

Westlaw

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United States District Court
D. Kansas.
James Earl LINDSEY, Plaintiff,
v.
Scott BOWTEN, M.D., Defendant.
Civil Action No. 07-3067-KVW.

June 6, 2008.

Background: Federal prisoner incarcerated in private prison brought *Bivens* action against physician alleging violation of Fifth, Eighth, and Fourteenth Amendment rights. Physician moved to dismiss.

Holding: The District Court, Katsas, J.; Vratil, J., held that no state law negligence cause of action was shown.

Motion denied.

West Headnote

[1] Prisons 310 ↗ 192**310 Prisons****310II Prisoners and Inmates****310II(O) Health and Medical****310K17 Particular Cases and Treatments**

310K19 ↗ k. In General. Most Cited
(Formerly 310k17(2))

United States 393 ↗ 3750, 403(3)**393 United States****393I Government in General****393K50 Liabilities of Officers or Agents for Negligence or Misconduct****393K50,19 Particular Acts or Claims**

393K50,19(3)(k). Criminal Law Enforcement and Investigation. Prisoners' Claims. Most Cited Cases

(Formerly 310k17(2))

No state law negligence action was shown for federal prisoner's injuries arising out of physician's failure to diagnose Hepatitis C and methicillin-resistant *Staphylococcus aureus* (MRSA), as would preclude federal prisoner's *Bivens* action against physician at private prison, alleging that failure to diagnose violated prisoner's Fifth, Eighth, and Fourteenth Amendment rights. U.S.C.A. Const. Amends. 5, 8, 14.

[2] United States 393 ↗ 50,10(3)**393 United States****393I Government in General****393K50 Liabilities of Officers or Agents for Negligence or Misconduct****393K50,10 Particular Acts or Claims**

393K50,10(3) k. Criminal Law Enforcement and Investigation. Prisoners' Claims. Most Cited Cases

A federal prisoner has no implied right of damages against an employee of a privately operated prison under *Bivens*, when state or federal law affords an alternate cause of action for the alleged injury.

[3] Civil Rights 78 ↗ 1326(4)**78 Civil Rights****78II Federal Remedies in General****78II,1223 Color of Law****78II,1226 Particular Cases and Contexts**

78II,1226(3) Private Persons or Corporations, in General

78II,1326(3) k. In General. Most Cited Cases

Civil Rights 78 ↗ 1326(5)**78 Civil Rights****78II Federal Remedies in General****78II,1223 Color of Law****78II,1226 Particular Cases and Contexts**

78II,1326(3) Private Persons or Corporations, in General

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78k1323(5)(A), State Actor, Most Cited Cases

Civil Rights 78 >>> 1326(7)

78 Civil Rights

78111 Federal Remedies in General

78k1323 (Color of Law)

78k1326 Particular Case, Most Contested

78k1326(7) (A), Public Security, License, or Regulation: Utilities and Telephones, Most Cited Cases

Under § 1983, conduct is "fairly attributable" to the state if (1) the deprivation is caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state, and (2) the private party acted together with or obtained significant aid from state officials or agents in conducting otherwise chargeable to the state. 42 U.S.C.A. § 1983.

[4] Civil Rights 78 >>> 1326(8)

78 Civil Rights

78111 Federal Remedies in General

78k1323 (Color of Law)

78k1326 Particular Case, Most Contested

78k1326(8) (A), Police and Justice Officers; Prisons, Most Cited Cases

Federal prisoner bringing § 1983 action against physician at private run prison, alleging physician's receipt of license to practice medicine in state, claiming prisoner was injured, and physician's failure to diagnose and treat Hepatitis C and methicillin-resistant Staphylococcus aureus ("MRSA"), was required to allege that state or agent conduct created deprivation in that physician acted in concert with state officials or engaged in conduct otherwise chargeable to the state. 123 F.3d 393, *1226 James Earl Lindsey, Tabasco, et al., v. Se.

Mark A. Lynch, Michael J. Jinkins, and John D. born, PA, Overland Park, KS, for Plaintiff(s).

Mark A. Lynch, Michael J. Jinkins, and John D. born, PA, Overland Park, KS, for Plaintiff(s).

KATHERINE WRATH, District Judge.

James Earl Lindsey brings suit *pro se* against Scott Howlin, M.D., for violation of constitutional rights under the 3rd, 8th, Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff's claim arises from his incarceration in Leavenworth Detention Center, a private prison run by the Corrections Corporation of America ("CCA").¹²²⁶ Specifically, plaintiff claims that during said incarceration defendant, a physician for CCA, conducted or failed to take reasonable steps to prevent the spread of methicillin-resistant Staphylococcus aureus ("MRSA") and Hepatitis C within the prison population, and failed to treat plaintiff for said diseases. This matter comes before the Court on defendant's *Motion To Dismiss* (Doc. # 34) filed March 21, 2007.¹²²⁷ Defendant asserts that plaintiff cannot bring an action for constitutional violations under *Bivens v. Six Unknown Agents in the Name of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 F.3d 619 (1991), because he is an employee of a privately operated prison. For reasons stated below, the Court overrules defendant's motion.

The CCA is a private Maryland corporation which houses and detains federal pretrial detainees and prisoners under contract with the United States Marshal's Service. *People v. CCA Det. Ctr.*, 2004 WL 74317, at *1 (Cal. 15, 2004) ("Peoples I"), *rev'd en banc*, *People v. CCA Det. Ctr.* ("Peoples II"), 43 F.3d 1097 (10th Cir.), *cert. denied*, 545 U.S. 1056, 127 S.Ct. 664, 156 L.Ed.2d 521 (2006).

First, because defendant has already filed a motion, however, it should normally make its motion under Rule 12(c), for judgment on the pleadings. See *Jacobson v. Deseret Book Co.*, 137 F.3d 936, 941 n. 2 (10th Cir. 1998). The same standard applies for Rule 12(b)(6) and 12(c) motions, however, so in keeping with defendant's designation,

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the Court refers to the motion to dismiss. See *id.*

Legal Standards

In ruling on a motion to dismiss a claim under Rule 12(b)(6), the Court assumes as well as all well-pleaded facts in the complaint and views them in a light most favorable to plaintiff. See *Zubik v. Babbitt*, 118 F.3d 478, 481 (1st Cir. 1997); *Johnson v. Peletier*, 113 F.3d 121, 124 (1st Cir. 1996). Rule 12(b)(6) does not require detailed factual allegations, but the complaint must set forth the grounds of plaintiff's entitlement to relief through more than conclusional, general, or formulaic recitation of the elements of the cause of action. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (S.Ct. 2007); *Id. at 550* (2007). In other words, plaintiff must allege facts sufficient to state a claim which is plausible-rather than merely conceivable-on its face. See *id.* Plaintiff bears the burden to furnish a complaint with enough factual matter (taken as true) to suggest "that he is entitled to relief." *Id. at 565*. The Court makes all reasonable inferences in favor of plaintiff. See *Zubik*, 118 F.3d at 481; *Id. at 491*; *Id. at 495*; *see also* *Cox v. Lee*, 100 F.3d 975, 977 (1st Cir. 1996); *Id. at 977*; *HMG Code 96-81-16-94, 98-17-17-173*. The Court, however, need not accept as true allegations which violate legal concepts. See *id.*; *Id. v. Belotti*, 117 F.3d 111, 114 (1st Cir. 1999). In reviewing the sufficiency of plaintiff's complaint, the issue is not whether plaintiff's claim prevails but whether he is entitled to relief. *Id. at 550* (citing *232 F.2d 343, 350 (1st Cir. 1956)*). A court may overrule or otherwise modify a motion to dismiss under Rule 12(b)(6) if it finds that plaintiff has failed to state a cause of action. *Id. at 550* (citing *557 F.Supp.2d 1225*).

Rule 12(b)(6)

Plaintiff's complaint is less formal than formal pleadings drafted by lawyers. See *id.* The Court, however, does not assume the role of advocate for a *pro se* litigant. See *id.*

Facts

Plaintiff alleges the following facts, which the Court accepts as true for purposes of ruling on defendant's motion:

Plaintiff is a inmate at Federal Correctional Institution ("FCI") in Tuscaloosa, Alabama. *Complaint* (Doc. # 1) filed March 3, 2007 at 1-2. From November of 2004 to January 16, 2005, plaintiff was incarcerated in a maximum security unit at the Lowndes County Detention Center ("LDC"), a private prison run by CCA.¹ *Id.* at 1-3. Defendant is a physician who works for CCA. *Id.* at 1.

Plaintiff states the complaint contains inconsistent page numbering. For purposes of this order, the Court refers to page numbers designated by the electronic court filing system.

Plaintiff states the complaint does not allege when he began his incarceration at LDC, but it appears that he was incarcerated there from at least November of 2004.

On December 29, 2004, defendant examined plaintiff regarding nausea, fever and an extremely painful bump in his right upper scrotum. *Id.* at 2. Defendant advised that plaintiff had an ingrown nail in his toe. Dovycycline and asked him to return in two weeks. *Id.* During the following week, plaintiff saw the wound himself without bandaging it again.

On December 30, 2004, medical staff performed a catheterization on plaintiff's wound. *Id.* Plaintiff told the doctor that he had never seen a two-inch bump for so long a time which caused nausea and fever and contained a thick pus. *Id.* The doctor assured plaintiff that he only an ingrown hair. *Id.* During the entire time plaintiff knew several inmates

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who had similar abscesses on their bodies. *Id.* CCA never staffed that the abscesses were caused by bites. *Id.*

ENS Plaintiff does not know whether he saw defendant or another ENS.

On December 15, 2003, CCA received culture results which showed the wound was not an ingrown hair but potentially deadly. The culture indicated MRSA. *Id.* Defendant did not culture plaintiff's nose for MRSA. Plaintiff informed defendant that he had MRSA and attempted to get defendant to culture his nose for MRSA. *Id.* Defendant did not culture plaintiff's nose for MRSA because defendant has a policy of not absorbing a nose culture and to seek immediate medical attention. *Id.* Because defendant did not culture plaintiff's nose for MRSA, plaintiff became a carrier and spread the disease. *Id.* at 2, 4. As a result, plaintiff contracted a substantial number of serious complications associated with MRSA such as cellulitis which plaintiff suffered from fatal organ failure. *Id.* at 2, 4, 6, 10, 11, 13, 14, 16, 17, 19, 20, 22, 23, 25, 26, 28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 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1829, 1830, 1831, 1832, 1833, 1834, 1835, 1835, 1836, 1837, 1838, 1839, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1845, 1846, 1847,

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able care to stop him. A few days later he was admitted to the hospital with a severe case of cellulitis and suffered considerable infection and excruciating pain due to shanefield scars on his scrotum, buttocks and thighs. *Id.*

***1229** Determined that it is carried by the M.R.A. that defendant should have been held up inmates among non-infected as ally, defendant was guilty of charge, acts or omissions maintained by the M.R.A. as described simultaneously caused various infectious diseases. At defendant failed able one to stop spreading of spreading with other inmates properly caused plaintiff to become disease.

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Plaintiff claims that defendant
tional right to due process of law
and that defendant failed to
failing to prevent the spread of
is changing the interests of people to
treat plaintiff like other inmates,
dismiss, or ignore his plaint
action against him as employee of a
prison.

In *Pooper v. City of New York*, 2004 WL 1000000, at *1-2 (S.D.N.Y. 2004), the court held that state would not be liable under CCA if plaintiff's only available remedy available under state ***⁶⁻⁷ C.R.A. § 87(2)(b). The city agreed, finding that under the state of California, a plaintiff does not have an exclusive pre-existing or continuing right claim against a private defendant for failure to

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¹⁴ See *People v. Alex H.H.*), 422 F.3d 1090, 1093 (10th Cir.2005).¹⁵ On rehearing en banc, however, the Tenth Circuit equally divided on whether it would allow actions against employees of a privately operated prison. See *People v. Alex H.H.* (Peopley II”), 449 F.3d 1097,

On this issue, the court rejected the panel opinion and remanded the case to the trial court for further proceedings. On remand of the case, the trial court issued an order to show cause which Plaintiff did not dismiss the case for failure to appear or answer. Rule 12(b)(6). See *Order To Show Cause* (Doc. # 41) filed October 5, 2006 in Case No. 03-3129. Plaintiff did not respond and the trial court dismissed the case. See *Order* (Doc. # 42) filed October 30, 2006 in Case No. 03-3129.

In *People I*, this Court concluded that the lack of subject matter jurisdiction precluded claims. See *id.* at *7. In a related case, another judge of this Court found that there was subject matter jurisdiction, but that plaintiff did not state a claim upon which relief could be granted. See *People v. City of New York, et al., People II* (No. 2004-00277, 02-3298, M.J. March 26, 2004), in *inter alia*, that case noted that it was uncertain if the plaintiff could maintain a *Bivens* cause against individual CCA employees, especially when alternative state remedies were available, but it did not decide the issue, instead, it assumed the availability of a *Brown* action and held that plaintiff had not alleged sufficient facts to support his process claims. See *id.* at ***4-7.

The panel majority concluded that the court did not have jurisdiction over such a claim, but that plaintiff did not state a cause of action for which relief could be granted. See *id.* at 111.

In the entire panel could unanimously agree that the disease exists have subjected it to scientific examination.

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After a short time, the
court heard the case and
ruled in favor of the
plaintiff.

In *Cole v. Johnson*, 534 U.S. 526 (2001), the Supreme Court held that it is unconstitutional to impose a death sentence in circumstances that are "grossly disproportionate." Correctional officials keep private records of lawbreakers

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1. *Leucosia* *leucostoma* *Leucosia*
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with the Bureau of Prisons, for sufficient violations. The Supreme Court rejected *Bivens* to claims against private prison officials at 66 U.S.L.W. 66, 122 S.Ct. 515.¹²¹ In so doing, the Supreme Court noted that it has considered to extend *Bivens* except "to otherwise nonexistent cause of action against officers alleged to have acted unconstitutionally to provide a cause of action for damages as an alternative remedy for the individual officer's unconstitutional conduct." See id. at 70, 122 S.Ct. 515 (emphasis added). The Supreme Court emphasized that plaintiff had alternative remedies available and that the Supreme Court's three previous decisions toward extending *Bivens* in 1971, 1973, and 1976 foreclosed any extension in that case.

¹⁷ *Id.* did not address whether one could bring a *Brown* claim against one's own employees of USC.

plaintiffs, *Colvin* and *Holly*, and for reasons set forth in the *Itt* majority opinion, this court held that a federal prisoner has no implied cause of action as an employee of a privately owned prison if state or federal law affords an exclusive remedy for the alleged injury. See *Colvin*, 33 F.3d at 1096-103. Thus, to determine whether plaintiff has stated a claim upon which relief may be granted, the Court must determine if Rule 13 provides an alternative remedy for his alleged injuries.¹⁸ See *id.*

The Court held that if plaintiff were to state a claim for violation of his constitutional rights, he could not proceed in equity and it would be immaterial what state law affords an alternative remedy. Plaintiff's motion does not address whether plaintiff has sufficiently stated a cause for constitutional deprivation. At present, it appears that plaintiff may proceed in equity under the Civil Rights Act.

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Page 7

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***1231** [334] The County of Los Angeles filed a complaint in state Superior Court against the *Los Angeles Times* and *Los Angeles Sunday Mirror* (Case No. 35-1035) filed March 20, 1935, for libel analysis. It is sought to restrain defendant from publishing or printing any statement which may be libelous or defamatory. Plaintiff has filed a writ of preliminary injunction. The law cases cited in the complaint, the County will not release this time.

1. M. 15. P. 18. B.
Wright, H. G. 1910. A new
genus and species of the
Asteraceae from the
Rocky Mountains. Bull. Amer.
Mus. Natl. Hist. 37: 1-10.
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Wright, H. G. 1910. A new
genus and species of the
Asteraceae from the
Rocky Mountains. Bull. Amer.
Mus. Natl. Hist. 37: 1-10.

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with or obtained significant aid from officials or engaged in conduct chargeable to the state. See *id.* Plaintiff does not allege that state conduct created the deprivation or defendant acted in concert with state officials or engaged in conduct otherwise chargeable to the state. Accordingly, his claims do not state a claim for relief under section 1983. Cf. *Comiskey v. HEI*, 939 F.2d 1907, 1010-11 (8th Cir. 1991) (bar not state actor merely because issued it liquor license); *Tunica County v. City of Tunica*, 814 F.2d 411, 413 (5th Cir. 1990) (hospital not state actor merely because regulated by state); *Willis v. City of Louisville*, No. C-107-6, 10949, 1996 U.S. Dist. LEXIS 61762, p. 23 (S.D. Pa., March 5, 1996) (attorney not state actor merely because regulated by state).

IT IS FURTHER ORDERED that defendant's
Motion (Doc. # 34) filed March 21,
everywhere is OVERRULED.

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Table 10.1 No Cl atoms

Introduction

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Only the Westlaw citation is currently available.

United States District Court
D. Kansas.
Junior Clayton MENEFEE v. CCA,
et al., Plaintiff,
v.
Stacey APPLEBEET, et al., Defendants.
No. 04-3054-MJ

June 27, 2008

David A. Rameden, Zach Chaffee, Shook, Hardy & Wailes L.L.P., Kansas City, MO, for Plaintiff.

Joshua D. Mast, Michael P. Crowley, Clothier & Associates, Leavenworth, KS, for Defendants.

MEMORANDUM AND ORDER

JAMES P. O'HARA, U.S. Magistrate Judge

I. Introduction

*1 This is a prisoner civil rights case. The plaintiff, Junior Clayton Menefee, asserts claims related to his treatment while he was incarcerated at the Corrections Corporation of America ("CCA") Detention Center in Leavenworth, Kansas. Specifically, plaintiff alleges he was denied the right of the neglect and indifference of CCA employees, defendants Stacey Applebee, Dr. Frederick Lawrence, Rhonda Allen, and Shirley Davis (collectively, the "individual CCA defendants"). The case is now before the court after individual CCA defendants' supplemental motion to dismiss (doc. 45) and CCA's motion to dismiss plaintiff's amended complaint (doc. 79). On January 22, 2005, by consent of all parties, the two motions currently before the court were assigned for consideration from Hon. Monte L. Belot, U.S. District Court Judge, to the undersigned, U.S. Magistrate Judge James P.

O'Hara (see doc. 87). As discussed below, these motions have been fully briefed, and the court is ready to rule.

II. Background

A detailed review of this case's complex procedural history is necessary to understand the legal issues currently before the court. On February 13, 2004, plaintiff filed this case pro se against the United States of America, the United States Marshal for the District of Kansas, and the United States Attorney General (collectively, the "federal defendants"), and also against CCA and the individual CCA defendants (doc. 1). In his complaint, plaintiff asserted a claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 F.Ed.2d 619 (1971), for violations of his Fifth Amendment right to due process and his Eighth Amendment right to be free of cruel and unusual punishment, along with a claim under the Federal Tort Claims Act, 28 U.S.C. §§ 1333, 2671-2680, and a breach of contract claim pursuant to the Tucker Act, 28 U.S.C. § 1498(a)(2).

On August 14, 2004, CCA and the individual CCA defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted (doc. 21). On September 30, 2004, the federal defendants filed a joint motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted or, in the alternative, for summary judgment (doc. 28).

On December 16, 2004, Judge Belot granted both of the above-referenced dispositive motions, dismissing the complaint in its entirety (doc. 30). Judgment was entered accordingly (doc. 31). Plaintiff, still proceeding pro se, appealed (doc. 32). On August 13, 2006, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal of

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the claims against the federal defendants, but reversed the dismissal of the claims against the individual CCA defendants for lack of subject matter jurisdiction, remanded the case for further proceedings only on the individual CCA defendants' claim (see doc. 48).

***2** As earlier indicated, the individual CCA defendants' original motion to dismiss was based on lack of subject matter jurisdiction and failed to state a claim upon which relief can be granted. The Tenth Circuit found that Judge Belot erred on the basis of lack of subject matter jurisdiction and held this was improper because it was an appropriate basis for dismissing a *Riverside* claim if the court failed to state a claim upon which relief can be granted.

On August 29, 2006, after this court remanded, Judge Belot determined that individual CCA defendants should be allowed to file a supplemental motion to dismiss for lack of subject matter jurisdiction or upon any other appropriate grounds. He also set briefing deadlines relative to the individual CCA defendants' supplemental motion to dismiss and report (doc. 46). On September 13, following a letter from plaintiff stating his response by the previously set date, the court gave plaintiff an extension of time until October 2006 to respond to the individual CCA defendants' motion (i.e., doc. 47). The court cause the individual CCA defendants of plaintiff's motion to file a brief in support of their position that he file the motion to one for summary judgment of which plaintiff was given. The court stated plaintiff could evidence on the issue.

The court received an letter requesting an extension of time for the individual CCA defendants' motion (docs. 48 & 50). On October 12, 2006, plaintiff responded to the court on the individual CCA defendants' motion to file a brief in support of their position that he file the motion to one for summary judgment of which plaintiff was given. The court stated plaintiff could evidence on the issue.

On November 13, 2006, the court denied CCA defendants' motion to dismiss for lack of subject matter jurisdiction, remanded the case for further proceedings only on the individual CCA defendants' claim (see doc. 48).

On January 12, 2007, plaintiff filed a supplemental motion to dismiss for lack of subject matter jurisdiction or upon any other appropriate grounds. The court denied plaintiff's motion to dismiss for lack of subject matter jurisdiction (see doc. 49).

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On January 12, 2007, plaintiff filed a motion for summary judgment on the issue of whether plaintiff was given pain medication (see doc. 51). The court then allowed the individual CCA defendants to supplement their motion to dismiss to explain whether administrative remedies were or are available at the Leavenworth Detention Center and, if so, what the remedies were or are (see doc. 52). The court's order included a footnote stating the individual CCA defendants' "motion may be converted to summary judgment."

On January 12, 2007, the individual CCA defendants timely filed a supplement to their motion to dismiss addressing the availability of administrative remedies and whether plaintiff exhausted those remedies (see doc. 53). The individual CCA defendants attached to their supplement an affidavit of defendant Frederick Lawrence, Chapter 10 of the CCA Corporate and Facility Policy and the CCA Inmate Handbook for the Leavenworth Detention Center. The court then noted the evidence presented by the individual CCA defendants was contrary to plaintiff's statement in his complaint that he was told there were no administrative remedies available at the Leavenworth Detention Center (see doc. 54). The court converted the individual CCA defendants' motion to one for summary judgment pursuant to Rule 12(c) and gave plaintiff an opportunity to respond to the individual CCA defendants' motion to dismiss. In an abundance of caution, the court sent plaintiff its previous order allowing the individual CCA defendants to supplement their motion regarding administrative remedies (see doc. 52). Plaintiff responded to the individual CCA defendants' supplement to his motion to dismiss (see doc. 55) and the court denied plaintiff's motion to dismiss (see doc. 56).

On February 5, 2007, Judge Belot provisionally appointed Michael A. Kameder as counsel to represent plaintiff (see doc. 57). On February 5, 2008, plaintiff, through counsel, filed a motion for leave to amend his complaint to properly identify the previously

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unknown or recordable CCA defendant and claims against CCA defendants (doc. 70). CCA opposed the motion as being plaintiff's proposed amendment (doc. 71). CCA further argued that because it had not been a defendant at the time of plaintiff's proposed amendment, undue prejudice. Plaintiff did not file any opposition to the proposed amendment.

On February 24, 2006, at 12:45 p.m., in support of my motion to dismiss, I filed a motion for leave to file, under his motion to amend, that CCA file his pleading (doc. 76) - his surre, his opportunity to amend having ended and therefore the court's arguments raised in my brief and the subsequent motions denied by same day. The trial court denied (doc. 77) and withdrew its motion to amend and motion to leave to file (doc. 78). CCA later filed the original amended complaint, which plaintiff (doc. 81) never did object to. A CCA trial individual CCA was answer to plaintiff's amended, subsequently amended suit, answer (doc.

Meant to be plaintiff's addendum to his previous letter, this document contains a detailed response to the defendant's interrogatories and exhibits. It also contains a copy of the defendant's motion for summary judgment and the plaintiff's reply brief regarding the same.

End. Wenn es möglich ist,
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initial motion to dismiss addressing the availability of administrative remedies at Leavenworth Detention Center. Plaintiff already had filed a pro se response to the individual CCA defendants' motion (see doc. 51). Plaintiff was to file his response to the individual CCA defendants' supplement by March 16, 2007 (see doc. 54). Plaintiff sent Judge Belot a letter dated March 5, 2007 requesting an extension of time to file his response (doc. 56). This request, which the court construed as a motion, was never ruled, but as mentioned above, the court appointed counsel for Plaintiff on June 18, 2007.

The court, however, will consider plaintiff's response filed through counsel entirely. The court finds that plaintiff, who now has the benefit of counsel should not be limited to the arguments and exhibits he presented in his pre-answer response. Further, plaintiff's motions for extensions of time to file his response and the court's orders granting such motions were not extremely precise as to what plaintiff was being given an extension of time to file (see does, § 59.4; 73-74).

**For the individual CCA Defendants' Supplemental
Motion to dismiss**

• Periodic acids and anands

13 CCA defendants' supplemental motion asserted pursuant to Fed.R.Civ.P. 56(e) in support of plaintiff's *Bivens* claim to settle a claim upon which relief can be granted, the individual CCA defendants attached plaintiff's medical records to their memorandum. Judge Belot stated he set the motion to rule for summary judgment of whether plaintiff was given notice. Judge Belot gave plaintiff an opportunity to controvert evidence on the issue.

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The individual C's defendant's their motion to dismiss or other administrative remedies is to review outside the pleadings after a motion may be converted into "the court will convert defendant's motion to one for summary judgment if he has been given notice of his response time period and the court should have rejected the defendant's motion to dismiss or should convert the motion to a hearing.

See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(d) (noting that if a party fails to file a timely opposition to a motion for summary judgment, the court may treat the motion as conceded).*

Under Rule 56(e), if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment. See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

*4 If a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment.

If, on a motion for summary judgment, a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment.

See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

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See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

The court has discretion to accept or reject documents filed in a motion to dismiss pursuant to Rule 12(b)(6). The court, however, must provide the parties notice and an opportunity to present evidence before converting a motion to dismiss into a motion for summary judgment. Actual notice required may be actual or constructive. In some circumstances, courts have held that the submission of evidentiary material by the movant, the nonmovant, or both of them, is sufficient notice.¹¹⁷

See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

Under Rule 56(e), the court should not treat the movant's claim as a jury question because the individual defendants failed to comply with D. Rule 56(e), which requires parties moving for summary judgment to summarize the facts and specifically cite to the supporting portions of the record. It is not clear whether a movant complies with Rule 56(e) by filing a motion it intended to convert into a motion for summary judgment for failing to state a claim does not affect whether the court can exercise its discretion to convert the motion.

See *USCA-3, 11-14-14, Fed Rule of Civil Procedure 56(e) (noting that if a party fails to present evidence in support of its motion, the court may disregard the evidence and grant summary judgment).*

Under Rule 56(e), if the court converts a motion to one for summary judgment, the court should deny summary judgment because the individual

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(Cite as: 2003 U.S. LEXIS 1115)

Page 5

Chlorophyll
is found in
green plants
like the
leaves, stems,
flowers, and
fruits, and
it is also
found in
algae, which
are simple
plants.

Plaintiff failed to file the motion to quash the parties' joint pre-summary-jury trial discovery. As a result, the court denied Plaintiff's motion to quash and rejected Plaintiff's argument. The decision is appealed.

Relationships between psychosocial adult factors and child abuse

The second part of the study was to effectively evaluate the CCA. One aspect of the question concerned the ability of the motion analysis system to detect anteroposterior extension in the trunk during the CCA. This was done before the subjects entered the laboratories. The subjects were instructed to respond whenever they felt the passive motion analysis system had reached this stage during the

¹ See also the discussion in the previous section.

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Marsden v. Lappin, No. 19-1353, slip op. at 38 (D. Kan. 2019) (finding that a motion for a segment was premature when the parties had not engaged in discovery).

argues the court should not convert a motion for summary judgment because once it certifies the parties it will use the same height standard. Such an argument ignores the facts of this case. The defendant's counsel was appointed to the case with the implicated procedure in mind. His (defendant's) counsel, however, filed a motion over eight months after being retained which should have been sufficient time to review the parties' history. Regardless, informed the parties the motion may be denied. If held the motion would be converted to a motion for summary judgment, clearly giving notice of such a conversion.¹⁷ Given the court's order converting the motion for summary judgment to a motion for judgment on the pleadings, the undersigned respectfully consider the matters outside the pleadings herein attached to the indicated memorandum in support of the motion supplemental, and plain if so requested to refuse to file the motion as one to be tried.

See, 54, at 7. Judge Belof precisely the action could be converted to summary judgment on the issue and plaintiff was given particularized notice. At 7-113, subsequent order, rejected the motion as a whole as unmerited.

¹ The Court has spoken of the "flexible standard" of the Due Process Clause as to whether a conviction must be subjected to judgment as a criminal offense. In applying this standard, the Court has held that the inference of guilt beyond a reasonable doubt is not necessarily irreconcilable with the inference of guilt beyond a reasonable doubt.

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(Cite as: 2008 U.S. LEXIS 34464)

Page 6

nonmovant to establish the applicability of the proper defense. The fact is that if each side succeeds in solving its burden,

the case will be decided

on the basis of the

facts adduced by

each side.

That is, the court

will decide the case

on the basis of the

The trial judge may then demonstrate a claim for summary judgment by pointing to a series of laws, regulations, or other movant documents which purport to establish the claim. The burden then shifts to the court to determine whether an evidentiary hearing is required. If proof of the claim is sufficient, the judge may enter a judgment on the facts in the plaintiff's favor.

That is, the court

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and, however this initial burden lies, it is for the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." The nonmoving party may not rely on its pleadings to satisfy its burden; the nonmoving party must instead offer evidence that would be admissible in the event of trial from which a rational jury could find in favor of the plaintiff. To accomplish this, the facts must be referred to affidavits, depositions, or specific exhibits incorporated

by reference.¹⁷ U.S. at 256 (citing *Local Rule 56(d)* (concerning motion for summary judgment)).

¹⁷ See also *id.* at 256.

Local Rule 56(d) at 671 (internal quotation omitted).

or notes. Summary judgment is not a final and direct action. It is at first designed to secure the just, quick, and determinative of every action.

Local Rule 56(d) at 227 (quoting *id.* at 671).

That is, the court constitutes the trial judge in the trial to plaintiff and defendant as required by law. The material facts and issues properly supported by the record are determined. When necessary, additional information is adduced in the analysis section or in the addendum or report.

That is, the original complaint was sworn to

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(Cite, p. M)

Page 7

under your signature, and you have fiduciary obligations to the facts based on the information you filed. Even though he has stated correctly that he has no right on his behalf to file any other unverified documents, notwithstanding the original filing of the complaint, the allegations in the complaint will be considered by the court. The original fiduciary complaint may be amended.

Initiated by the two parties concerned, the plan received the immediate attention of the Leavenworth authorities until after the arrival of Lawrence at the institution. He was received by the plenipotentiary, with a cordial greeting.

defendants produced two facility
guards, neither of which were effective
at the Leavenworth Detention
Center. Plaintiff states plaintiff did
not file a grievance while at the Leavenworth De-
tention Center. Plaintiff produced multiple grievances
while at Leavenworth.

and defendants filed their motion to dismiss plaintiff's cause of action for interference with the original contract and the individual CCA because Plaintiff's allegations had been filed against them. It is intended that Plaintiff file his amended complaint as to his cause of action against the individual CCA.

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THE AUTHORITIES

Plaintiffs argue plaintiff's allegation is true, and therefore he should be dismissed. The Prison Litigation Reform Act (PLRA) requires prisoners exhaust administrative remedies before proceeding to court regarding conditions under which they are held. Plaintiff has not exhausted his administrative remedies, and thus is estopped from bringing suit. In addition, plaintiff's claim is barred by the statute of limitations, which has already passed.

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Page 8

Several significant developments have occurred since the administration of Vito J. Lopez. In November 2005, the indictment was amended to add a count of mail fraud. In November 2006, the indictment was amended again to add a count of obstruction of justice. In November 2007, the indictment was amended to add a count of conspiracy to commit mail fraud. The defense has moved to dismiss the indictment on the basis of the recent changes in the law.

The Director of the Bureau said "that his office was responsible under the law for the collection of special assessments and the collection of taxes on land held among the Indians. The Testimony of the Commissioner of the Indian Affairs, however, recited that the burden of defense of the Indians against the tribal Councils was so great as to settle a bill introduced by him to relieve the burden of the defense of the Indians from the tribal councils. He said that these assessments were probably collected.

— *Parthenocissus* H. & A. 1256,
in *Cirurgia Brasiliensis* H. 263 f.

Journal of Health Politics, Policy and Law

types of benefits exist regarding their policy was in effect at the time of his accident and the substance of the somewhat more important "benefit schedules" which would as plaintiff "did see" while he was an inmate at CCA his health treatment or injuries he alleged while detained at this individual CCA defendants contend plaintiff's case should be dismissed as it provided several grievances including compensation related to his case he filed and which contain his "discrepancy".

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At present no specific exists regarding whether or not while in theLeave-with-leave act or a material act regarding leave available administrative leave, in fact provides summary leave in case the educational institution fails to pay the due salaries the individual concerned is required to dismiss him from his post.

¹ See, *infra*, *passim*; *notitiae* ways the
firm obligation to exhaust administrative
remedies. But it is also finding a
way.

est. No. C. 1900. 1901. 1902. 1903. 1904. 1905.

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(Cite as: 2009 FC 1333)

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2nd Circuit held that the cause of action under *Bivens* did not exist against the U.S. Marshals Service, which had been sued for damages for the death of a plaintiff's son during his confinement at a federal prison.

2. The evolution of the cause of action under *Bivens*

The initial cause of action under *Bivens* was limited to suits by employees of the federal government against their superiors for damages given for acts of unconstitutional behavior committed by their superiors. Although the cause of action did not attach to cases involving torts committed by the law enforcement officers or employees of the federal government, the Court has since expanded the cause of action to cover cases involving the U.S. Marshals Service.

In 1985, the U.S. Court of Appeals for the 2nd Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 1990, the U.S. Court of Appeals for the 5th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 1994, the U.S. Court of Appeals for the 1st Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 1995, the U.S. Court of Appeals for the 10th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 2003, the U.S. Court of Appeals for the 11th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 2004, the U.S. Court of Appeals for the 5th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 2005, the U.S. Court of Appeals for the 10th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 2006, the U.S. Court of Appeals for the 11th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates against the U.S. Marshals Service.

In 2007, the U.S. Court of Appeals for the 5th Circuit held that the cause of action under *Bivens* did not extend to suits by inmates held in inhumane conditions when we conclude that no alternative cause of action arising under federal law against the individual defendant is authorized by the Constitution. Since April 1, 2007, the area was evenly divided on the question of whether damages available against the privately operated prison fall within the cause of action under *Bivens*. The majority of the en banc panel affirmed the reasoning in *Peoples II*, while the portion of *Peoples III* that addressed the precedential

value of *Peoples II* was rejected by the majority. The U.S. Supreme Court denied certiorari in *Peoples III* on October 1, 2007.

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(Cite as: 2009 U.S. LEXIS 64010)

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1. A plaintiff can sue a state or its agents under § 1983.
Perez v. Tamm, 430 F.3d 1000, 1005 (10th Cir. 2005) (citing *Ex parte Young*, 209 U.S. 268, 273 (1908)).
N.Y. ex rel. O’Malley v. N.Y. State Bd. of Regents, 199 F.3d 100, 104 (2d Cir. 1999) (“[T]he Constitution does not prohibit suits against state officials under § 1983.”).

Based on Supreme Court precedent, Vratil’s suit against the state and its agents based on § 1983 is constitutional. Individual employees of the state and individual inmates also have standing to sue the alleged defendant(s). Plaintiff has the right to sue the defendant(s) under § 1983. Plaintiff has the right to sue the defendant(s) under § 1983. Plaintiff has the right to sue the defendant(s) under § 1983. Plaintiff has the right to sue the defendant(s) under § 1983.

2. A plaintiff can sue a state or its agents under the Civil Rights Act of 1871.
O’Malley v. N.Y. State Bd. of Regents, 199 F.3d 100, 104 (2d Cir. 1999) (“[T]he Constitution does not prohibit suits against state officials under § 1983.”).

3. A plaintiff can sue a state or its agents under the Bivens Act.

On three occasions, the Supreme Court has held that § 1983 does not provide a cause of action for violations of the Bill of Rights. In *Constitutional Rights Foundation v. New York City Board of Education*, 522 U.S. 773, 783 (1999), the Court held that § 1983 does not provide a cause of action for violations of the First Amendment. In *City of Los Angeles v. Superior Court*, 523 U.S. 417, 426 (1998) (implied cause of action for violation of the First Amendment), the Court held that § 1983 does not provide a cause of action for violations of the First Amendment.

4. A plaintiff can sue a state or its agents under § 1983.
Scheuer v. Rhodes, 416 U.S. 123, 131 (1980) (plaintiffs could sue prison officials for § 1983 violation). Since 1980, Supreme Court has refused to recognize cause of action for money damages directly from the Constitution. See *Scheuer v. Rhodes*, 416 U.S. 123, 131 (1980).

5. A plaintiff can sue a state or its agents under § 1983.
See *Ex parte Young*, 209 U.S. 268, 273 (1908).

6. A plaintiff can sue a state or its agents under § 1983.
The Supreme Court declined to extend a cause of action in a new circumstance. Specifically, Court declined to imply a *Bivens* cause of action for a plaintiff who sued his state house for allegedly violating a state’s Eighth Amendment rights. The Supreme Court noted it has only implied cause of action in otherwise unconstitutional conduct against *individual officers* that were violated unconstitutionally or to sue the state for a plaintiff who lacked Article III standing to sue for damages for harms caused by an officer’s unconstitutional conduct. The Supreme Court emphasized the availability of alternative remedies and ruled accordingly, declining to extend § 1983. See *Ex parte Young*, 209 U.S. 268, 273 (1908).

7. A plaintiff can sue a state or its agents under § 1983.
See *Ex parte Young*, 209 U.S. 268, 273 (1908).

8. A plaintiff can sue a state or its agents under § 1983.
See *Ex parte Young*, 209 U.S. 268, 273 (1908).

9. A plaintiff can sue a state or its agents under § 1983.
The magistrate judge finds Judge Vratil’s argument that *Hobbs Act* preclusive and § 1983 preclusive of the similar cause of action under § 1983. Specifically, the Judge Vratil stated a federal prisoner has no implied cause of action against a state employee of a state prison when state or federal law affords an adequate administrative inquiry.⁷¹ Therefore, Plaintiff must determine whether state administrative remedy for plaintiff’s alleged constitutional violation.

Slip Op.
Slip Op. No. 08-1333
(Cite as: 33 U.S. 315)

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leged in his suit.

The court held that the state law claim was pre-empted by § 1333, and that the defendant's claim for damages under state law was not pre-empted because it denied plaintiff an alternative remedy. The court rejected the defendant's CCA argument that the state law claim in "Bivens does not provide an alternative remedy to an individual plaintiff who has exhausted state law remedies." The court found that sufficient to establish that plaintiff is entitled to sue under § 1333. The court contrasted this case with *Bivens*, where the plaintiff had asserted a claim for damages against an individual state actor, and held that after plaintiff had exhausted state law, he did not have an alternative remedy if he asserted negligence claims against state actors.

Plaintiff argued that the court's holding violated § 1333 by failing to consider the underlying purpose of the statute, which sets forth a cause of action for damages.

The court rejected this argument, holding that the underlying purpose of § 1333 is to provide an alternative remedy to individuals who have exhausted state law remedies.

The court also rejected the defendant's argument that plaintiff's state law claim was pre-empted by § 1333. The court held that plaintiff's state law claim was not pre-empted because it denied plaintiff an alternative remedy. The court rejected the defendant's CCA argument that the state law claim in "Bivens does not provide an alternative remedy to an individual plaintiff who has exhausted state law remedies." The court found that sufficient to establish that plaintiff is entitled to sue under § 1333. The court contrasted this case with *Bivens*, where the plaintiff had asserted a claim for damages against an individual state actor, and held that after plaintiff had exhausted state law, he did not have an alternative remedy if he asserted negligence claims against state actors.

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The court rejected this argument, holding that the underlying purpose of § 1333 is to provide an alternative remedy to individuals who have exhausted state law remedies.

Despite the court's rejection of plaintiff's arguments, the court held that plaintiff's state law claim was pre-empted by § 1333.

The court argues his negligence claim is an equally effective remedy to one available to *Bivens*. The court disagrees that the negligence claim is an alternative to his claim brought pursuant to § 1333.

The Court in *Correctional Services* found that the heightened deliberate standard of Eighth Amendment liability makes it difficult for a plaintiff to establish a claim pursuant to *Bivens* than in ordinary negligence. The Supreme Court held that while the plaintiff's state law remedies available in *Bivens* were not inconsistent or irreconcilable with the remedy available in state law, the alternative remedy available to plaintiff in *Bivens* is of resisting the deprivation uncharged as a crime. A plaintiff may pursue it as a negligence claim would constitute a crime or rise to the level of abuse the plaintiff in *Bivens*.

See also 7 U.S.C. § 1333, 1333(a)(2)(B)(i), relating *Eighth Amendment* to § 1333 (2007); 33 U.S. 315, 33 U.S. 315 (U.S. Cir. Court of Appeals for the D.C. Circuit, 2007); 11 U.S. 315, 33 U.S. 315 (U.S. Cir. Court of Appeals for the D.C. Circuit, 2007).

Accordinging *Bivens*, 33 U.S. at 315,

the court appears to make a decision in favor of plaintiff in that his negligence claim qualifies as a claim for damages. Plaintiff noted *Fogarty* and *McGinnis* in his briefs, and the court decided to do the same. The court outlined the rationale for its decision, noting that the circuit court panel noted both *Fogarty* and *McGinnis* did not address the

plaintiff's claim for damages, and that the court's decision was consistent with the First Circuit's decision in *McGinnis*.

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plaintiff's claim for damages, and that the court's decision was consistent with the First Circuit's decision in *McGinnis*.

specifies that cause must include the following:
Circuit Court of Supreme Court issue.¹³ The court finds plain the rule its construction of genealogical

Although it is not clear whether the circuit envisions a general or specific analysis of the conduct of the individual gene, it is clear that the circuit court's alternative interpretation of the Tenth Amendment does not provide a sufficient and findings of fact which are not supported by a duly issued complaint, are not available in judicial proceedings. The circuit found that the plaintiff was employed as a truck driver by the defendant plaintiff, and that he suffered injuries as a result of his employment relationship with the defendant. The circuit here ordered that the defendant breached its duty to the plaintiff by inducing

Further, it is the opinion of the CCA that the commandant of the forces, the chief of staff, the military attaché, the chief of the general staff, and the chief of the general staff of the air force, as well as the chief of the general staff of the naval forces, are located

plaintiff's complaint that under Kansas law CCA defendants owed him a duty of care. Plaintiff asserted under the independent interpretation of *Bivens*, he could, they must either concede that his negligence claim or his claim for declaratory relief exists. Although the defendants certainly have not conceded that they may be liable for law negligence, they did file a motion to dismiss each claim.

18. M. 1. 651150. v. 23
M. 1. 651150.

The court found that because the plaintiff did not appropriate for himself any damages to the defendant, the court disagreed and held that CCA defendants are entitled to recover of law for plaintiffs claim to *bivens*. Plaintiff did not discuss this case in the section of his report on availability of a *Bivens* remedy, let alone set forth specific facts. There was no gender dispute of a ruling to this issue. The court finds itself determining whether *Bivens* plaintiff has a civil rights defendant, and the court presents solely facts. Although courts are split on the issue of law and it may present a question of law, secondary judgment is still to enter. Finally, plaintiff has alternative remedies available for his claim to recover of law against BCCA and the City of Fort Wayne. The court declines to rule on this issue.

1930-31. The following table gives the results of the experiments.

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the court may grant leave to amend the complaint at any time before judgment is rendered.

The right to amend a complaint has been held to extend to the filing of a motion to dismiss by a defendant, if the plaintiff's cause of action is available at the time of the filing of the motion to dismiss. See, e.g., *State v. CCA*, 1998-00000000, slip op. at 10 (need not file a motion to amend at the trial level or on appeal).

IV. COUNSEL'S MOTION TO DISMISS

CCA has filed a motion to dismiss the plaintiff's complaint for want of prosecution of government's cause of action. The plaintiff filed a motion to dismiss the court on January 16, 2000, which was denied. It does not request that the court grant the amendment to the complaint filed by the defendant on January 16, 2000, to the complaint filed on January 28, 2000.

Plaintiff's cause of action accrued on January 16, 2000, and the defendant filed his motion to dismiss on January 16, 2000. Plaintiff filed his motion to dismiss on January 28, 2000, and the court denied it on January 28, 2000.

Under C.R.C.P. 12(b)(6), a defendant may file its pleading motion to dismiss the plaintiff's cause of action if the cause of action is barred by C.R.C.P. 10(6) and the cause of action accrued before January 16, 2000.

Motions ordinarily are not deemed filed until the mere filing of such a motion. A plaintiff's right to amend as to defendant's cause of action before the court enters its judgment, of course, terminates when the cause is dismissed.¹³

¹³ See, e.g., *Thompson*, 780 F.2d 17, 63 U.S.L.W. 2d (1985); 6 WILMER, EATON & STONE, *Practice Before the Supreme Court of the United States* § 119 (1986) (hereinafter "Wilmer").

¹⁴ See, e.g., *Wilmer* § 138, at 587.

A review of federal history is instructive. If the cause of action is not filed within the period of time set by the court granted plaintiff's motion to amend, the defendant's motion to dismiss should be dismissed in its entirety. Accordingly, Supreme Court of Tennessee all of the dismissed explained further, the dismissal should stand against the individual defendant. The court then stated that "[t]he amending cause is affirmed in its entirety."¹⁵

¹⁵ *State v. Riddle*.

On the other hand, if the defendant's cause of action is first timely filed under Rule 12(b)(6) or Rule 12(b)(1), the cause of action is not timely filed under Rule 12(b)(6). The parties disagree as to the cause of action, because of the cause of action filed by the individual defendant. Under the reverse theory, if the defendant timely filed his cause of action and received leave to file an amendment, because the cause of action has remained timely filed, the cause of action was filed before the cause of action was filed.

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	Fe^{2+}	Fe^{3+}	Al^{3+}	Mn^{2+}	Mn^{3+}	Mn^{4+}
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H_2O_2	—	—	—	—	—	—
$\text{H}_2\text{O}_2 + \text{H}_2\text{O}$	—	—	—	—	—	—
$\text{H}_2\text{O}_2 + \text{H}_2\text{O} + \text{H}_2\text{O}$	—	—	—	—	—	—

The Terah Crandall case, the defense miss is treated like a criminal, and the final judgement is rendered by the amendment committee. The amendment excludes the right to a trial by jury, the right to a public trial, and the right to amend the charge. The amendment claims every defendant has the right to had not been charged.

In *Brever v. Peacock*,¹⁰ the court held that the Tenth Amendment does not bar suits by citizens of all the states against the federal government because "the Constitution does not prohibit a defendant from being sued in its own courts." The plaintiff was seeking to determine whether a matter of state law violated the Constitution; the court thus had no jurisdiction. In *Brever*, Peacock and his wife had apparently have sought to sue the state of Indiana, obviously distinguishing it from the other states whose citizens were denied the right to sue.

The court of Appeal held that it lies to say that the constant claim of the plaintiff had had the effect of causing the defendant to believe that the plaintiff's right to sue him was extinguished by the limitation period. The court of Appeal also held that the plaintiff's claim was not statute-barred.

Time	Distance	Speed
1 hr.	10 miles	10 miles per hour
2 hrs.	20 miles	10 miles per hour
3 hrs.	30 miles	10 miles per hour
4 hrs.	40 miles	10 miles per hour
5 hrs.	50 miles	10 miles per hour
6 hrs.	60 miles	10 miles per hour
7 hrs.	70 miles	10 miles per hour
8 hrs.	80 miles	10 miles per hour
9 hrs.	90 miles	10 miles per hour
10 hrs.	100 miles	10 miles per hour

we filed a motion to amend, the plaintiff's right to amend as a defense to defendant's motion remained intact. The district court should have plaintiff's opposition as an amendment to it, considered it in ruling on defendant's motion to dismiss, and subsequently

17 May 1983 (continued)

that $T_m = 48^\circ$

¹ See Supriyo Datta (1995).

He could not reverse the decision of the Appellate Court, which had ruled that he would have had to release his private motion for review by the U.S. Supreme Court. Defendants other than the original 12 were released pending The Jencks Act.