

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWIN JAY HUTCHISON,

Plaintiff,

v.

CALIFORNIA PRISON INDUSTRY
AUTHORITY, et al.,

Defendants.

Case No.: C 13-4635 CW (PR)

ORDER OF SERVICE OF AMENDED
COMPLAINT

INTRODUCTION

Plaintiff Edwin Jay Hutchison, a state prisoner incarcerated at San Quentin State Prison (SQSP), filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by the California Prison Industry Authority (CALPIA), operating under the auspices of the California Department of Corrections and Rehabilitation (CDCR), and individuals who are employees of CALPIA or of SQSP. On January 13, 2014, the Court dismissed with leave to amend the claims asserted by Plaintiff because he did not causally connect the actions of each Defendant to the alleged constitutional deprivations. On February 6, 2014, Plaintiff filed his First Amended Complaint (1AC), which the Court now reviews.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the plaintiff can show that the defendant's actions both actually and proximately caused the deprivation of a federally protected right. Lemire v. California Dept. Corrections & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013); Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning of § 1983 if he does an affirmative act, participates in another's affirmative act or omits to perform an act which he is legally required to do,

1 that causes the deprivation of which the plaintiff complains.
2 Leer, 844 F.2d at 633. Under no circumstances is there respondeat
3 superior liability under § 1983. Lemire, 726 F.3d at 1074. Or,
4 in layman's terms, under no circumstances is there liability under
5 § 1983 solely because one is responsible for the actions or
6 omissions of another. Taylor v. List, 880 F.2d 1040, 1045 (9th
7 Cir. 1989); Ybarra v. Reno Thunderbird Mobile Home Village, 723
8 F.2d 675, 680-81 (9th Cir. 1984).

9 A supervisor may be liable under § 1983 upon a showing of
10 personal involvement in the constitutional deprivation or a
11 sufficient causal connection between the supervisor's wrongful
12 conduct and the constitutional violation. Redman v. County of San
13 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation
14 omitted). A supervisor therefore generally "is only liable for
15 constitutional violations of his subordinates if the supervisor
16 participated in or directed the violations, or knew of the
17 violations and failed to act to prevent them." Taylor, 880 F.2d
18 at 1045. This includes allegations that a supervisor implemented
19 "a policy so deficient that the policy itself is a repudiation of
20 constitutional rights and is the moving force of the
21 constitutional violation." Redman, 942 F.2d at 1446; Jeffers v.
22 Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

23 II. Plaintiff's Allegations

24 In his 1AC, Plaintiff asserts: (1) an Eighth Amendment claim
25 for deliberate indifference to the serious risk of harm from
26 exposing him to asbestos and lead at the CALPIA furniture factory
27 where he worked; (2) a state law claim against the CALPIA under
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1 California Government Code section 835,¹ which provides that a
2 public entity is liable for injury proximately caused by a
3 dangerous condition on its property; (3) an Eighth Amendment claim
4 for deliberate indifference to his serious medical need by failing
5 to provide testing to determine his exposure to asbestos or lead;
6 and (4) a state law claim for fraudulent concealment.

7 A. Claim for Deliberate Indifference to Serious Risk of Harm

8 The legal standard for this Eighth Amendment claim was
9 provided in the Court's Order dismissing the complaint with leave
10 to amend. See Doc. no. 5 at 6-7. Plaintiff names the following
11 Defendants in this claim: (1) Ronald Glass, CALPIA Industrial
12 Supervisor; (2) Gary S. Loredo, CALPIA Superintendent II;
13 (3) Philip Earley, CALPIA Industries Administrator/Lead Manager;
14 (4) Luu Rogers, CALPIA Industrial Supervisor/Health and Safety
15 Coordinator; (5) John Walker, SQSP Health and Safety Manager;
16 (6) Elizabeth Babcock, SQSP Hazardous Material Specialist;
17 (7) Brad Smith, Branch Manager at CALPIA Sacramento Headquarters;
18 (8) Charles Pattillo, General Manager at CALPIA Sacramento
19 Headquarters; and (9) Kevin Chappell, SQSP Warden.

20 In the Order of Dismissal, the Court found that Plaintiff's
21 allegations of exposure to lead and asbestos were sufficiently
22 serious to fulfill the objective requirement of an Eighth
23 Amendment violation but that he had failed to allege the
24 subjective component of the claim. See Farmer v. Brennan, 511
25 U.S. 825, 832 (1994). For Plaintiff to remedy this deficiency,

26 ¹ Plaintiff refers to California Government Code section 830,
27 but he quotes from California Government Code section 835. The
28 latter appears to be the relevant statute.

1 the Court indicated that he must allege how each Defendant knew
2 that he faced a substantial risk of serious harm and how that
3 Defendant failed to take reasonable steps to abate that risk of
4 serious harm.

5 Plaintiff's amended allegations indicate what each Defendant
6 knew about the hazardous conditions at the furniture factory, that
7 each Defendant had a responsibility to remedy the hazardous
8 conditions, and that each Defendant failed to do so. The amended
9 allegations are sufficient to state a cognizable Eighth Amendment
10 against all the above-named Defendants.

11 B. Public Entity Liability Claim Against CALPIA

12 Plaintiff alleges that CALPIA, operating under the auspices
13 of the CDCR, is a public entity responsible for the operation of
14 the furniture factory where Plaintiff worked. At that factory,
15 Plaintiff was allegedly exposed to the hazardous conditions of
16 latent asbestos fibers and lead-based paints. Plaintiff alleges
17 that CALPIA was responsible for creating these dangerous
18 conditions and failed to remedy them, even after it became aware
19 of their existence.

20 California Government Code section 835 provides:

21 Except as provided by statute, a public entity is liable for
22 injury caused by a dangerous condition of its property if the
23 plaintiff establishes that the property was in a dangerous
24 condition at the time of the injury, that the injury was
25 proximately caused by the dangerous condition, that the
26 dangerous condition created a reasonably foreseeable risk of
27 the kind of injury which was incurred, and that either:

28 (a) A negligent or wrongful act or omission of an employee of
the public entity within the scope of his employment created
the dangerous condition; or

1 (b) The public entity had actual or constructive notice of
2 the dangerous condition under section 835.2 a sufficient time
3 prior to the injury to have taken measures to protect against
4 the dangerous condition.

5 Cal. Gov. Code § 835.

6 Liberally construed, Plaintiff's allegations state a claim
7 against CALPIA under section 835.

8 C. Claim for Deliberate Indifference to Serious Medical Needs

9 The legal standard for this Eighth Amendment claim also was
10 provided in the Court's Order dismissing the complaint with leave
11 to amend. See Doc. no. 5 at 7-8. Plaintiff names the following
12 Defendants in this claim: (1) Dr. John Cranshaw, Plaintiff's
13 primary care provider (PCP) during the time at issue; (2) R.
14 Dixon, RN, who denied Plaintiff's appeal pertaining to his lack of
15 adequate medical treatment at the first level of review; (3)
16 Andrew W. Deems, Chief Executive Officer (CEO) of SQSP Health Care
17 Services, who denied Plaintiff's appeal at the second level of
18 review; (4) C. Harless, Health Care Appeals Coordinator, who
19 denied Plaintiff's request for an interview regarding the delay in
20 the response to his original appeal; and (5) Chief L.D. Zamora,
21 who denied Plaintiff's appeal at the third level of review.

22 In its previous Order, the Court found that Plaintiff had
23 alleged a serious medical need, but had failed to allege that
24 Defendants were aware that Plaintiff faced a substantial risk of
25 serious harm and disregarded that risk by failing to take
26 reasonable steps to abate it.

27 In his 1AC, Plaintiff alleges the following against Dr.
28 Cranshaw. On July 4, 2012, while Plaintiff was working at the
CALPIA factory, he submitted a health care services request form
to Dr. Cranshaw seeking comprehensive blood and lungs testing for

1 possible exposure to lead and/or asbestos while he was assigned to
2 the CALPIA furniture factory. 1AC, Ex. R. On July 5, 2012, Dr.
3 Cranshaw mailed a note to Plaintiff stating, "Plaintiff have [sic]
4 not been identified by PIA as significantly exposed to lead or
5 asbestos. Therefore, there is nothing we [SQSP Medical
6 Department] can do to evaluate you. IF you believe you are
7 significantly exposed, please discuss it with the appropriate
8 individuals in the PIA." 1AC, Ex. R.

9 Plaintiff alleges that Dr. Cranshaw's denial of testing was
10 the result of action by P. Early who had notified the SQSP Medical
11 Department of the inmates to be tested as a result of a June 6,
12 2012 exposure incident.

13 Plaintiff claims that Dr. Cranshaw's reliance on P. Early's
14 notification was contrary to recognized rules and procedures which
15 provide that only health care staff are authorized to diagnose
16 illnesses, prescribe medication and treat inmates and, because Dr.
17 Cranshaw did not obey these procedures, he was deliberately
18 indifferent toward Plaintiff's serious medical needs.

19 Even if Dr. Cranshaw's reliance on P. Early's notification
20 violated prison regulations, it does not rise to the level of
21 deliberate indifference. The allegations show that Plaintiff
22 submitted one request for testing to Dr. Cranshaw based on his
23 possible exposure to asbestos or lead while working at the CALPIA
24 factory, which Dr. Cranshaw denied. The denial of one request for
25 testing, without more, does not show deliberate indifference.
26 Furthermore, even though Plaintiff alleges in his 1AC that, from
27 August 2009 to the present he suffers from severe pain, frequent
28 headaches, nasal and sinus problems, coughing and chest pains, see
1AC at 12, in his request for testing, Plaintiff did not inform

1 Dr. Cranshaw that he had any physical signs or symptoms from
2 asbestos or lead exposure, see 1AC, Ex. R. Thus, Plaintiff's
3 allegations fail to show that, at the time Dr. Cranshaw denied
4 Plaintiff's request, he was aware that Plaintiff had a serious
5 medical need and that his denial of testing would create a
6 substantial risk of serious harm. Accordingly, the Eighth
7 Amendment claim against Dr. Cranshaw is dismissed, without leave
8 to amend further.

9 Plaintiff alleges that Nurse Dixon denied his first level
10 appeal for medical testing. In her denial, Nurse Dixon wrote that
11 Plaintiff was not "identified by P. Earley on the day of the
12 incident. Plaintiff can go to the PIA supervisor to file a
13 workman's compensation form and the medical department will
14 address any and all medical issue reported. At this time there is
15 no definitive test for exposure to asbestos."

16 Plaintiff argues that Nurse Dixon was deliberately
17 indifferent to his medical needs because she should have provided
18 Plaintiff with the "mandatory medical questionnaire" which must be
19 administered to all employees who are exposed to asbestos. He
20 also alleges that, contrary to Nurse Dixon's statement, tests for
21 exposure to asbestos do exist. For the same reasons discussed
22 above in regard to Dr. Cranshaw, these allegations are
23 insufficient to state a claim for deliberate indifference against
24 Nurse Dixon. Furthermore, the denial of an administrative
25 grievance does not amount to a constitutional violation. See
26 Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no federal
27 constitutional right to a prison administrative appeal or
28 grievance system for California inmates); Mann v. Adams, 855 F.2d

1 639, 640 (9th Cir. 1988); Antonelli v. Sheahan, 81 F.3d 1422, 1430
2 (7th Cir. 1996).

3 Plaintiff alleges that CEO Deems, C. Harless and L.D. Zamora
4 are also liable because they denied his appeals at higher levels
5 of review. For the reasons discussed above, these allegations are
6 insufficient to state an Eighth Amendment claim against these
7 Defendants. See Ramirez, 334 F.3d at 860. Accordingly, the
8 Eighth Amendment claim based on the allegations that Defendants
9 denied Plaintiff's appeals is dismissed without leave to amend
10 further.

11 However, Plaintiff also alleges that Deems, as CEO of SQSP
12 Health Care Services, created a policy, custom and practice of
13 denying prisoners, including Plaintiff, adequate medical attention
14 and treatment for exposure to asbestos, as evidenced by CEO
15 Deems's delay and denial of testing Plaintiff for signs and
16 symptoms of asbestos or lead exposure. As stated above, a
17 supervisor may be liable if he implemented "a policy so deficient
18 that the policy itself is a repudiation of constitutional rights
19 and is the moving force of the constitutional violation." Redman,
20 942 F.2d at 1446; Jeffers, 267 F.3d at 917. Although Dr. Cranshaw
21 did not have sufficient information to be aware that his denial of
22 testing might cause a serious risk to Plaintiff's health,
23 Defendant Deems, as CEO of SQSP Health Care Services, allegedly
24 knew or should have known of a risk of exposure to asbestos and
25 lead at the CALPIA factory, and yet did not implement a policy
26 that allowed Plaintiff, who feared he had been exposed to asbestos
27 and lead, to be tested for such. Liberally construed, this
28 alleges a policy so deficient that the policy itself is a
repudiation of constitutional rights. Therefore, Plaintiff

1 sufficiently alleges an Eighth Amendment violation against CEO
2 Deems.

3 D. Claim for Fraudulent Concealment

4 Plaintiff sues SQSP Appeals Coordinator Steve Hay and SQSP
5 Correctional Officer Keith Davis for fraudulent concealment.
6 Plaintiff alleges that Appeals Coordinator Hay received a
7 directive to decide Plaintiff's appeal, regarding unsafe
8 conditions, within thirty days. Although Plaintiff's next
9 allegations are difficult to follow, it appears that he faults
10 Appeals Coordinator Hay for writing that B. Smith, PIA Branch
11 Manager, was no longer available when Appeals Coordinator Hay knew
12 that B. Smith was available. Plaintiff argues that this, and the
13 fact that Appeals Coordinator Hay responded after the thirty-day
14 deadline, show that Appeals Coordinator Hay is liable for
15 fraudulent concealment because he "assisted the Defendants from
16 answering their own wrongs" and hindered Plaintiff "from
17 discovering his course of action in this matter, thereby
18 preventing Plaintiff's due process of exhausting administrative
19 remedies." 1AC at 61-61. On April 12, 2013, Plaintiff received
20 notice from Appeals Coordinator Hay that his appeal was screened
21 out and rejected. On May 13, 2013, approximately ten months after
22 Plaintiff's original filing, his appeal was denied at the third
23 level of review. Plaintiff claims that this also shows that
24 Appeals Coordinator Hay intentionally concealed and misrepresented
25 material facts under a "Code of Silence" which encourages prison
26 employees to remain silent about improper behavior of their fellow
27 employees.

28 These allegations do not state a claim against Appeals
Coordinator Hay. As discussed above, the denial of an appeal does

1 not rise to the level of a constitutional violation. Further,
2 Plaintiff does not sufficiently allege the elements of common law
3 fraud or fraudulent concealment. Therefore, this claim against
4 Appeals Coordinator Hay is dismissed. Dismissal is without leave
5 to amend further because Plaintiff has had an opportunity to
6 remedy this claim and has failed to do so.

7 Plaintiff alleges that Officer Davis observed the dangerous
8 conditions from asbestos at the CALPIA furniture factory when
9 supervising Plaintiff's work detail, but remained silent. Based
10 on this, Plaintiff claims that Officer Davis is liable for
11 implementing the Code of Silence regarding the improper behavior
12 of other employees.

13 This allegation is insufficient to state a claim against
14 Officer Davis. Officer Davis may not have been aware of any
15 danger from asbestos exposure. This can be inferred from the fact
16 that Officer Davis's presence in the factory supervising
17 Plaintiff's work detail may have exposed him to the same hazardous
18 conditions as Plaintiff. Furthermore, the allegations are
19 insufficient to state a claim for fraud or fraudulent concealment.

20 Therefore, this claim against Officer Davis is dismissed.
21 Dismissal is without leave to amend further because Plaintiff has
22 had an opportunity to remedy this claim and has failed to do so.

23 CONCLUSION

24 For the foregoing reasons, the Court orders as follows:

25 1. Plaintiff fails to state a cognizable claim for
26 fraudulent concealment. This claim is dismissed without leave to
27 amend.

28 2. Plaintiff fails to state a cognizable Eighth Amendment
claim for deliberate indifference to serious medical needs against

1 Dr. Cranshaw. He also fails to state this Eighth Amendment claim
2 against Nurse Dixon, CEO Deems, C. Harless and L. D. Zamora based
3 on their denial of his appeals. The claim against these
4 Defendants is dismissed without leave to amend. However,
5 Plaintiff states a cognizable Eighth Amendment claim against CEO
6 Deems who, as CEO of the Health Services Department, allegedly
7 created a policy, custom or practice of failing to test inmates
8 who may have been exposed to asbestos.

9 3. Plaintiff states a cognizable Eighth Amendment claim for
10 deliberate indifference to hazardous conditions against all the
11 Defendants he names in that claim. Plaintiff also states a
12 cognizable state law claim against CALPIA.

13 4. In order to encourage the just, speedy and inexpensive
14 determination of 42 U.S.C. § 1983 cases filed in this district,
15 the parties may waive their right to proceed before a district
16 judge and consent to proceed before a magistrate judge for all
17 purposes. Attached to this Order is a Notice of Option to Consent
18 to Proceed Before United States Magistrate Judge and an Order
19 requiring the parties to notify the Court whether they consent or
20 decline to so proceeding. The parties shall complete the
21 requisite consent or declination form and return it to the Court
22 no later than thirty days from the date of this Order.

23 5. The Clerk of the Court shall mail a Notice of Lawsuit and
24 Request for Waiver of Service of Summons, two copies of the Waiver
25 of Service of Summons, a copy of the 1AC (docket no. 6) and all
26 attachments thereto, a copy of this Order, the Order Dismissing
27 Claims with Leave to Amend, (docket no. 5), and a copy of the form
28 "Consent or Declination to Magistrate Judge Jurisdiction" to SQSP
employees John Walker, Health and Safety Manager; Elizabeth

1 Babcock, Hazardous Material Specialist; Kevin Chappell, Warden;
2 and A. Deems, CEO of Health Services and to CALPIA employees
3 Ronald Glass, Industrial Supervisor; Gary S. Lored,
4 Superintendent II; Philip Earley, Industries Administrator/Lead
5 Manager; Luu Rogers, Industrial Supervisory/Health and Safety
6 Coordinator; Brad Smith, Branch Manager; and Charles Pattillo,
7 General Manager. The Clerk shall send the same documents to
8 CALPIA in care of its chief executive officer or other agent
9 authorized by law to receive service of process. The Clerk shall
10 also mail a copy of the LAC and a copy of this Order and the Order
11 Dismissing Claims with Leave to Amend to the California Attorney
12 General's Office. Additionally, the Clerk shall mail a copy of
13 this Order to Plaintiff.

14 6. Defendants are cautioned that Rule 4 of the Federal Rules
15 of Civil Procedure requires them to cooperate in saving
16 unnecessary costs of service of the summons and complaint.
17 Pursuant to Rule 4, if Defendants, after being notified of this
18 action and asked by the Court, on behalf of Plaintiff, to waive
19 service of the summons, fail to do so, they will be required to
20 bear the cost of such service unless good cause be shown for the
21 failure to sign and return the waiver forms. If service is
22 waived, this action will proceed as if Defendants had been served
23 on the date that the waiver is filed, except that pursuant to Rule
24 12(a)(1)(B), Defendants will not be required to serve and file an
25 answer before sixty days from the date on which the request for
26 waiver was sent. (This allows a longer time to respond than would
27 be required if formal service of summons is necessary.)

28 Defendants are advised to read the statement set forth at the
foot of the waiver form that more completely describes the duties

1 of the parties with regard to waiver of service of the summons.
2 If service is waived after the date provided in the Notice but
3 before Defendants have been personally served, the answer shall be
4 due sixty days from the date on which the request for waiver was
5 sent or twenty days from the date the waiver form is filed,
6 whichever is later.

7 7. Defendants shall answer the complaint in accordance with
8 the Federal Rules of Civil Procedure. The following briefing
9 schedule shall govern dispositive motions in this action:

10 a. No later than thirty days from the date the answer
11 is due, Defendants shall file a motion for summary judgment or
12 other dispositive motion and opposition to Plaintiff's motion for
13 a preliminary injunction. If Defendants file a motion for summary
14 judgment, it shall be supported by adequate factual documentation
15 and shall conform in all respects to Federal Rule of Civil
16 Procedure 56. If Defendants are of the opinion that this case
17 cannot be resolved by summary judgment, they shall so inform the
18 Court prior to the date the summary judgment motion is due. All
19 papers filed with the Court shall be promptly served on Plaintiff.

20 At the time of filing the motion for summary judgment or
21 other dispositive motion, Defendants shall comply with the Ninth
22 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.
23 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and
24 provide Plaintiff with notice of what is required of him to oppose
25 a summary judgment motion or a motion to dismiss.

26 b. Plaintiff's opposition to the motion for summary
27 judgment or other dispositive motion shall be filed with the Court
28 and served on Defendants no later than twenty-eight days after the
date on which Defendants' motion is filed.

1 Before filing his opposition, Plaintiff is advised to read
2 the notice that will be provided to him by Defendants when the
3 motion is filed, and Rule 56 of the Federal Rules of Civil
4 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party
5 opposing summary judgment must come forward with evidence showing
6 triable issues of material fact on every essential element of his
7 claim). Plaintiff is cautioned that because he bears the burden
8 of proving his allegations in this case, he must be prepared to
9 produce evidence in support of those allegations when he files his
10 opposition to Defendants' summary judgment motion. Such evidence
11 may include sworn declarations from himself and other witnesses to
12 the incident, and copies of documents authenticated by sworn
13 declaration. Plaintiff will not be able to avoid summary judgment
14 simply by repeating the allegations of his complaint.

15 c. Defendants shall file a reply brief no later than
16 fourteen days after the date Plaintiff's opposition is filed.

17 d. The motion shall be deemed submitted as of the date
18 the reply brief is due. No hearing will be held on the motion
19 unless the Court so orders at a later date.

20 8. Discovery may be taken in this action in accordance with
21 the Federal Rules of Civil Procedure.

22 9. All communications by Plaintiff with the Court must be
23 served on Defendants, or Defendants' counsel once counsel has been
24 designated, by mailing a true copy of the document to Defendants
25 or Defendants' counsel.

26 10. It is Plaintiff's responsibility to prosecute this case.
27 Plaintiff must keep the Court informed of any change of address by
28 filing a separate paper with the Clerk headed "Notice of Change of
Address," and must comply with the Court's orders in a timely

1 fashion. Failure to do so may result in the dismissal of this
2 action for failure to prosecute pursuant to Federal Rule of Civil
3 Procedure 41(b).

4 11. Extensions of time are not favored, though reasonable
5 extensions will be granted. Any motion for an extension of time
6 must be filed no later than fourteen days prior to the deadline
7 sought to be extended.

8 IT IS SO ORDERED.

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Dated: 4/4/2014


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE