

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROGER CANUPP, JACOB MYERS,)
LAWRENCE MCGEE, HUBERT)
DAVIDSON, TYWAUN)
JACKSON, CHARLES DURDEN,)
DANIEL FABIAN, and BRUCE)
KRAMER, individually, and on behalf of a)
Class of all persons similarly situated,)

Plaintiffs,)

Case No. 2:04-cv-260-FtM-33DNF

vs.)

LIBERTY BEHAVIORAL HEALTH)
CORPORATION and LUCY HADI, in)
her official capacity as Secretary of the)
Department of Children and Families,)

Defendants.)

**PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL OF
DANIEL FABIAN, BRUCE KRAMER, AND COUNT 4**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), the Plaintiffs move the

Court to dismiss Plaintiff Daniel Fabian, Plaintiff Bruce Kramer, and Count 4 of the class action Complaint (procedural due process confinement claim). In support of this Motion, the Plaintiffs state as follows:

1. Plaintiff Daniel Fabian was released from the Florida Civil Commitment Center on January 4, 2005. (*See* Dkt.# 54). Mr. Fabian no longer has standing to pursue the claims raised in the class action Complaint. Therefore, the Plaintiffs request the Court to dismiss Mr. Fabian as a named Plaintiff.

2. Plaintiff Bruce Kramer was released from the Florida Civil Commitment Center on November 4, 2004. (*See* Dkt.# 45). Mr. Kramer no longer has standing to pursue the

claims raised in the class action Complaint. Therefore, the Plaintiffs request the Court to dismiss Mr. Kramer as a named Plaintiff.

3. Count 4 of Plaintiffs' class action Complaint raises Fourteenth Amendment Procedural Due Process claims related to the procedure used to place residents in disciplinary confinement at the Florida Civil Commitment Center. The Plaintiffs request the Court to dismiss Count 4 from the Complaint.

4. Plaintiffs' counsel conferred with Jason Vail, counsel for Defendant Hadi, on February 3, 2005. Mr. Vail stated he was not opposed to the dismissal of Plaintiffs Fabian and Kramer or the dismissal of Count 4.

5. Plaintiffs' counsel conferred with John Jolly, counsel for Defendant Liberty, on February 4, 2005. Counsel for Defendant Liberty objected to this Motion for Dismissal unless it included language stating that each side would bear their own costs and attorney's fees. Plaintiffs declined to add this language because it is premature to discuss fees and costs at this point in the litigation.

Memorandum of law

Rule 41(a)(2) authorizes the Court to grant a plaintiff's motion to dismiss upon such terms and conditions as the court deems proper. Fed.R.Civ.P. 41(a)(2). All parties have agreed to the dismissal of Plaintiffs Fabian and Kramer and Count 4 of the class action Complaint. The objection by Defendant Liberty relates only to the issue of attorney's fees and costs. It is premature to address the issue of fees and costs at this point in time as those matters are better addressed at the conclusion of the case in accordance with the procedures set out in Fed.R.Civ.P. 54(d) and Local Rule 4.18.

WHEREFORE, the Plaintiffs respectfully move this Court to dismiss Daniel Fabian and Bruce Kramer as named Plaintiffs, as well as dismiss Count 4 of Plaintiffs' class action Complaint (procedural due process confinement claim).

Certificate Pursuant to Local Rule 3.01(g)

Undersigned counsel certifies that counsel for the Plaintiffs conferred with counsel for Defendants. Counsel for Defendant Hadi stated that they agreed to the dismissals. Counsel for Defendant Liberty stated they they did not agree to this Motion.

Respectfully Submitted,

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s/ Kristen Cooley Lentz
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to **Jason Vail, Esq., Chesterfield Smith, Jr., Esq., and Cecilia Bradley, Esq.**, Senior Assistant Attorney Generals, Office of the Attorney General, PL 01, The Capitol, Tallahassee, FL 32399-1050; **Jennifer R. Haymes, Esq.**, Office of the General Counsel, Florida Civil Commitment Center, 13613 SE Hwy 70, Arcadia, FL 34266-7829; and **John W. Jolly, Jr., Esq., and Barbara Fromm, Esq.**, Jolly, Peterson, and Cherr P.A., P.O. Box 37400, Tallahassee, FL 32315 on this 4th day of February, 2005.

s/ Kristen Cooley Lentz