

77. Claimant fully adopts and incorporates each and every allegation set forth herein above.

78. Respondents developed and maintained policies, procedures, customs, and/or practices, including a failure to adequately hire, train, retain and/or supervise parole officers regarding the protection of parolees from sexual assault, exhibiting or resulting in deliberate indifference to the constitutional rights of parolees, which was the proximate cause of the violation of Ms. Deer's constitutional rights as set forth herein, as well as the rights of others similarly situated.

79. Respondents failed to properly hire, train, supervise, retain and/or discipline their employees regarding the protection of parolees, including Ms. Deer, from physical injury, and other violations as described herein.

80. Respondents knew, or had reason to know, that their employees would foreseeably use their authority and influence to sexually assault parolees, thereby violating parolees' constitutional rights.

81. Respondents knew, or had reason to know, that their employees would foreseeably not be able to protect parolees from physical injury by parole

officers because of lack of parole officer supervision and training, thereby violating parolees' constitutional rights.

82. Respondents knew, or had reason to know, that their parole officers would foreseeably cause physical injury to parolees because of lack of parole officer supervision and training, thereby violating parolees' constitutional rights.

83. The inadequate hiring, training, retention and/or supervision provided by Respondents resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to them.

84. In light of the duties and responsibilities of parole officers and other ADCC personnel who exercise control over parolees, the need for specialized training, supervision, proper retention and discipline is so obvious, and the inadequacy of training and/or supervision and proper retention is so likely to result in the violation of constitutional rights, such as those described herein, that Respondents are liable for their failure to appropriately hire, train, retain and/or supervise parole officers and other ADCC personnel.

85. Respondents could have pursued reasonable methods for the hiring, training, retention policies and supervision of employees, but failed to do so.

86. Respondents' policies and customs in failing to properly train and supervise their employees, and in failing to create and enforce preventative policies or policy manuals as well as retention policies, were the moving forces and proximate cause of the violation of Ms. Deer's constitutional rights, and the rights of those similarly situated.

87. Respondents, through their acts and/or omissions, ratified the unconstitutional conduct described herein, causing such conduct to be legally attributable to Respondents.

88. The acts and/or omissions of Respondents caused Ms. Deer such damages that she suffered physical injury, as described above, and mental pain from which she still suffers.

89. As a direct and proximate cause and consequence of the unconstitutional policies, procedures, customs, and/or practices described above, Ms. Deer suffered and continues to suffer damages and losses as set forth herein.

90. The actions of Respondents as described herein intentionally deprived Ms. Deer of due process and the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

91. The foregoing acts and omissions of Respondents described above, constitute negligent hiring, training, retention, and/or supervision under Arkansas law, as well as violations of the Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101, *et seq.*, and 42 U.S.C. § 1983.

D.

FOURTH CLAIM FOR RELIEF
A.C.A. § 16-118-107—Civil Action by Crime Victim

92. Claimant fully adopts and incorporates each and every allegation set forth herein above.

93. Anthony Lawrence's conduct described above constituted two felonies under Arkansas law.

94. Anthony Lawrence was in fact convicted of sexual assault in the fourth degree, a Class D felony, and criminal attempt to commit sexual assault in the third degree, a Class C felony.

95. Anthony Lawrence's actions were willful and malicious.

96. As a direct and proximate cause and consequence of Anthony Lawrence's conduct described above, Ms. Deer suffered and continues to suffer damages and losses as set forth herein.

97. Because of Anthony Lawrence's commission of felonies against Plaintiff, Plaintiff is entitled to compensatory damages, together with attorneys' fees and costs, pursuant to Ark. Code Ann. § 16-118-107.

98. All of the acts and omissions of Anthony Lawrence are attributable to Respondents, through the doctrine of Respondeat Superior and Respondents' own willful, wanton and/or intentional failure to make a proper effort to prevent the assault on Ms. Deer, despite their legal duty to do so.

V.

PRAYER FOR RELIEF

99. Claimant fully adopts and incorporates each and every allegation set forth herein above.

100. As a direct and proximate result of Respondents' conduct, Claimant is entitled to the following damages, taking into account the nature, extent, duration, and permanency of her injuries:

a. Past and present medical care, treatment, services, expenses, and costs;
b. Future medical care, treatment, services, expenses, and costs;
c. Past and present pain, suffering, and mental anguish;
d. Future pain, and suffering;
e. Claimant respectfully requests the cost of litigating this case; and
f. Such further relief as justice requires.

101. Claimant reserves the right to plead further in this matter, to amend the Complaint, and file additional pleadings, as allowed by the Rules.

Respectfully submitted,

CLAIMANT DESERAE DEER

SANFORD LAW FIRM, PLLC
ONE FINANCIAL CENTER
650 S. SHACKLEFORD SUITE 411
LITTLE ROCK, ARKANSAS 72211
TELEPHONE: (501) 221-0088
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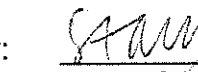
By: 
Stacy Gibson
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and Josh Sanford
Ark. Bar No. 2001037
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ARKANSAS STATE CLAIMS COMMISSION
NON VEHICLE PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SECTION 1
CLAIMANT Deserae Deer ADDRESS 306 Church Street
CITY & STATE DeQueen, Arkansas ZIP CODE 71832
DATE OF INCIDENT: December 2012 TIME

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:
please see attached original complaint

(If personal injury claim only, move on to Section IV)
****

SECTION II
Has this property been repaired? Yes ( ) No ( ) If repairs have been made, give the following information: Amount: $ Have you paid for the repairs? Yes ( ) No ( )

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

NAME	ADDRESS	AMOUNT
1.		$
2.		$
3.		$

****

SECTION III
Was property covered by insurance? Yes ( ) No ( )
If yes, what is the deductible? $

NAME OF INSURANCE CARRIER ADDRESS

****

SECTION IV

Is injured covered by medical insurance? Yes ( ) No ( )

If yes, what is the deductible? $

NAME OF INSURANCE CARRIER ADDRESS

****

SECTION V
If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: State police, Sevier County Sheriffs dept.

****

SECTION VI
The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Deserae D. Deer
Signature of Claimant

(Notary Seal) CYNTHIA WILLIAMSON No. 12696239 NOTARY PUBLIC EXPIRES 12-01-2025 PULASKI COUNTY - ARKANSAS

Sworn to and subscribed before me at Little Rock, Arkansas
City & State

on this 22nd day of August 2016
day month year

My Commission Expires 12-1-2025

Cynthia Williamson
Signature of Notary Public

Arkansas
State Claims Commission
DEC 07 2016
RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

DESERAE DEER **CLAIMANT**

VS. **No. 17-0336-CC**

ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION **RESPONDENT**

MOTION TO DISMISS

Comes now the Arkansas Department of Community Correction (ADCC) through its counsel, M. Wade Hodge and for its Motion to Dismiss, states as follows:

This motion is brought pursuant to Ark. R. Civ. P. 12(b)(6). On a motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(6), the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v. Morgan*, 2011 Ark. 94, *6-7, 380 S.W.3d 377. "However, [Arkansas's] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.*

I. FAILURE TO STATE A CLAIM

Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v. American State Bank*, 339 F.3d 764, 767 (8th Cir. 2003). pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Although detailed factual allegations are not required, more than "unadorned, the-defendant-unlawfully-harmed-me-accusations" are required. *Id.* at 678. To survive a motion to

dismiss, a complaint must contain sufficient factual matter that, when accepted as true, states a claim to relief that is plausible on its face. *Id.* A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Accepting her allegations as true, Plaintiff claims Respondent violated its own internal policies and failed to properly train one of its employees. However, Claimant does not identify what policy or policies to which Claimant has failed to adhere. Further, while Claimant alleges a failure to properly train, Claimant simply makes the conclusory allegation that since the employee in question did something he should not have done, that must mean he was not properly trained or supervised. Claimant's Complaint against ADCC should be dismissed for failure to state a claim. It contains little to no factual allegations implicating Respondent ADCC (or anyone else for that matter other than Anthony Lawrence, who is not named as a Respondent). It is nothing more than unadorned bare conclusions, which do not state any claim for relief. As such, the Court should dismiss the Complaint against Respondent ADCC.

II. FAILURE TO EXHAUST

In Arkansas, all persons in the custody of the Arkansas Department of Correction are required to exhaust their administrative remedies before filing a civil lawsuit. Claimant admits she "was a parolee under the supervision of the Arkansas Department of Correction (ADCC) and the Arkansas Department of Correction (ADC)." Pursuant to A.C.A.§ 16-93-101(6) "'Parole' means the release of the prisoner into the community by the Parole Board prior to the expiration of his or her term, subject to conditions imposed by the board and to the supervision of the Department of Community Correction." A.C.A. § 16-93-615(g) explains that "Every inmate while on transfer status shall remain in the legal custody of the Department of Correction under the supervision of

the Department of Community Correction and subject to the orders of the Parole Board." Therefore, Claimant was under the supervision of ADCC, but remained in the legal custody of ADC.

The ADCC has established a grievance procedure that a parolee must exhaust before he or she has a right to seek redress in the courts. Claimant failed to exhaust (or even begin) her administrative remedies prior to filing this action. As a result, her claims must be dismissed.

According to the Prison Litigation Reform Act of 1995 (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 requirements 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 Community Correction . . . by an inmate in a penal institution or an 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.

Since Claimant, in her capacity as a parolee, remained in the legal custody of ADC, her claim must be dismissed because she failed to exhaust her administrative remedies.

III. RESPONDEAT SUPERIOR

The Claimant's Complaint should be dismissed because the doctrine of respondeat superior is inapplicable to this action. *Glick v. Sargent*, 696 F.2d 413, 414-415 (8th Cir. 1983). *See also Cotton v. Hutto*, 577 F.2d 453, 455 (8th Cir. 1978). There must be some personal involvement before a defendant may be held liable under the doctrine of respondeat superior. *E.g. Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). A general responsibility for supervising

the operations of a parole system or prison is insufficient to establish the personal involvement required to support liability. *See, Camberos v. Branstad,* 73 F.3d 174, 176 (8th Cir. 1995). *See also Keeper v. King,* 130 F.3d 1309, 1314 (8th Cir. 1997); *Ouzts v. Cummins,* 825 F.2d 1276, 1277 (8th Cir. 1987). "[S]omething more must be shown than merely the existence of the supervisor-subordinate relationship." *Ripson v. Alles,* 21 F.3d 805, 809 (8th Cir. 1994) *quoting Clay v. Conlee,* 815 F.2d 1164, 1170 (8th Cir. 1987).

CONCLUSION

Claimant's claim must be dismissed for failure to state a claim upon which relief can be granted, and for all the reasons set forth herein.

WHEREFORE, Respondent respectfully requests that Claimant's Complaint be dismissed and for all other relief to which it may be entitled.

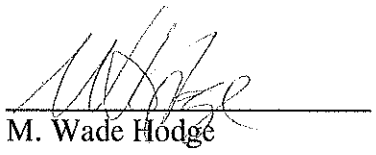
Respectfully submitted,

M. WADE HODGE, #90072
General Counsel
Arkansas Department of Community Correction
Two Union National Plaza, 3rd Floor
Little Rock, AR 72201
(501) 747-3783
wade.hodge@arkansas.gov

CERTIFICATE OF SERVICE

I, M. Wade Hodge, certify that on December 7, 2016, I forwarded a copy of the foregoing, by U.S. Mail, postage prepaid, addressed to the following:

Stacy Gibson
Josh Sanford
Sanford Law Firm, PLLC
One Financial Center
650 S. Shackleford Suite 411
Little Rock, AR 72211



M. Wade Hodge

Arkansas Claims Commission
DEC 12 2016
RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DESERAE DEER CLAIMANT

V. NO. 17-0336-CC

STATE OF ARKANSAS, ARKANSAS DEPARTMENT OF CORRECTION, and ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION, RESPONDENTS

RESPONDENT ARKANSAS DEPARTMENT OF CORRECTION'S MOTION TO DISMISS

Respondent, Arkansas Department of Correction (ADC), for its MOTION TO DISMISS, states:

1. The Arkansas Department of Correction is not an appropriate party to this action.

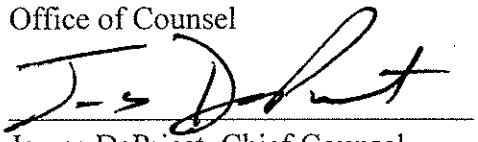
2. While the ADC takes no position with respect to the allegations set out in the Claimant's Original Complaint, even taken as true and viewed in a light most favorable to the Claimant, the Claimant fails to state facts upon which relief can be granted against the ADC. ARCP Rule 12(b)(6).

3. The Claimant's claim against the ADC is hinged upon the allegation set out in paragraph 64 of Claimant's Original Complaint that the Department of Community Correction is subject to the control and oversight of the ADC. As a matter of law, that allegation has no basis.

4. Counsel for the ADC has consulted with counsel for the Claimant and reasonably anticipates that the Claimant will not object to the granting of this Motion to Dismiss.

WHEREFORE, Respondent prays that this Commission grant the separate Respondent's Motion to Dismiss and dismiss Claimant's claim as against the ADC.

Respectfully submitted,
Department of Correction
Office of Counsel



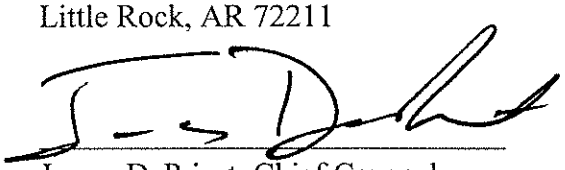
James DePriest, Chief Counsel
Arkansas Bar No. 80038
Post Office Box 8707
Pine Bluff, AR 71611-8707
(870)267-6371 Office
(870)267-6373 Facsimile
jim.depriest@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 9th day of December, 2016, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Wade Hodge, Gen. Counsel DCC
Two Union National Plaza
105 W. Capitol, 3rd Floor
Little Rock, AR 72201

Stacy Gibson, Attorney
Sanford Law Firm
650 S. Shackleford, Suite 411
Little Rock, AR 72211



James DePriest, Chief Counsel

Arkansas Claims Commission
DEC 19 2016
RECEIVED

ARKANSAS STATE CLAIMS COMMISSION

DESERAE DEER **CLAIMANT**

vs. Case No. 17-0336-CC

STATE OF ARKANSAS, ARKANSAS DEPARTMENT OF CORRECTION, and ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION **RESPONDENTS**

CLAIMANT'S RESPONSE TO RESPONDENT ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION'S MOTION TO DISMISS

I.

INTRODUCTION

This Court must deny and dismiss Respondent's Motion to Dismiss Claimant's Original Complaint in its entirety. Respondent Arkansas Department of Community Correction ("hereinafter "Respondent") asserts that Claimant failed to state a claim for relief, failed to exhaust her administrative remedies, and that the doctrine of respondeat superior is not applicable in this case. However, Respondent misinterprets the rules, cases, and statutes applicable to this action, offers no evidence in support of its contentions, and only provides argument why some, but not all, of Claimant's claims should be dismissed. Although Claimant asserts that Respondent has not set forth any factual or legal basis for dismissal of any part of Claimant's Original Complaint, in the event that this Court determines otherwise, Claimant respectfully requests the opportunity to amend her pleadings to adequately plead her claims.

II.

STANDARD OF REVIEW: MOTION TO DISMISS

In reviewing a complaint on a defendant's motion to dismiss, the Court considers all facts alleged in the complaint as true and liberally construes the pleadings in a light most favorable to the plaintiff. Faulkner v. Ark. Children's Hosp., 347 Ark. 941, 951, 69 S.W.3d 393 (Ark. 2002). Moreover, all reasonable inferences must be resolved in favor of the plaintiff. Perry v. Baptist Health, 358 Ark. 238, 241, 189 S.W.3d 54 (Ark. 2004).

III.

ARGUMENT

A. Failure to State a Claim

Respondent's argument that Claimant failed to state a claim pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure is inapplicable and unsupported. Pursuant to the Arkansas State Claims Commission General Rules of Practice and Procedure Rule 8.1, the Arkansas Rules of Civil Procedure only apply to Arkansas State Claims Commission cases to the extent that they do not conflict with the General Rules of Practice and Procedure. Rule 2.1 of the General Rules of Practice and Procedure, which governs the form of claims, only requires a statement of facts sufficiently clear to identify the Claimant, the Respondent state agency or agencies, the circumstances giving rise to the claim and the amount of monetary damages sought." This requirement is clearly in conflict as the more rigorous Rule 12(b)(6) and the cases which interpret it to require "facial plausibility.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

Even if Rule 12(b)(6) were to apply to claims in front of the Arkansas State Claims Commission, Respondent only addresses Claimants claims of negligent training, negligent supervision, and failure to follow procedure. Claimant does not make a stand-alone claim for failure to follow procedure. Rather, it is encompassed within Claimant's claim for negligent hiring, training, retention and supervision. Complaint at ¶86. It is surely against policy for a parole officer to be allowed to meet a parolee after hours at his office and sexually assault her as Claimant alleges in her Complaint, because it is a felony under Arkansas law. However, Respondent's policies and procedures are not readily available to the public and Claimant should be allowed an opportunity to conduct discovery to obtain the policies and procedures so that she may determine what policies were not followed.

A negligence claim in Arkansas requires Claimant to state "that he sustained damages, that the defendant was negligent, and that such negligence was a proximate cause of the damages." New Maumelle Harbor v. Rochelle, 338 Ark. 43, 46, 991 S.W.2d 552, 554 (1999). Claimant has alleged that Respondent was negligent. Complaint at ¶79-85. Claimant was left alone, unsupervised, with a recently hired parole officer in a private office where he proceeded to sexually harass and assault her. Complaint at ¶20, 29. Because of the position of authority parole officers have over parolees, Respondent knew or should have known of the danger of sexual assault of parolees, yet Respondent did not supervise and train its employees sufficiently to prevent sexual assault of parolees. Complaint at ¶80-82. Claimant has also alleged that she sustained damages and that Respondent's negligence was a proximate cause of the damage. Complaint at ¶88-90, 86. When these statements are accepted as true,

it is plausible that Respondent was negligent. Therefore, Claimant has stated a claim upon which relief can be granted.

B. Failure to Exhaust

Respondent asserts that Claimant failed to exhaust her administrative remedies. Respondent first attempts to use the Prison Litigation Reform Act of 1995 (PLRA) in support of its argument. However, the PLRA only applies to persons who are "incarcerated or detained in any facility." 42 U.S.C.S. § 1997e. It is abundantly clear that as a parolee, Claimant was not detained in any sort of facility while under the supervision of Respondent. Additionally, the PLRA only applies to claims brought pursuant to Federal law, and only one of Claimant's claims is brought pursuant to Federal law. Id.

Respondent then attempts to use Ark. Code Ann. § 16-106-202 in support of its exhaustion argument. However, this statute only applies to claims brought "by an inmate in a penal institution or an incarcerated person appearing pro se." Ark. Code Ann. § 16-106-202. Claimant is not appearing pro se. Assuming, *arguendo*, this statute applied to Claimant, Respondent has failed to show that administrative remedies were available to Claimant. Respondent asserts that it has established a grievance procedure in place. However, Respondent has offered no affidavit, written policies, or other evidence that a grievance procedure was in fact in place, let alone proof that Claimant was informed of the procedure. Respondent also offered no evidence to show that Claimant failed to exhaust remedies that were allegedly available. Because Respondent has failed to present any evidence to the contrary, its arguments on this point should be dismissed.

C. Respondeat Superior

Respondent asserts that Claimant's Complaint should be dismissed because the doctrine of respondeat superior is inapplicable to this action. Only one of Claimant's four claims – Civil Action by Crime Victim – relies on the doctrine of respondeat superior. Every case cited in Respondent's argument stands for the premise that respondeat superior is not a basis for liability under 42 U.S.C. § 1983. Although another of Claimant's four claims seeks relief under 42 U.S.C. § 1983, the claim is based on constitutional violations attributable to Respondent itself, not violations attributable to an employee of Respondent. Respondent does not cite a single case or argument as to why it should not be held liable for Civil Action by Crime Victim under the doctrine of respondeat superior. Therefore, Respondent's respondeat superior argument should be dismissed.

IV.

CONCLUSION

In short, Respondent has not set forth any factual or legal basis for dismissal of any part of Claimant's Original Complaint. Therefore, Respondent's Motion to Dismiss should be denied and dismissed.

Respectfully submitted,

CLAIMANT DESERAE DEER

SANFORD LAW FIRM, PLLC
ONE FINANCIAL CENTER
650 S. SHACKLEFORD SUITE 411
LITTLE ROCK, ARKANSAS 72211
TELEPHONE: (501) 221-0088
FACSIMILE: (888) 787-2040

By: _____
Stacy Gibson
Ark. Bar No. 2014171
stacy@sanfordlawfirm.com

and Josh Sanford
Ark. Bar No. 2001037
josh@sanfordlawfirm.com

CERTIFICATE OF SERVICE

I, Stacy Gibson, do hereby certify that on December 19, 2016, a true and correct copy of the foregoing RESPONSE was served by First Class U.S. Mail, postage pre-paid, in accordance with Rule 5 of the ARCP on the following persons:

Mr. M. Wade Hodge
Arkansas Department of Community Correction
Two Union National Plaza, 3rd Floor
105 West Capitol
Little Rock, Arkansas 72201

_____
STACY GIBSON

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 50,000.00

Claim No. 17-0336-CC

		Attorneys	
Deserae Deer	**Claimant**	Josh Sanford, Attorney Stacy Gibson, Attorney	**Claimant**
vs.			
Arkansas Department of Correction	**Respondent**	James DePriest, Attorney	**Respondent**

State of Arkansas

Date Filed November 7, 2016

Type of Claim Negligence, Failure to Follow Procedure

FINDING OF FACTS

The Arkansas State Claims Commission (the "Claims Commission") hereby unanimously grants the Motion to Dismiss (the "Motion") filed by respondent Arkansas Department of Correction (the "Respondent") for the reasons set forth in Paragraphs 1-4 of the Motion. As such, the claim of Deserae Deer ("Deer") is hereby denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously GRANTS the Respondent's Motion and DENIES and DISMISSES Deer's claim against the Respondent.

Date of Hearing January 19, 2017

Date of Disposition January 19, 2017

Chairman

Commissioner

Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 50,000.00

Claim No. ~~17-0336-CC~~

Attorneys

Deserae Deer **Claimant**

Josh Sanford, Attorney
Stacy Gibson, Attorney **Claimant**

vs.

Arkansas Department of Community Correction **Respondent**

M. Wade Hodge, Attorney **Respondent**

State of Arkansas

Date Filed November 7, 2016

Type of Claim Negligence, Failure to Follow Procedure

FINDING OF FACTS

The Arkansas State Claims Commission (the "Claims Commission") hereby unanimously grants the Motion to Dismiss (the "Motion") filed by respondent Arkansas Department of Community Correction (the "Respondent") for the reasons contained in the Motion. As such, the claim of Deserae Deer ("Deer") is hereby denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously GRANTS the Motion and DENIES and DISMISSES Deer's claim against the Respondent.

Date of Hearing **January 19, 2017**

Date of Disposition **January 19, 2017**

Chairman

Commissioner

Commissioner

***Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.*

Arkansas
State Claims Commission
FEB 23 2017
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IN THE CLAIMS REVIEW SUBCOMMITTEE
OF THE ARKANSAS GENERAL ASSEMBLY

DESERAE DEER **CLAIMANT**

vs. Case No. 17-0336-CC

STATE OF ARKANSAS, ARKANSAS DEPARTMENT OF CORRECTION, and ARKANSAS DEPARTMENT OF COMMUNITY CORRECTION **RESPONDENTS**

NOTICE OF APPEAL

COMES NOW Claimant Deserae Deer, and for her Notice of Appeal, states and alleges as follows:

Notice is hereby given that Claimant is appealing the granting of the decisions by the Arkansas State Claims Commission rendered January 19, 2017, in the above matter to the General Assembly of the State of Arkansas in accordance with Arkansas Code Annotated § 19-10-211.

Claimant hereby designates the entire record and all proceedings, exhibits, evidence and documents introduced into evidence to be obtained in the record on appeal.

Dated this 22nd day of February, 2017.

Respectfully submitted,

Arkansas
State Claims Commission
FEB 23 2017
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CLAIMANT DESERAE DEER

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By: Stacy Gibson
Stacy Gibson
Ark. Bar No. 2014171
stacy@sanfordlawfirm.com

and Josh Sanford
Ark. Bar No. 2001037
josh@sanfordlawfirm.com

CERTIFICATE OF SERVICE

I, Stacy Gibson, do hereby certify that on February 22, 2017, a true and correct copy of the foregoing NOTICE OF APPEAL was served by First Class U.S. Mail, postage pre-paid, in accordance with Rule 5 of the ARCP on the following persons:

Mr. M. Wade Hodge
Arkansas Department of Community Correction
Two Union National Plaza, 3rd Floor
105 West Capitol
Little Rock, Arkansas 72201

Mr. James Depriest
Arkansas Department of Correction
P.O. Box 8707
Pine Bluff, AR 71611-8707

Stacy Gibson
STACY GIBSON