

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**THADDEUS A. STACY,**

Civil Case No. 08-6412-KI

Plaintiff,

OPINION AND ORDER

vs.

**L. ROB ROBBINS; TONY LEWIS;  
SERGEANT COOK; RON VAN FLEET;  
KEITH LONG; JACK JONES; RODD  
CLARK; ANDREJIS EGLITIS; and  
THE PEOPLE OF JEFFERSON COUNTY,**

Defendants.

Thaddeus Andrew Stacy  
SID #7409562 - TRCI  
82911 Beach Access Road  
Umatilla, Oregon 97882

Pro Se Plaintiff

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KING, Judge:

Plaintiff Thaddeus Stacy, proceeding *pro se*, brings a civil rights action against Crook and Jefferson County officials for violations of his constitutional rights arising out of events that occurred during a period of pre-conviction detention at Jefferson County Correctional Facility. Before the Court is the Motion for Summary Judgment (#85) filed by L. Rob Robbins, Tony Lewis, Brad Cook, Ron Van Eck (real name Ronald Vanfleet), Jack Jones and Rodd Clark (hereinafter, "Jefferson County defendants"). Also before the Court is the Motion for Summary Judgment filed by defendant Andrejis Eglitis (#72). Stacy failed to respond to the motion for summary judgment submitted by the Jefferson County defendants. He did respond to Deputy District Attorney Eglitis' motion. For the following reasons, I grant both motions.

#### **PROCEDURAL AND FACTUAL BACKGROUND**

Stacy was arrested in Crook County in September 2008 and was detained at the Jefferson County Correctional Facility prior to his conviction. One of Stacy's claims is against defendant

Ronald Vanfleet, a nurse who treated him at the Jefferson County facility, and Tony Lewis, the captain at the Jefferson County Correctional Facility, for improper treatment of a tumor and a gallbladder condition. Stacy also brings claims against Captain Lewis, Sergeant Cook and L. Rob Robbins, who are other Jefferson County jail officials, for denying Stacy access to legal materials, retaliating against him by placing him in the disciplinary segregation unit (“DSU”), and altering his psychiatric medication for the purpose of diminishing his capacity before trial.<sup>1</sup> Stacy also makes a vague allegation that the Jefferson County defendants have a policy of limiting care to prisoners due to costs. With respect to all of these claims, Stacy alleges former Sheriff of Jefferson County Jack Jones and Crook County Sheriff Rodd Clark are liable because the other defendants were acting under their direction and supervision. Finally, Stacy alleges Andrejs Eglitis, Chief Deputy District Attorney for Crook County during the events at issue, directed Stacy’s placement in DSU and directed changes be made to his medications.

I. Facts Relevant to the First Claim—Medical Mistreatment

Vanfleet treated Stacy on September 26, 2008 for what was believed to be an MRSA infection. Vanfleet explains Stacy was placed in medical isolation until October 2, 2008 because of the concern over the diagnosis. Treating providers later concluded Stacy had a staph infection, which was successfully treated with antibiotics. Stacy did not complain at the time about Vanfleet’s treatment of the staph infection.

As relevant to the pending motion, Stacy alleges that Vanfleet incorrectly diagnosed the “tumor” on his head as an MRSA infection, and performed “surgery” on his head but was

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<sup>1</sup>The Court permitted plaintiff to add this fourth claim in a Motion to Add Assertion of Culpability (#55), and deemed it a part of plaintiff’s Fourth Amended Complaint rather than directing Stacy to file a Fifth Amended Complaint.

unqualified to do so. The “surgery” caused “severe trauma, blood loss, loss of consciousness and long term scarring.” Fourth Am. Compl. 5.

Stacy suffers from gallbladder disease. Stacy’s gallbladder releases excessive amounts of bile into his digestive tract when he eats high-fat foods, causing abdominal pain, fever, or an elevated heart rate. These symptoms can be alleviated or eliminated by not eating foods high in fat. Physician Assistant Keith Long<sup>2</sup> told Stacy to avoid high-fat foods.

On December 26, 2008, Stacy experienced a gallbladder episode but refused Vanfleet’s treatment. Vanfleet contacted Long and informed him that Stacy had stomach pains and was vomiting. Long suggested antacid medication. Jail staff subsequently requested that Long evaluate Stacy. By the time Long arrived at the jail, Stacy’s symptoms had subsided and when Long examined Stacy, he was no longer complaining of stomach pain. Long gave Stacy antacid medication and recommended avoiding high-fat foods.

Stacy alleges Vanfleet acted with deliberate indifference in failing to properly treat his gallbladder disease. Stacy alleges that he reported his gallbladder disease on the Medical History Questionnaire upon his admission to the Jefferson County jail. He alleges that after a month at the facility, he suffered a gallbladder attack. He alleges “[d]eputies” placed him in a wheelchair and took him to the drunk cell where they left him to vomit all night. Id. With respect to this first incident, Stacy makes no allegations against Vanfleet.

About three weeks later, Stacy alleges he suffered another attack, which resulted in vomiting, loss of bladder and bowel control, and loss of consciousness. He alleges “[d]efendants

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<sup>2</sup>This Court previously dismissed with prejudice the claims alleged against physician assistant Keith Long.

refused to transport [him] to a medical facility or provide any services beyond mere passive observation.” Id. at 6. “[D]eputies” again placed him in the drunk tank where he lay “begging for his life and drenched in his own vomit and excrement.” Id. Approximately six hours later, Long examined Stacy and diagnosed a gallbladder attack. Stacy alleges that he contacted a physician at his own expense who informed Stacy that his gallbladder should have been removed after the first attack.

## II. Facts Relevant to the Second Claim—Access to Legal Materials

With respect to his second claim for relief, Stacy alleges Captain Lewis, Sergeant Cook and L. Rob Robbins “denied access to the Court and his own legal materials which were held in confiscation” in Captain Lewis’ office “for the purposes of intentionally inflicting a legal, and emotional disability” upon him so that the District Attorney could get him to plead guilty. Id. at 7. He also alleges he prepared a Petition for a Writ of Mandamus, but defendants refused to make the necessary copies required by the Oregon Supreme Court.

Defendants set out the requests Stacy made: (1) one on October 27, 2008 for legal materials—the request was denied because the “materials [brought by Stacy’s parents] were accepted into facility without prior approval,” and did not meet criteria to be held by Stacy in his cell, but officials would evaluate and advise whether access would be allowed. Lewis Decl. ¶ 6, Stacy Ex. 29, at 3; (2) on November 1, 2008 Stacy requested three legal books—Captain Lewis informed Stacy he could access the materials on a limited basis and could request access at any time; (3) on November 12, 2008, Stacy’s request to spend time with legal materials in booking was approved; (4) on November 20, 2008, Stacy was permitted time with Black’s Law Dictionary; (5) on November 25, 2008, Stacy’s request was allowed to read the Oregon Revised

Statutes in booking; (6) Stacy was allowed to review United Nations material in booking on December 14, 2008; (7) on January 1, 2009, Stacy was allowed to read Chapter 163 of the Oregon Revised Statutes; (8) defendants denied Stacy's request for paperclips; and (9) Stacy requested a word processing computer, printer, and a place to work; he suggested the area could be called the Thaddeus Stacy Law Library—Stacy's request was denied and the offer declined.

### III. Facts Relevant to Third Claim—Placement in the DSU

Stacy's third claim alleges Robbins, acting under the direction of Captain Lewis, Sergeant Cook and Deputy DA Eglitis, put him in the DSU without reason or explanation. Stacy alleges his investigator was permitted to see him, who explained that he was in DSU because jail staff were upset about this lawsuit and "that he could expect ongoing harassment for seeking help from the court or speaking to any other inmates about legal matters." Fourth Am. Compl. 9. Stacy immediately dismissed the lawsuit against the Jefferson County defendants. Within a few hours, Stacy alleges, he was released from the DSU. Stacy suggests that, because the written report about his discipline was found among Deputy DA Eglitis' materials, Eglitis himself was involved in the discipline.

Robbins filed an incident report against Stacy on January 22, 2009 for his provision of legal advice to another inmate in violation of jail procedure. Stacy was placed in unit #905 for 48 hours with loss of privileges.

On January 23, 2009, Stacy signed a "Motion to Dismiss and Remove Defendant from Action; To wit: Jefferson County and its agents." Docket #5. He requested that the defendants be dismissed with prejudice.

The Court dismissed Stacy's complaint without prejudice for failure to state a claim and gave him thirty days to file a second amended complaint, which he did.

IV. Facts Relevant to Fourth Claim—Psychiatric Medication and Policy on Care

Finally, plaintiff alleges Deputy DA Eglitis and Sheriffs Jones and Clark manipulated his psychiatric medication to diminish his capacity in order to facilitate a plea bargain. Stacy entered an Alford plea to the criminal charges pending against him. He was represented.

With respect to the Jefferson County defendants' policy on health care, Stacy alleges they "failed to adequately and advanced [sic] a policy for caring for prisoners based solely on the determination of cost versus the amount of time the prisoner was likely to be staying at their jail. This evaluative model, places fiscal exposure before the medical needs of the detainees in their jails[.]" Mtn. to Add Assertion of Culpability ¶B.

### **LEGAL STANDARDS**

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The initial burden is on the moving party to point out the absence of any genuine issue of material fact. Once the initial burden is satisfied, the burden shifts to the opponent to demonstrate through the production of probative evidence that there remains an issue of fact to be tried. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). On a motion for summary judgment, the court "must view the evidence on summary judgment in the light most favorable to the non-moving party and draw all reasonable inferences in favor of that party." Nicholson v. Hyannis Air Service, Inc., 580 F.3d 1116, 1122 n.1 (9<sup>th</sup> Cir. 2009) (citation omitted).

## DISCUSSION

### I. Exhaustion of Administrative Remedies Against Deputy DA Eglitis

Deputy DA Eglitis argues that any claims against him must be dismissed for Stacy's failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act ("PLRA"). The PLRA states: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The PLRA exhaustion requirement requires "proper exhaustion," which means compliance with all deadlines and "other critical procedural rules." Woodford v. Ngo, 548 U.S. 81, 90, 93 (2006). The PLRA applies to pretrial detainees. 42 U.S.C. § 1997e(h) (defining "prisoner" to be "any person . . . detained in any facility who is accused of . . . violations of criminal law").

The PLRA's exhaustion requirement creates an affirmative defense that must be raised and proven by defendants. Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir.), cert. denied, 540 U.S. 810 (2003). If the prisoner has not exhausted nonjudicial remedies, the court should dismiss the claim without prejudice. Id. at 1119-20.

Stacy concedes he "never filed a grievance naming Mr. Eglitis personally in his role in any of the allegations of [his] complaint[.]" Hallman Decl., Stacy Dep. 205:14-17. Stacy's complaint against Deputy DA Eglitis is dismissed for failure to exhaust his remedies under the PLRA. For the reasons set out below, however, I find any further amendment would be futile, and I dismiss with prejudice.



## II. First Claim—Medical Mistreatment

Defendants move for summary judgment against Stacy’s claim of medical mistreatment under the Eighth Amendment. As an initial matter, although Stacy alleged Captain Lewis and Sheriffs Jones and Clark were involved in the purported deprivation, Stacy concedes that no other defendant aside from Vanfleet was involved in his medical care. Stacy Dep. 67:20-68:11.

Stacy’s rights derive from the Due Process Clause rather than the Eighth Amendment because he was a pretrial detainee at the time of the alleged violations. Bell v. Wolfish, 441 U.S. 520, 535 (1979). Protections under the Fourteenth Amendment are “comparable to prisoners’ rights under the Eighth Amendment” so courts “apply the same standards.” Frost v. Agnos, 152 F.3d 1124, 1128 (9<sup>th</sup> Cir. 1998). Indeed, “the eighth amendment guarantees provide a *minimum standard of care* for determining a prisoner’s rights as a pretrial detainee, including the prisoner’s rights to medical care.” Carnell v. Grimm, 74 F.3d 977, 979 (9<sup>th</sup> Cir. 1996) (citation and alterations omitted).

An Eighth Amendment claim must satisfy both an objective and subjective inquiry. Lopez v. Smith, 203 F.3d 1122, 1132-33 (9<sup>th</sup> Cir. 2000). In the context of a claim for failure to provide medical care, Stacy must establish a “serious medical need.” Estelle v. Gamble, 429 U.S. 97, 104 (1976). A serious medical need is the kind of injury that “a reasonable doctor or patient would find important and worthy of comment or treatment; . . . that significantly affects an individual’s daily activities; or [causes] chronic and substantial pain.” Lopez, 203 F.3d at 1131 (citation omitted).

The subjective inquiry requires a showing that corrections officers acted with deliberate indifference to this serious medical need. Id. “[A] prison official cannot be found liable under

the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety . . . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994). A difference of opinion as to the specific course of treatment does not establish deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9<sup>th</sup> Cir. 1989).

Vanfleet does not appear to dispute that Stacy’s conditions—both the infection and the gallbladder condition—constituted serious medical needs. Rather, he argues Stacy cannot meet the stringent deliberate indifference standard. According to Vanfleet, Stacy only alleges that he received a physician’s contrary opinion recommending surgery and a difference of opinion alone is not sufficient to overcome summary judgment.

Stacy failed to respond to Vanfleet’s motion. Stacy “must show that the course of treatment [Vanfleet] chose was medically unacceptable under the circumstances, and [he] must show that [Vanfleet] chose this course in conscious disregard of an excessive risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9<sup>th</sup> Cir. 1996) (internal citations omitted).

Instead, the undisputed evidence is that Vanfleet treated Stacy’s staph infection and gallbladder symptoms. Stacy did not complain at the time about the way Vanfleet treated the staph infection. Additionally, Vanfleet testifies that when Stacy had his December bout with his gallbladder condition, Stacy was moved to the booking area so that Vanfleet could treat him but Stacy refused treatment. Vanfleet called PA Long, who recommended that Stacy abstain from foods with a high-fat content. Long directed jail staff to give Stacy antacid medication and Prilosec. Stacy may not have agreed with Long’s decision that antacids and diet were the appropriate way to treat Stacy’s gallbladder problem, but this does not amount to deliberate

indifference on the part of Vanfleet. Id. at 332 (difference of opinion fails to show deliberate indifference as a matter of law).

Defendants are entitled to summary judgment dismissing claim one.

### III. Second Claim—Access to Legal Materials

Stacy alleges Captain Lewis, Sergeant Cook and Robbins denied him access to legal materials in order to give Deputy DA Eglitis a prosecutorial advantage over him. Stacy alleges these defendants “denied access to the Court and his own legal materials[.]” Fourth Am. Compl. 7. He also alleges he prepared a Petition for a Writ of Mandamus, but defendants refused to make the necessary copies required by the Oregon Supreme Court.

At the outset, I note that it is unclear what legal access Stacy was denied. Stacy failed to respond to the Jefferson County defendants’ motion for summary judgment, and he failed to elucidate the factual basis for this claim in his response to Deputy DA Eglitis’ motion for summary judgment. The evidence shows the Jefferson County defendants gave Stacy access to legal materials when he requested it. With respect to the copies Stacy requested, Robbins testified, “On March 3, 2009, Plaintiff submitted an Inmate Request Form requesting that several legal documents be photocopied. Subsequently, Plaintiff refused to hand over those legal documents for the purposes of photocopying. Plaintiff was notified that the jail staff would assume that Plaintiff had changed his mind and was no longer requesting photocopies.” Robbins Decl. ¶ 5. Stacy does not offer any evidence disputing this version of events.

Additionally, Stacy has no evidence Deputy DA Eglitis was involved in limiting any access to legal materials. Deputy DA Eglitis testifies, “I was not personally involved in Mr. Stacy’s placement in Disciplinary Segregation, although I later became aware that he had been

placed there.” Eglitis Decl. ¶ 4. Stacy points to the fact that the disciplinary report from January 22, 2009 was found in Deputy DA Eglitis’ files and had been faxed to him. The report describes Stacy’s behavior in giving legal advice to other inmates and the associated punishment for that behavior; it does not contain any information about Stacy’s access to legal materials or the courts. Stacy admits he never saw Deputy DA Eglitis in the Jefferson County Jail or Crook County Jail, and never heard Deputy DA Eglitis give an order regarding Stacy’s access to legal materials. Additionally, Stacy concedes he has “[n]othing other than speculation” to connect Deputy DA Eglitis to the denial of access to copies. Stacy Dep. 190:25. Consequently, this claim must be dismissed with prejudice against Deputy DA Eglitis. See Taylor v. List, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir. 1989) (“personal participation” required for liability under section 1983).

Finally, even if Stacy suffered a deprivation, in order to proceed on this claim Stacy must present evidence showing that he suffered an actual injury as a result of any denial of legal materials. Lewis v. Casey, 518 U.S. 343, 354 (1996) (prisoner must allege that his efforts to pursue a legal claim were hindered—mere inability to litigate effectively is insufficient). Based on the evidence submitted by the defendants, Stacy cannot show he suffered any injury. Stacy does not allege that he was unable to bring a civil claim. The research he undertook appears to have been related to his criminal case, but he was represented in that case, his lawyer visited him often at the jail, Stacy believed they were ready to go to trial, but he decided to enter an Alford plea “for his friend.” Stacy Dep. 91:11. As a result, there is no evidence Stacy suffered any injury.

For these reasons, defendants are entitled to summary judgment dismissing claim two.

IV. Third Claim–Placement in the DSU

Stacy alleges Robbins, acting at the direction of Captain Lewis, Sergeant Cook, and Deputy DA Eglitis, placed him in the DSU without giving any reason, causing “psychological torture.” Fourth Am. Compl. 8. He believes he was disciplined for seeking relief in this Court for the grievances he had filed. He alleges that within hours after agreeing to dismiss his civil lawsuit, he was returned to regular housing. His evidence that Deputy DA Eglitis was directing the punishment is that the disciplinary report was found in Deputy DA Eglitis’ file, and that it had been faxed to him. Stacy asserts Deputy DA Eglitis benefitted from his punishment by placing Eglitis in a position of power.

Prisoners have a First Amendment right to seek relief from civil rights violations in the courts and retaliation for doing so constitutes a constitutional violation. Rhodes v. Robinson, 408 F.3d 559, 567 (9<sup>th</sup> Cir. 2005). Stacy must demonstrate the following five factors in order to have a viable First Amendment retaliation claim:

(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.

Brodheim v. Cry, 584 F.3d 1262, 1269 (9<sup>th</sup> Cir. 2009) (quoting Rhodes, 408 F.3d at 567-68).

The Jefferson County defendants first argue that Stacy does not identify whether the constitutionally protected conduct they infringed upon was (a) access to legal resources; (b) right to file a non-frivolous lawsuit; (c) right to be free from segregation; or (d) some other conduct. I disagree. Stacy alleges that he was placed in the DSU for filing a lawsuit. A few hours after dismissing Stacy’s lawsuit, he was placed back in regular housing.

Stacy concedes he has no evidence Deputy DA Eglitis knew he was being placed in DSU prior to it happening. Further, the incident report contains a description of Stacy's provision of a legal form to another inmate, not for his filing a civil. Additionally, Deputy DA Eglitis himself testifies, "I was not personally involved in and I have no knowledge of any alleged denial of medical care or legal materials to Mr. Stacy. I was not personally involved in Mr. Stacy's placement in Disciplinary Segregation, although I later became aware that he had been placed there." Eglitis Decl. ¶ 4. Given the lack of evidence from Stacy as to Deputy DA Eglitis' participation in any constitutional violation, I must dismiss this claim with prejudice. See Taylor, 880 F.2d at 1045 ("personal participation" required for liability under section 1983).

With respect to Captain Lewis and Sergeant Cook, Stacy must show that "his protected conduct was the substantial or motivating factor behind [their] conduct." Id. (quotations and citation omitted). Stacy must "put forth evidence of retaliatory motive, that, taken in the light most favorable to him, presents a genuine issue of material fact as to [defendants'] intent[.]" Id. Additionally, Stacy must show that the challenged action "did not reasonably advance a legitimate correctional goal." Id.

Robbins testified,

13. On January 22, 2009, I filed an incident report (#JR0001007) for Plaintiff's role in providing legal advice to fellow inmates in violation of jail procedures. Plaintiff was placed in unit #905 for 48 hours with loss of all privileges and was reclassified to administrative separation.

14. Confinement in isolation is imposed for violations of the jail rules and regulations. The periods of confinement in isolation are of relatively short duration. Plaintiff's confinement was not imposed as any form of retaliation. Plaintiff's confinement was not imposed to inhibit Plaintiff from engaging in his own legal work.

15. I did not participate in enforcing any of jail regulations with the purpose of hampering Plaintiff's ability to gain reasonable access to the courts with regard to Plaintiff's legal matters.

16. I did not participate in any way in any actions, individually or collectively, regarding Plaintiff's decision to enter a plea at his criminal trial in State court.

Robbins Decl. ¶¶ 13-16. The incident report supports Robbins' testimony.

Stacy does not dispute that he provided legal advice to other inmates. Indeed, just after filing his motion to dismiss, he filed an Affidavit in Support of Amended Complaint and Assertion of Duress in which he confirmed that the disciplinary action was taken "in response to both my suit in United States District Court against Jefferson County and the fact I had provided two Civil Rights Complaint Forms to inmates[.]" Stacy Aff. 2 (#8). Inmates do not have a constitutional right to provide legal assistance to other inmates. Shaw v. Murphy, 532 U.S. 223 (2001).

Because Stacy has failed to raise a material issue of fact that his filing of a civil rights complaint was the "substantial or motivating factor" behind his placement in the DSU, and because Stacy failed to raise a material issue of fact as to whether the disciplinary action served a legitimate penological purpose, defendants are entitled to summary judgment on the third claim.

V. Fourth Claim—Psychiatric Medication and Policy on Care

Stacy alleges that Sheriffs Clark and Jones, and Deputy DA Eglitis, altered his psychiatric medication to diminish his capacity and obtain a plea agreement. Stacy also alleges the Sheriff of Jefferson County and the County defendants considered only cost and the amount of time a prisoner was serving when making decisions about medical care, in violation of the Eighth and Fourteenth Amendments.

In his deposition, Stacy explained he was given Seroquil for anxiety when he was transferred to the Crook County Jail. He believes the Seroquil led to diminished capacity, which resulted in his entry of an Alford plea rather than going to trial. Stacy does not know who ordered the medication or why it was ordered. He admits he has no evidence that Deputy DA Eglitis was involved. Since Stacy does not provide any evidence as to how any of the named defendants were personally involved in this alleged constitutional violation, he has failed to demonstrate that there is a genuine issue of material fact remaining for trial. Taylor, 880 F.2d at 1045.

Similarly, Stacy fails to offer any evidence or explanation for his allegation about any policies regarding medical treatment at the prison.

Defendants are entitled to summary judgment on Stacy's fourth claim for relief.

VI. Arguments Raised in Stacy's Response to Deputy DA Eglitis' Motion

In response to Deputy DA Eglitis' motion, Stacy argues at length about the merits of his criminal case. I do not consider these arguments; they are not related to the allegations in his Fourth Amendment Complaint and are the subject of his pending petition for post-conviction relief. Stacy v. Coursey, Umatilla County Circuit Court Case No. CV09-0989.

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## CONCLUSION

For the foregoing reasons, I grant the Motion for Summary Judgment (#85) filed by L. Rob Robbins, Tony Lewis, Brad Cook, Rod Van Eck (real name Ron Vanfleet), Jack Jones and Rodd Clark, as well as the Motion for Summary Judgment filed by defendant Andrejs Eglitis (#72). Stacy's Fourth Amended Complaint and his Motion to Add Assertion of Culpability are dismissed with prejudice.

IT IS SO ORDERED.

Dated this \_\_\_\_\_ 8th \_\_\_\_\_ day of April, 2011.

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/s/ Garr M. King  
Garr M. King  
United States District Judge