KYLE ELLISON
PLAINTIFF
88432-054
FCI Terre Haute
POB 33
Terre Haute, IN 47808

IN PROPRIA PERSONA

FILED
NOV 16 2015
U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

2:15-cv-0385 JMS-WGH

KYLE ELLISON,	)	
	)	No.
Plaintiff,	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
Defendant.	)	

COMPLAINT FOR DAMAGES

Plaintiff **Kyle Ellison**, complaining of the Defendant United States of America, respectfully shows and alleges that:

NATURE OF PROCEEDING

1. This is a Complaint, brought pursuant to the **Federal Tort Claims Act** (FTCA), **28 U.S.C. § 1346 (b)(1)** and **28 U.S.C. § § 2671-2680**, asserting that Prison Medical Staff provided negligent medical care.

PARTIES

2. That Plaintiff herein is **Kyle Ellison.** Plaintiff is proceeding pro se herein. At all times relevant hereto, Plaintiff was and is an inmate confined in the Federal Bureau

of Prisons (BOP), and is confined at the Federal Correctional Complex at 4700 Bureau Road, Terre Haute, Indiana.

3. That the United States of America is the defendant herein. The United States of America is named as defendant, as this action seeks monetary damages and award based upon the medical negligence of employees, agents and servants of the United States of America. **28 U.S.C. § § 2671-2680.**

JURISDICTION

4. That the United States District Court for the Southern District of Indiana is designated as the place of trial herein. Venue is so designated, as all of the occurences hereinafter complained of took place within the geographic area for this District; as the United States of America is the sole defendant herein with the action sounding is violations of Federal Law; and as the monetary damages and award sought herein are within the jurisdictional limits of the Court.

EXHAUSTION OF REMEDIES

5. That Plaintiff has fully exhausted all steps precedent to suit, in that

A. Plaintiff's action accrued on May 12 2015.

B. Plaintiff filed an Administrative Tort Claim [Form 95-109] with the Defendant United States of America, dated July 23, 2015 and received by the Defendant s administrative agency, BOP, on July 30, 2015. (Please See: Exhibit A & B)

C. That the Defendant, by and through the BOP, did deny the Plaintiff's Administrative Tort Claim, on October 14, 2015. (Please see Exhibit C.)

D. That this action is commenced within six (6) months of the date on which the final administrative decision was made by Defendant.

STATEMENT OF CASE

6. That on August 27, 2014, at about 09:00 a.m., at FCI Terre Haute, Plaintiff was entering a common shower area in his assigned housing unit.

7. That, upon ingress into the area, Plaintiff did strike his forehead on an overhanging and protruding piece of ste l.

8. That, Plaintiff sought and received emergent medical care at Terre Haute FCI Medical Department, which at all times herein was staffed by employees, agents, and servants of the Defendant United States of America.

9. That, upon examination, Plaintiff was found to have suffered a contusion and bruising to his forehead area.

10. Plaintiff was issued treatment for pain and swelling reduction, and discharged from the Medical Department back into General Population at Terre Haute FCI.

11. Therafter, Plaintiff began suffering a swelling area in the region of the forehead which had been impacted, and sought Medical Care and Evaluation by BOP Medical Staff.

12. On numerous and divers times between August 27, 2014 and May 12, 2015, BOP Medical Staff stated that the swelling was caused by a calcium buildup in the forehead region, which was unrelated to the injury suffered when Plaintiff struck his head.

13. Commencing on or about August 28, 2014 continuing through May 12, 2015, and at divers times therein, Plaintiff requested Medical Care and Treatment, noting that his forehead area was swelling, had a clearly distinguishable tumor like growth, and Plaintiff was suffering undue pain and suffering.

14. From on or about August 28, 2014 through May 12, 2015, at at divers times therein, BOP Medical Staff continued to deny Plaintiff Treatment, stating that the growth/tumor on Plaintiff's forehead was caused by a calcium build up.

15. On May 12, 2015, Plaintiff underwent an examination of the area, which was extremely swollen and disfigured, by a Private Medical Doctor Contracting Surgeon.

16. That, following such examination, the Contracting Surgeon informed Plaintiff that BOP Medical Staff had consistently and wrongly diagnosed the swelling and disfigurement and a calcium build up, when in fact Plaintiff had been, and was suffering a fatty tumor, as a direct and proximate result of the injury he suffered when he struck his head on August 27, 2014.

17. That as a direct and proximate result of the misdiagnosis and malpractice by BOP Medical Staff, Plaintiff was required to undergo surgical removal of the tumor.

18. That, the Contracting Surgeon further advised Plaintiff that had he received proper diagnosis and treatment, surgery

would not have been required, and the tumor could have been localized and reduced by less invasive treatment.

19. That, Plaintiff underwent surgery to remove the Tumor, which surgery was invasive, resulting in permanent scarring and disfigurement of his forehead, together with great pain and suffering.

20. Further, the Contracting Surgeon had to close the surgical area with sutures, and directed that BOP Medical Personell, on or after July 31, 2015, remove the sutures.

21. That, on July 30, 2015, Plaintiff was required to report to Terre Haute Medical Offices, and was evaluated by a Dental Hygienist, Kimberly Rhoads.

22. That, contrary to the Contracting Surgeons written orders, Dental Hygienist Rhoads removed Plaintiff's sutures before the date such was to be accomplished.

23. Upon information and belief, Rhoads, an employee of the Defendant, is a Dental Hygienist, with no training, licensure, or authority to remove sutures or perform any other medical task save cleaning teeth.

24. That, on or about July 30, 2015, and at divers times thereafter, up to and including August 9, 2015, Plaintiff's surgical incision area opened, as a direct and proximate result of Rhoads failure to adhere to the Contracting Surgeon's Orders; and as a direct and proximate result of her performing medical services and treatment for which she was

not licenses, authorized, or allowed to do by Law.

25. That, as a direct and proximate result of the medical negligence of Defendant's Medical Staff in diagnosing and treating Plaintiff, combined with the direct and proximate result of Defendant's employee Rhoads in removing sutures contrary to Medical Doctors Orders and acting outside the scope of her licensure and status, Plaintiff has suffered, and continues to suffer serious and permanent physical injury, scarring and gross disfigurement of his forehead, great pain and suffering, and undue mental anguish and anxiety.

PRAYER FOR RELIEF

26. Plaintiff Kyle Ellison demands Judgment as against the Defendant United States of America for medical negligence and malpractice; and an

A. Award on compensatory damages in an amount not-less - than one millions dollars ($1,000,000.00); and

B. **Award** of exemplary damages as against the Defendant United States of America, and in favor of Plaintiff; and

C. **Award** of costs, expenses, and fees of suit herein; and an

D. **Award** of such other and further relief as to the Court may seem just and proper.

Signed under the penalty of perjury this day of **November,** 2015 at Terre Haute, Indiana.

Kyle Ellison

Kyle Ellison
Plaintiff
Pro Se

Sworn to before me this 9 Day of November, 2015,

Kyle Ellison

Authorized by the Act July 7, 1955 to Administer Oaths (18 U.S.C. 4004)

D. Mark

Case Manager

VERIFICATION

State of Indiana)
) SS.:
County of Vigo)

KYLE ELLISON, , being first duly sworn upon oath, deposes and says: I am the **PLAINTIFF** pro se herein. I had read and know the contents of the foregoing **COMPLAINT** and that same is true and correct to my own knowledge, except as to those matters therein stated upon information and belief, and as to such matters, I believe them also to be true.

Kyle Ellison
KYLE ELLISON

Sworn to before me this 9 Day of November, 2015,

Kyle Ellison

Authorized by the Act July 7, 1955 to Administer Oaths (18 U.S.C. 4004)

D. Mark

Case Manager

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:

North Central Regional Office
Attn. Of: Regional Counsel's Office
Gateway Complex, Tower II, 8th Floor
4th and State Avenue Kansas City, Kansas 66101

2. Name, Address of claimant and claimant's personal representative, if any. *(See instructions on reverse.) (Number, street, city, State and Zip Code)*

KYLE ELLISON, REG.#: 88432-054
FCI TERRE HAUTE
P.O. BOX 33
TERRE HAUTE. IN. 47808

3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME *(A.M. or P.M.)*
☐ MILITARY ☐ CIVILIAN N/A	8/3/83	N/A	August 27, 2014	AM

8. Basis of Claim *(State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)* This FCI Terre Haute medical staff /department did noting when I brought my medical issue to sick-call & placed them on notice that I was in servere pain & suffering where I was told that it was not the knot on my head that was putting me in pain, and that it was a calcium build-up without giving me an MRI, X-ray, or Catscan. They prescribed no pain meds. in almost 2yrs of complaining of the severe pain & suffering I was exsperiancing. The FCI medical Staff/Dept. has falsely & wrongly continued to diagnose me & my medical injury for almost 2yrs, until I started filing my grievance and exhausted my administrative remedy that forced them to do their job which should have been done in the begining which would have proven my injury, pain & suffering was being caused by Lipoma "FATTY TUMA" and not a calcium buildup... but they didn't and I continued to suffer.

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT *(Number, street, city, State, and Zip Code)*

SAME AS ABOVE

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. *(See instructions on reverse side.)*

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Petitioner inmate suffered in severe pain for almost two years without any pain medication and having the FCI Terre Haute Medical Staff/Dept. misdiagnois my medical condition, and wasn't evaluated by a General Surgen until May 12, 2015.

11. WITNESSES

NAME	ADDRESS *(Number, street, city, State, and Zip Code)*
FCI TERRE HAUTE MEDICAL RECORDS	FCI TERRE HAUTE P.O. BOX 33 TERRE HAUTE. IN. 47808

12. *(See instructions on reverse)* AMOUNT OF CLAIM *(In dollars)*

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL *(Failure to specify may cause forfeiture of your rights.)*
N/A	1,000,000.00	N/A	1,000,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT *(See instructions on reverse side.)*	13b. Phone number of signatory	14. DATE OF CLAIM
Kyle Ellison	N/A	7/23/2015

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of $2,000 plus double the amount of damages sustained by the United States. *(See 31 U.S.C. 3729.)*

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine of not more than $10,000 or imprisonment for not more than 5 years or both. *(See 18 U.S.C. 287, 1001.)*

EX A

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 38 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim

INSTRUCTIONS

Complete all items - Insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in Item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? [ ] Yes, If yes, give name and address of insurance company *(Number, street, city, State, and Zip Code)* and policy number. [X] No

N/A

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

N/A

17. If deductible, state amount

N/A

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? *(It is necessary that you ascertain these facts)*

N/A

19. Do you carry public liability and property damage insurance? [ ] Yes, If yes, give name and address of insurance company *(Number, street, city, State, and Zip Code)* [X] No

N/A

U.S. Department of Justice
Federal Bureau of Prisons

North Central Regional Office

Office of the Regional Counsel

400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101

09-01-2015

KYLE ELLISON, #88432-054
FCI TERRE HAUTE

Re: Administrative Claim for Damages
Claim #: TRT-NCR-2015-06109 $ 1,000,000.00

Dear Claimant:

This is to notify you of our receipt of your administrative claim for damages under provisions of the Federal Tort Claims Act, Title 28 USC §1346(b), 2671 et. seq., alleging liability of the United States Government.

Your claim was received on 07-30-2015. The above referenced Act provides that the agency has 6 months to make an administrative determination on your claim from the date such claim was received by the appropriate agency. Accordingly, in the matter of the above referenced claim, the government's response is not due until 01-29-2016.

Regulations that may be pertinent to your claim may be found at Title 28 C.F.R. Part 14 et.seq., and §543.30.

Sincerely,
Richard W. Schott
Regional Counsel

EX P

U.S. Department of Justice

Federal Bureau of Prisons

North Central Regional Office

Office of the Regional Counsel

400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101

Kyle Ellison, Register No. 88432-054
Terre Haute FCI
P.O. Box 33
Terre Haute, IN 47808

Re: Administrative Claim Number TRT-NCR-2015-06109
Personal Injury: $1,000,000.00

CERTIFIED NUMBER 7009 1680 0001 8892 0227

Dear Mr. Ellison:

Your above referenced tort claim has been considered for administrative review pursuant to 28 C.F.R. § 0.172, Authority: Federal Tort Claims and 28 C.F.R. Part 14, Administrative Claims Under Federal Tort Claims Act. Investigation of your claim did not reveal you suffered any personal injury as a result of the negligent acts or omissions of Bureau of Prisons employees acting within the scope of their employment.

As a result of this investigation, your claim is denied. This memorandum serves as a notification of final denial under 28 C.F.R. § 14.9, Final Denial of Claim. If you are dissatisfied with our agency's action, you may file suit in an appropriate U.S. District Court no later than six months after the date of mailing of this notification.

Sincerely,

Richard W. Schott
Regional Counsel

EXC

U.S. Department of Justice
Federal Bureau of Prisons

North Central Regional Office

Office of Regional Counsel

400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101

Kyle Ellison, Register No. 88432-054
FCI Terre Haute
P.O. Box 33
Terre Haute, IN 47808

CERTIFIED NUMBER 7009 1680 0001 8892 0234

Dear Mr. Ellison:

We have reviewed your Standard Form 95 Claim for Damage, Injury, or Death received on September 22, 2015. Upon further investigation, we have determined that the claims you assert in TRT-NCR-2016-00105 are identical to those previously asserted in TORT claim TRT-NCR-2015-06109. As such, you are requesting a re-investigation into previously submitted tort claim TRT-NCR-2015-06109, which was denied on October 14, 2015. As explained to you in the notification of denial letter, investigation of your claim did not reveal that you suffered any personal injury as a result of the negligent acts or omissions of Bureau of Prisons employees acting within the scope of their employment. We stand by our previous notification. Attached is a copy of the October 14, 2015 notification denying administrative claim TRT-NCR-2015-06109.

Sincerely,

Rob Schalburg

for Richard W. Schott
Regional Counsel

Kyle Ellison 88432-054
Federal Correctional Institution
P.O. Box 33
Terre Haute, Indiana 47808

RECEIVED
NOV 16 2015
U.S. CLERK'S OFFICE
INDIANAPOLIS, INDIANA

INMATE
IDENTIFICATION
CONFIRMED

CLERK OF COURT
U.S. District Court
46 East Ohio Street, Room 105
Indianapolis, IN. 46204