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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SEBASTIAN RICHARDSON,

Plaintiff,

v.

THOMAS R. KANE, et al.,

Defendants.

CIVIL ACTION

Case No.: 3:11-cv-02266

Judge William J. Nealon

JOINT CASE MANAGEMENT PLAN

Having complied with the meet and confer requirements set forth in the LOCAL RULES, or with any orders specifically modifying their application in the above-captioned matter, the parties hereby submit the following Joint Case Management Plan.

1.0 Principal Issues

1.1. Separately for each party, please give a statement summarizing this case:

By Plaintiffs:

This is a civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), against various corrections officers at the United States Penitentiary in Lewisburg, Pennsylvania (“USP Lewisburg”) in their individual capacity; and a class action claim pursuant to the Eighth Amendment to the United States Constitution and Federal Rule of Civil Procedure 23 against the Federal Bureau of Prisons (the “BOP”) and Supervisory Defendants in their official capacity. Plaintiff Sebastian Richardson brings the damages claims on his own behalf, and the claim for injunctive relief on behalf of all current and future prisoners at the Special Management Unit (the “SMU”) of USP Lewisburg for the unconstitutional and unconscionable conditions of confinement that Plaintiff individually endured, and all inmates at the SMU collectively, must endure on a day-to-day basis.

Defendants have deprived Mr. Richardson, and continue to deprive the members of the class, of their constitutional right to be free from cruel and unusual punishment, by engaging in a pattern, practice or policy of placing hostile inmates together in cells and/or recreation cages despite the serious risk that the hostile inmates will cause substantial harm to each other. Inmates face a Hobson’s choice: if an inmate accepts a dangerous cell assignment and violence ensues, corrections officers stand idly by and do not intervene. Inmates who refuse placement assignments are punished by being placed in restraints for hours at a time, sometimes for more than twenty-four (24) hours. These restraints significantly restrict an inmate’s arm and leg motion, and in some cases, inmates are strapped to a bed with their limbs tied to the posts in a procedure known as four pointing. If appropriate injunctive relief is not granted to remedy the Defendant’s violations of the Constitutional rights of the members of the class, the harms suffered will be irreparable, may lead to death, and will continue for the foreseeable future.

Plaintiff has repeatedly been placed in restraints as punishment for refusing dangerous cell assignments with hostile inmates. Plaintiff seeks compensatory and punitive damages on behalf of himself, as well as injunctive relief on behalf of all current and future USP Lewisburg inmates.

By Defendants:

This is a combined Bivens and FTCA action brought by Sebastian Richardson, a federal prisoner, against numerous prison staff at USP Lewisburg and other high-ranking officials of the BOP. See Complaint (Doc. No. 1.)

Richardson raises claims on his own behalf, as well as a claim for injunctive relief on behalf of a purported class of current and future USP Lewisburg inmates.

Richardson claims that contrary to a Bureau Program Statement, former warden Bledsoe and his former associate wardens Young and Hudson were on a committee that made decisions to place “hostile inmates” together. Richardson claims that the program statement required the committee to consider the safety of the inmates; and Bledsoe, Young, and Hudson violated that program statement or did not consider it when they placed inmates in cells or recreation cages together. He went on to claim that they should have known based on their personal experience that placing these hostile inmates together would cause danger to the inmates.

Richardson next claims that contrary to the Bureau’s policy that inmates are to be kept safe, Kane, Norwood, Bledsoe, Young, and Hudson had a practice whereby staff were directed not to intervene in cell fights until the victim of the attack is seriously injured.

Richardson finally claims that Kane, Norwood, Bledsoe, Young, and Hudson used restraints, or acquiesced in the use of restraints, contrary to Bureau policy, by forcing inmates into restraints if they did not accept hostile inmates.

This matter is inextricably intertwined with Shelton v. Bledsoe, 11-cv-1618. Currently pending before the Shelton Court is a motion to dismiss based on the insufficient allegations in the complaint, qualified immunity, and personal jurisdiction of the acting director of the BOP.

Because the two cases are related and because discovery will be duplicated, this Court should wait until an order is issued in Shelton prior to setting a discovery schedule. If necessary, the Court should consolidate the two cases for discovery only.

1.2. The facts the parties dispute are as follows:

The parties dispute whether various Defendants were involved in or responsible for decisions regarding inmate housing placement, recreation placement, and the application of restraints. [Defendants dispute that this is even an issue in the case].

The parties dispute whether there is a pattern, practice or policy of confining inmates to cells with other known hostile inmates.

The parties dispute whether Defendants were aware of an excess risk to safety of inmates in the SMU arising out of cell and recreational assignment patterns, practices or policies and ignored it.

The parties dispute the methods used to apply restraints to inmates at USP Lewisburg and the effects that the restraints have on inmates.

The parties dispute whether all of the notations in inmates' medical records concerning the effects of the restraints are accurate.

The parties dispute whether Richardson's confinement rises to the level of an Eighth Amendment violation.

The parties dispute whether Defendants' conduct violated clearly established constitutional rights of which a reasonable person would have known.

The parties dispute whether a reasonable officer would determine that Defendants' conduct was lawful in the situation he confronted.

The parties dispute whether Richardson received any injury, substantial or otherwise, as a result of Defendants' placement of restraints on him.

The parties dispute whether Richardson's behavior required Defendants to maintain him in restraints.

agree upon are as follows:

The parties agree that at the time in question, all individual Defendants were employees of USP Lewisburg.

The parties agree that Plaintiff Richardson was placed in restraints while incarcerated at USP Lewisburg.

1.3. The legal issues the parties dispute are as follows:

The parties dispute whether the Defendants' have a pattern, practice or policy that caused injuries to Mr. Richardson in the circumstances described in the Amended Complaint (violating Mr. Richardson's Eighth Amendment rights) and that violated and continues to violate the Eighth Amendment rights of all inmates in the SMU.

By Plaintiff:

Plaintiff's Amended Complaint alleges that Defendants placed him in painful restraints (and kept him in restraints) because he refused to accept dangerous cell assignments. Plaintiff further alleges that the Defendants forced him to choose between accepting a dangerous cell assignment and being placed in painful restraints in accordance with a policy and practice at USP Lewisburg.

By Defendant:

Defendants dispute the remaining allegations in the complaint.

agree upon are as follows:

The parties agree that jurisdiction and venue are proper in this Court.

The parties agree that federal law governs any constitutional claims.

1.4. Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:

None.

1.5. Identify any named parties that have not yet been served:

None.

1.6. Identify any additional parties that:

Plaintiff intends to join:

None at this time. Plaintiff reserves the right to add additional defendants based upon facts learned in discovery.

Defendants intends to join:

None.

1.7. Identify any additional claims that:

Plaintiffs intends to add:

None at this time.

Defendant intends to add:

None.

2.0 Disclosures

The undersigned counsel certify that they have made the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) or that they will do so within the time provided by that rule.

Plaintiff made his initial disclosures on June 7, 2013. Defendants made their initial disclosures on June 6, 2013.

2.1. Separately for each party, list by name and title/position each person whose identity has been disclosed.

By Plaintiff

Plaintiff has no additional disclosures at this time aside from those listed in his initial disclosures.

By Defendant

See attached initial disclosures.

3.0 Early Motions

Identify any motion(s) whose early resolution would likely have a significant effect either on the scope of discovery or other aspects of the litigation:

By Plaintiff:

Plaintiff will be filing a Motion for Class Certification within the next few weeks.

By Defendants:

Defendants may file a motion on the pleadings per Rule 12 (c) of the Federal Rules of Civil Procedure based on the Court's decision in Shelton.

4.0 Discovery

4.1. Briefly describe any discovery that has been completed or is in progress:

By Plaintiff:

Plaintiff served preliminary discovery on Defendants to ascertain the identities of several "Doe" Defendants in order to amend the caption of the complaint to include the names of these defendants and effect service of process. This discovery is complete.

Plaintiff served a second set of discovery requests, relating to his individual claims for damages, on July 30, 2013. On May 19, 2014, Plaintiffs submitted a letter to Defendants responding to their objections and requesting that Defendants' production be supplemented. Defendants provided supplemental discovery responses on October 9, 2014. On October 8, 2014, the District Court entered an order staying all additional discovery pending decision of the appeal in this case.

Plaintiff objects to any further stay or delay of discovery, due to the past delays, the age of the case, and the remand by the U.S. Court of Appeals for the Third Circuit to proceed accordingly.

By Defendant(s):

Discovery should not begin until the cases have been consolidated and the motion to dismiss has been ruled upon in Shelton.

4.2. Describe any discovery that all parties agree should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g. "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"):

By Plaintiff:

Plaintiff will take the depositions of Defendants and other fact witnesses and serve interrogatories and document requests related to the following topics (the relevant time period is from 2008 to the present unless otherwise stated):

A. Cell Assignments

1. Policies and procedures for cell assignments, including who makes them, how are they generally made, and what criteria are used.
2. The existence of written procedures regarding assignments
3. All documents regarding Mr. Richardson's cell assignments in particular
4. All documents regarding cell assignments which resulted in cellmate-on-cellmate assaults or violence including, but not limited to, all investigations or reviews of how those assignments were made

B. Inmate Expressions of Concern about Safety Regarding Cell Assignments

1. Procedures and practices regarding how to handle inmates' expressions of concern regarding safety of cell assignments
2. Inmates' expressions of concern and inmate complaints regarding cell assignments or cell assignment procedures
3. Mr. Richardson's expression of concern regarding any and all of his cell assignments

C. Guards or Lewisburg Employees' Expressions of Concern for Safety

1. Expressions of concern by Lewisburg guards or employees regarding safety at the Lewisburg SMU
2. Expressions of concern by Lewisburg guards or employees regarding cell assignments, either in a particular case or generally

3. Expressions of concern by Lewisburg guards or employees regarding their safety or inmates' safety as a result of inmate-on-inmate violence at Lewisburg

D. Use of Restraints to Enforce Cell Assignments

1. Policies, practices and procedures regarding use of restraints including, but not limited to, use of restraints when an inmate refuses a cell assignment or cellmate
2. All instances where restraints were used to force an inmate to accept a cell assignment or cellmate, or where an inmate refused a cell assignment or cellmate
3. Facts regarding use of restraints on Mr. Richardson as alleged in the Amended Complaint including, but not limited to, who was involved in deciding to use the restraints, why the restraints were used and for how long, and what, if any, relationship the use of restraints had to do with a cell assignment

E. Information Regarding the Defendants

1. Work history
2. Any prior complaints alleging violation of inmates' constitutional rights, nature of these complaints, and resolution of these complaints
3. Training or involvement with development or implementation of practices and procedures as noted above in categories A and D
4. Involvement with Mr. Richardson

Plaintiff's counsel (along with any experts retained) will also need to tour the SMU at USP Lewisburg.

Plaintiff objects to any further stay or delay of discovery, due to the past delays, the age of the case, and the remand by the U.S. Court of Appeals for the Third Circuit to proceed accordingly.

By Defendants:

Discovery should not begin until the cases have been consolidated and the motion to dismiss has been ruled upon in Shelton.

4.3. Describe any discovery that one or more parties want(s) to conduct but to which another party objects, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it:

By Plaintiff:

None at this time. Plaintiff objects to any further stay or delay of discovery, due to the past delays, the age of the case, and the remand by the U.S. Court of Appeals for the Third Circuit to proceed accordingly.

By Defendants:

Discovery should not begin until the cases have been consolidated and the motion to dismiss has been ruled upon in Shelton.

4.4. Identify any subject area limitations on discovery that one or more parties would like imposed, at the first stage of or throughout the litigation:

By Plaintiff:

None at this time. Plaintiff objects to any further stay or delay of discovery, due to the past delays, the age of the case, and the remand by the U.S. Court of Appeals for the Third Circuit to proceed accordingly.

By Defendants:

Discovery should not begin until the cases have been consolidated and the motion to dismiss has been ruled upon in Shelton.

4.5. For each of the following discovery tools, recommend the per-party or per-side limitation (specify a number) that should be fixed, subject to later modification by stipulation or court order on an appropriate showing (where the parties cannot agree, set forth separately the limits recommended by plaintiff(s) and by defendant(s)):

4.5.1. depositions (excluding experts) to be taken by:

Plaintiff: 25. (Due to the large number of individuals disclosed by Defendants in the prior case management plan, Plaintiff may seek to depose additional individuals beyond this number. We anticipate that some of these depositions will be relatively short)

Defendants: Without waiving their position regarding discovery, 10. Plaintiffs will be required to seek court permission per the Federal Rules of any deposition over 10.

4.5.2. interrogatories to be served by:

Plaintiff: 25

Defendants: Without waiving their position regarding discovery, 25 interrogatories per each side is normal practice. There are currently 18 defendants, which would equal 450 interrogatories. Alternatively, 25 from each Defendant to Plaintiff.

4.5.3. document production requests to be served by:

Plaintiff: 50 for individual Defendants and 50 for supervisory Defendants.

Defendants: Without waiving their position regarding discovery, 25 per side.

4.5.4. requests for admission to be served by:

Plaintiff: 50

Defendants: Without waiving their position regarding discovery, 25 requests per each side is normal practice. There are currently 18 defendants, which would equal 900 requests. Alternatively, 25 from each Defendant to Plaintiff.

4.6. Discovery of Electronically Stored Information

Counsel certify that they have conferred about the matters addressed in M.D. Pa. LR 26.1 and that they are in agreement about how those matters will be addressed in discovery.

Counsel have conferred regarding electronic discovery.

Counsel certify that they have conferred about the matters addressed in M.D. Pa. LR 26.1 and that they are in agreement about how those matters will be addressed in discovery with the following exceptions:

Counsel have conferred and informed their clients to preserve any and all electronic information. Counsel also agreed that to the extent there are emails or electronic information not contained in hard copy, the parties will produce those documents. The Bureau of Prisons stores only limited amounts of electronic information. To the extent there is any electronic information, the parties will agree to format any media to be used in its production.

5.0 Protective Order

5.1. If entry of a protective order is sought, attach to this statement a copy of the proposed order. Include a statement justifying the propriety of such a protective order under existing Third Circuit precedent.

By Plaintiff:

Not applicable at this time.

By Defendants:

To the extent the Court requires a protective order regarding discovery while the current motion to dismiss is pending, Defendants will draft such an Order.

5.2. If there is a dispute about whether a protective order should be entered, or about certain terms of the proposed order, briefly summarize each party's position below:

Not applicable at this time.

6.0 Scheduling

6.1. Final date for joining additional parties:

Plaintiff February 13, 2017

Defendants February 13, 2017

6.2. Final date for amending pleadings:

Plaintiff February 13, 2017

Defendants February 13, 2017

6.3. All fact discovery commenced in time to be completed by:

July 14, 2017. The Parties may need to seek an extension of the discovery deadline, in light of the number of depositions anticipated in this case. The parties will submit an appropriate motion, if necessary.

Defendants: September 15, 2017

6.4. All potential dispositive motions should be filed by:

September 14, 2017.

6.5. Reports from retained experts due:

from Plaintiff by: July 24, 2017

from Defendant(s) by: December 6, 2017

6.6. Supplementations (replies/rebuttals) due: December 20, 2017

6.7. All expert discovery commenced in time to be completed by:

By Plaintiff: July 24, 2017

By Defendant: December 6, 2017

6.8. This case may be appropriate for trial in approximately:

240 Days from the filing of the action in this court

365 Days from the filing of the action in this court

Days from the filing of the action in this court

The parties agree that the Court may determine when the case is appropriate for trial.

6.9. Suggested Date for the final Pretrial Conference

At the convenience of the Court.

6.10. Trial

6.10.1. Suggested Date for Trial

At the convenience of the Court.

7.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)

I hereby certify that the following individual(s) have settlement authority.

For Plaintiff:

Sebastian Richardson

For Defendants:

Bruce D. Brandler
United States Attorney
For the Middle District of Pennsylvania

8.0 Alternative Dispute Resolution (“ADR”)

8.1. Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.

ADR procedure _____ N/A _____
Date ADR to be commenced _____ N/A _____
Date ADR to be completed _____ N/A _____

8.2. If the parties have been unable to agree on an ADR procedure, but one or more parties believe that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended.

Plaintiff would be willing to participate in a settlement conference at the close of discovery.

8.3. If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:

None.

9.0 Consent to Jurisdiction by a Magistrate Judge

Indicate whether all parties agree, pursuant to 28 U.S.C. § 636(c)(1), to have a magistrate judge preside as the judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:

All parties agree to jurisdiction by a magistrate judge of this court:

Y N

If parties agree to proceed before a magistrate judge, please indicate below which location is desired for the proceedings:

Scranton/Wilkes-Barre

Harrisburg

10.0 Other Matters

Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.

By Plaintiff:

The Court has asked the parties to address whether consolidation with *Shelton v. Bledsoe*, 3:11-cv-1618, is appropriate at this time. From the outset of this litigation, the intent of Plaintiffs has been to consolidate these actions. However, given the numerous delays and duplicative motions by Defendants, Plaintiff is concerned that consolidation with *Shelton*, and Defendants' pending objections to the Motion to Dismiss Report and Recommendation, may result in additional delays. As a result, Plaintiffs' council believes that consolidation is inappropriate at this time, but should be revisited in the future.

By Defendants:

In Richardson, the Third Circuit particularly noted these two cases should be considered consolidated. Defendants would agree to such consolidation for discovery purposes only. Although Plaintiffs Richardson and Shelton have a team of highly qualified attorneys, there is only one counsel for Defendants, Michael J. Butler. Based on the extent of the discovery both plaintiffs want to conduct, fairness to counsel and to the defendants who are similar in both cases, the Court should consolidate these matters for discovery purposes only – and only if necessary after this Court has rule on the Objections to the Report and Recommendation.

11.0 Identification of Counsel

Counsel shall be registered users of the court's Electronic Case Files System (ECF) and shall file documents electronically in accordance with the Local Rules of Court

and the Standing Order RE: Electronic Case Filing Policies and Procedures. Electronic filing is required unless good cause is shown to the Chief Judge why counsel cannot comply with this policy. Any request for waiver of electronic filing must be filed with the Clerk's Office prior to the case management conferred. The Chief Judge may grant or deny such request.

Identify by name, address, and telephone number lead counsel for each party. Also please indicate ECF User status below.

Dated:

Attorney(s) for Plaintiff(s): Alexandra Morgan-Kurtz

- ECF User(s)
- Waiver requested (as separate document)
- Fed. R. Civ. P. 7.1 (statement filed if necessary) *

Dated:

Attorney(s) for Defendant(s): Michael J. Butler

- ECF User(s)
- Waiver requested (as separate document)
- Fed. R. Civ. P. 7.1 (statement filed if necessary)*

* Fed. R. Civ. P. 7.1 requires a nongovernmental corporate party to file a statement with the initial pleading, first entry of appearance, etc., that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock, or state there is no such corporation.

Respectfully submitted,

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Attorney for Defendants

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DEFENDANTS.

Case No.: 3:11-cv-02266

Judge William J. Nealon
Magistrate Judge Carlson

Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Joint Case Management Plan filed by Su Ming Yeh was served upon the following via ECF on January 20, 2017:

Michael Butler
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Email: Michael.J.Butler@usdoj.gov

/s/Su Ming Yeh

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DATE: January 20, 2017