IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

SHAWANNA NELSON PLAINTIFF

VS. NO. 1:04CV00037

CORRECTIONAL MEDICAL SERVICES, INC.,
ET AL DEFENDANTS

BRIEF IN SUPPORT
OF
MOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

Ms. Shawanna Nelson ("Nelson"), through counsel, has filed a 42 U.S.C. §1983 lawsuit against multiple defendants - Correctional Medical Services, Inc. ("CMS"), Max Mobley ("Mobley"), Larry Norris ("Norris"), and Patricia Turensky ("Turensky"). Nelson makes the following allegations: (1) CMS has an unconstitutional policy and custom with respect to the protocol used for female inmates in labor which fails to provide adequate monitoring of labor progress, as well as the heart rate of the fetus; (2) Mobley and Norris concurred in the policy used by CMS with respect to female inmates in labor; (3) Turensky applied restraints to Nelson while Nelson was approaching the end stages of labor, in violation of Nelson's civil rights; (4) the restraint policy utilized by Turensky was implemented and enforced by Norris; (5) Turensky engaged in retaliation against Nelson as a result of Nelson filing grievances against Turensky.

This Motion/Brief is filed on behalf of Separate Defendant CMS. CMS has no responsibility for, or involvement in, security, restraints, shackles, or securing inmates in any manner. Accordingly, except for consideration of the security issue in the context of the Prison Litigation Reform Act (PLRA) grievance issue, the security allegation is not discussed in this Motion/Brief.

Nelson has no evidence to support her allegation that the protocol used for female inmates in labor is unconstitutional. Additionally, Nelson has failed to comply with the requirements of the PLRA before initiating litigation in this action. For both of the above reasons, CMS submits that this matter should be dismissed with prejudice.

II.

SUMMARY JUDGMENT

Summary judgment is appropriate if there are no disputed issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Barrera v. Con Agra, Inc., 244 F.3d 663, 665 (8th Cir. 2001). The Court must view the evidence in the light most favorable to the non-moving party and determine whether all of the evidence points one way, giving her the benefit of all reasonable factual inferences. Belk v. City of Eldon, 228 F.3d 872, 877-878 (8th Cir. 2000). A plaintiff must establish a clear violation of a constitutional right to prevail upon a section 1983 claim. Mahers v. Harper, 12 F.3d 783, 785 (8th Cir. 1993).

In Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Supreme Court articulated guidelines for applying Rule 56 to defense motions for summary judgment stating, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial." Celotex at 322. The Court

explained that, in such a situation, "there could be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Celotex at 322-23.

Therefore, once a motion is made, the burden shifts to the Plaintiff to offer "sufficient probative evidence [that] would permit a finding in [his] favor on more than mere speculation, conjecture, or fantasy." Gregory v. City of Rogers, 974 F.2d 1006, 1010 (8th Cir. 1992) (quoting Barnes v. Arden Mayfair, Inc., 759 F.2d 676, 681 (9th Cir. 1985). "The mere existence of a factual dispute is insufficient alone to bar summary judgment*;* rather the dispute must be outcome determinative under prevailing law." Holloway v . Pigman, 884 F.2d 365, 366 (8th Cir. 1989). Moreover, if the plaintiff fails to demonstrate the existence of a genuine issue of material fact by offering significant probative evidence, defendants are entitled to judgment in their favor as a matter of law. Pentel v. City of Mendota Heights, 13 F.3d 1261, 1263 (8th Cir. 1994). **A non-movant has an obligation to present affirmative evidence to support his claims.** Settle v. Ross, 992 F.2d 162, 163 (8th Cir. 1993).

Broad and conclusory statements unsupported by facts are not sufficient to support a §1983 claim. Ellingburg v. King, 490 F.2d 1270, 1271 (8th Cir. 1974); Morton v. Becker, 793 F.2d 185 (8th Cir. 1985). Conclusive assertions of ultimate fact are entitled to little weight when determining whether a non-movant has shown a genuine issue of fact sufficient to overcome a motion for summary judgment supported by complying affidavits. Miller v. Solem, 728 F.2d 1020, 1024 (8th Cir. 1984). Summary judgment is designed to remove such factually unsubstantial cases from the crowded district court dockets. Smith v. Marcantonio, 910 F.2d 500, 502-503 (8th Cir. 1990).

Because Defendant CMS did not cause the deprivation of Nelson's constitutional rights, and because no genuine issue of material fact exists, defendant's Motion for Summary Judgment should be granted and plaintiff's Complaint and Amended Complaint should be dismissed. Whether or not a claim exists against defendant is solely a question of law for this Court to decide.

III.

EIGHTH AMENDMENT VIOLATION

Deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment in violation of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-06 (1976). Deliberate indifference can be manifested by prison medical personnel in their response to the prisoner's needs. Id. at 104-105. An actual subjective knowledge of the risk of harm is necessary to a finding of deliberate indifference. See Farmer v. Brennan, 511 U.S.825, 837 (1994).

To find an Eighth Amendment violation, the deliberate indifference must rise to the level of an unnecessary and wanton infliction of pain. Jorden v. Farrier, 788 F.2d 1347, 1348 (8th Cir. 1986). A prisoner must show evidence of action with malicious and sadistic intent, or with deliberate indifference. Moody v. Proctor, 986 F.2d 239, 241-42 (8th Cir. 1993). Deliberate indifference requires more than "gross negligence". Estate of Rosenberg v. Crandell, 56 F.3d 35, 37 (8th Cir. 1995) Deliberate indifference requires a highly culpable state of mind approaching actual intent. Choate v. Lockhart, 7 F.3d 1370, 1374 (8th Cir. 1993). There must be actual knowledge of the risk of harm, followed by deliberate action amounting to callousness. Bryan v. Endell, 141 F.3d 1290, 1291 (8th Cir. 1998).

Negligence in diagnosing or treating a medical condition does not constitute a cognizable claim of deliberate indifference in violation of the Eighth Amendment. Estelle, 429 U.S. at 106. A mere

disagreement with the course of an inmate's medical treatment also fails to give rise to a constitutional violation. Taylor v. Bowers, 966 F.2d 417, 421 (8th Cir.), cert. denied, 506 U.S. 946 (1992); Smith v. Marcantonio, 910 F.2d 500, 502 (8th Cir. 1990). Physicians "make treatment decisions on the basis of a multitude of factors, only one of which is the patient's input." Givens v. Jones, 900 F.2d 1229, 1231 (8th Cir. 1990). Prison doctors are free to exercise their independent medical judgment. Dulany v. Carnahan, 132 F.3d 1234 (8th Cir. 1997) citing Long v. Nix, 86 F.3d 761, 765 (8th Cir. 1996).

"Grossly incompetent or inadequate care can constitute deliberate indifference in violation of the Eighth Amendment where the treatment is so inappropriate as to evidence intentional maltreatment or a refusal to provide essential care." Id at 1240-1241, citing Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1990). Thus, **a plaintiff must put forth evidence that medical treatment evidenced intentional maltreatment or was grossly inappropriate**. Id at 1241. The plaintiff is required to present evidence "that the course of treatment, or lack thereof, **so deviated from professional standards** that it amounted to deliberate indifference in violation of the Eighth Amendment right to be free from cruel and unusual punishment." Id at 1243 citing Smith, 919 F.2d at 93 (internal quotations omitted) (emphasis added).

In the face of medical records indicating that treatment was provided and physician Affidavits indicating that the care provided was adequate, an inmate cannot create a question of fact by merely stating that "she did not feel she received treatment". Dulany v. Carnahan, at 1240.

A complaint that a delay in medical treatment to an inmate rose to a constitutional violation requires the plaintiff to place verifying medical evidence in the record to establish the detrimental effect of delay in order to succeed. Beyerbach v. Sears, 49 F.3d 1324 (8th Cir. 1995); see also Crowley v. Hedgepeth, 109 F.3d 500, 502 (8th Cir. 1997). Sufficient evidence must be submitted "that defendants

ignored 'an acute or escalating situation' or that the delays adversely affected" the prognosis. Sherrer v. Stephens, 50 F.3d 496 (8th Cir. 1994). When an inmate is complaining about a delay in treatment, the objective "seriousness" of the deprivation must be measured by reference to the effect of any delay. Coleman v. Rahija, 114 F.3d 778, 784 (8th Cir. 1997).

IV.

CORPORATE LIABILITY UNDER §1983

For a defendant to be held liable under §1983, the defendant must have personally participated in, or had some responsibility for, the particular act which deprived the plaintiff of a constitutionally protected right. See Mark v. Nix, 983 F.2d 138, 139-40 (8th Cir. 1993); Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990). Liability under §1983 requires a causal link to, and direct responsibility for, the deprivation of rights. Madewell, 909 F.2d at 1208. The doctrine of respondeat superior is an improper basis upon which to rest a §1983 claim, and an entity thus cannot be held liable solely on the actions or inactions of its subordinates. Bolin v. Black, 875 F.2d 1343, 1347 (8th Cir.), cert. denied, 493 U.S. 993 (1989).

A corporation, like a municipality or any other employer, cannot be saddled with §1983 liability for the actions of its employees solely under a theory of respondeat superior. Monell v. Department of Social Services, 436 U.S. 658, 691 (1978); Powell v. Shopco Laurel Co., 678 F.2d 504, 506 (4th Cir. 1982). However, an entity may be held liable for constitutional deprivations upon a showing that the entity has established or implemented an unconstitutional policy or custom which is causally related to the violation of constitutional rights. Patzner v. Burkett, 779 F.2d 1363, 1367 (8th Cir. 1985). See Kentucky v. Graham, 473 U.S. 159, 166-67 (1985). See also Crumpley-Patterson v. Trinity Lutheran Hospital, 388 F.3d 588 (8th Cir. 2004) (complaint in action under §1983 against

corporation must allege facts which would support the existence of an unconstitutional policy or custom).

In Pietrafeso v. Lawrence County South Dakota, et al, 452 F.3d 978, 982 (8th Cir. 2006), the Court considered the issue of Lawrence County's allegedly grossly inadequate policies for dealing with medical needs of transferees. The Court held as follows:

> "In Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397, 407, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997), the Supreme Court clarified the standards for municipal liability under §1983. A county is liable if an action or policy itself violated federal law, or if the action or policy was lawful on its face but 'led an employee to violate a plaintiff's rights [and] was taken with "deliberate indifference" as to its known or obvious consequences.' Here, Lawrence County's policies and practices for providing inmates with needed medical care were lawful on their face. Thus, Pietrafeso's claim that the policies were constitutionally inadequate required proof that at least one of the individual defendants violated Rocco's constitutional rights and caused the alleged injury. See Goldberg v. Hennepin County, 417 F.3d 808, 812-13 (8th Cir. 2005); Olinger v. Larson, 134 F. 3d 1362, 1367 (8th Cir. 1998)."

Thus, the Court makes it clear that a municipality, or corporation, can be liable if its policy violates federal law, or if the policy was lawful on its face, but led an employee to violate federal law. However, as more clearly explained in Goldberg, in the latter instance, an individual must also be named as a defendant and it must be demonstrated that the individual engaged in an act or omission that deprived the plaintiff of their constitutional rights.

V.

PRISON LITIGATION REFORM ACT

The PLRA provides that "[n]o 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. (emphasis added).

The exhaustion requirement of the PLRA is mandatory. See Chelette v. Harris, 229 F.3d 684, 688 (8th Cir. 2000); McAlphin v. Morgan, 216 F.3d 680, 682 (8th Cir. 2000); Graves v. Norris, 218 F.3d 884, 885 (8th Cir. 2000); and Castano v. Nebraska Dep't of Corrections, 201 F.3d 1023, 1025 (8th Cir. 2000). "The statute's requirements are clear: If administrative remedies are available, the prisoner must exhaust them." Chelette, 229 F.3d at 688.

When there is clearly a failure to exhaust **as to any claim** set out in the complaint, the entire action must be dismissed. Graves v. Norris, 218 F.3d 884 (8th Cir. 2000). (emphasis added). Further, ". . . a prisoner who files a complaint in Federal Court asserting multiple claims against multiple prison officials based on multiple prison grievances must have exhausted each claim against each defendant in at least one of the grievances." Abdul-Muhammad v. Kempker, 450 F.3d 350, 352 (8th Cir. 2006). See also Barber v. Hurst, United States District Court for the Eastern District of Arkansas, Pine Bluff Division, Case No. 5:05CV00347, wherein United States Magistrate Jerry W. Cavaneau made the following findings and recommendation:

> "The Eighth Circuit has recently mandated the dismissal of §1983 complaints pursuant to §1997(e)(a) based on the inmate's failure to identify by name during the grievance process each individual defendant he later sued in Federal Court. See Abdul-Muhammad, et al v. Kempker, 450 F.3d 350, 351-52 (8th Cir. 2006). . . Moreover, plaintiff is required to identify by name during the grievance process each individual defendant he later sues in Federal Court, which he failed to do. Failure to comply, or compliance in part, produces the same result; a dismissal without prejudice of the entire complaint. Abdul-Muhammad 450 F.3d at 352; Johnson 340 F.3d at 627; Graves, 218 F.3d at 885."

Magistrate Cavaneau's proposed findings and recommended disposition were adopted by United States District Judge J. Leon Holmes in an Order entered September 14, 2006. Additionally, ". . .when an inmate joins multiple prison-condition claims in a single complaint, as in this case, §1997(e)(a) requires that the inmate exhaust all available prison grievance remedies as to all his claims prior to filing suit in Federal Court." Graves v. Norris, 218 F.3d 884, 885 (8th Cir. 2000) (per curiam). If all available administrative remedies have not been exhausted as to all claims before the suit is filed, dismissal of the complaint is mandatory. Johnson v. Jones, 340 F.3d 624, 627 (8th Cir. 2003); see also Abdul-Muhammad at 352.

The PLRA "requires a prisoner to exhaust 'such administrative remedies as are available **before** suing over prison conditions." Booth v. Churner, 532 U.S. 731, 733, 121 S.Ct. 1819 (2001) (emphasis added). The Supreme Court further examined the exhaustion issue in Porter v. Nussle, 534 U.S. 516, 122 S.Ct. 983, 985 (2002), stating that the case before it "concerns the obligations of prisoners who claim denial of their federal rights while incarcerated to exhaust prison grievance procedures **before** seeking judicial relief." (emphasis added). In discussing Booth, the Supreme Court noted its holding that "[e]ven when the prisoner seeks relief not available in grievance proceedings, notably money damages, exhaustion is a **prerequisite** to suit." Porter, 122 S.Ct. at 988. (emphasis added). The Supreme Court further noted that "federal prisoners ... **must first** exhaust inmate grievance procedures just as state prisoners must exhaust administrative processes **prior** to instituting a §1983 suit. Id. (emphasis added).

Prisoners must provide proof of complete exhaustion for each claim joined in a single action, Graves at 885, and the process must be fully completed prior to filing suit. Johnson v. Jones, 340 F.3d 624, 628 (8th Cir. 2003). Johnson specifically overruled Williams v. Norris, 176 F.3d 1089, 1090 (8th Cir. 1999), which held that it is sufficient for prisoners to file a §1983 civil complaint prior to exhaustion of remedies as long as they are exhausted by the time of trial. Pursuant to Johnson, Williams is no longer the law, and the process of exhaustion must be completed prior to filing suit.

Technical compliance with all administrative requirements for exhaustion is mandatory under the PLRA. Woodford v. Ngo, 126 S. Ct. 2378, 165 L. Ed. 2d 368; 2006 U.S. Lexis 4891 (2006). "Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. . . . Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." Woodford at 2385-2386.

The PLRA applies not only to §1983 actions, but also to any action brought with respect to prison conditions under ". . . any other Federal law." Porter at 524. In Porter, the Supreme Court construed the term "prison conditions": "Nussle's case requires us to determine what the §1997(e)(a) term 'prison conditions' means, given Congress' failure to define the term in the text of the exhaustion provision." Porter at 525. The Court concluded as follows:

> "For the reasons stated, we hold that the PLRA's exhaustion requirement applies to **all inmate suits about prison life**, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong."

(Emphasis supplied) Porter at 532.

The Eighth Circuit has held that the PLRA's exhaustion requirement is an affirmative defense. In Nerness v. Johnson, et al, 401 F.3d 874, 876 (8th Cir. 2005), the Court holds:

> "This Circuit considers the PLRA's exhaustion requirement to be an affirmative defense that the defendant has the burden to plead and prove. Foulk v. Charrier, 262 F.3d 687, 697 (8th Cir. 2001) (citing Chelette v. Harris, 229 F.3d 684, 686-88) (8th Cir. 2000)."

In view of the 8th Circuit's holding in Nerness, the burden is on the defendant to plead and prove the plaintiff's failure to exhaust pursuant to the PLRA.

VI.

STATEMENT OF FACTS

For the facts of this matter, CMS references the Court to its Statement of Indisputable Material Facts which is filed separately in accordance with Local Rule 56.1, as well as the various exhibits attached to its Motion for Summary Judgment.

VI.

ANALYSIS

(A) CONSTITUTIONAL LIABILITY: Nelson alleges CMS has an unconstitutional policy with respect to the protocol used for female inmates in labor which fails to provide adequate

monitoring of labor progress as well as the heart rate of the fetus. Importantly, although Nelson proposes CMS's labor and delivery policy is unconstitutional, she offers no proof that it is. Further, the physician who established CMS's policy, Dr. Paul Hergenroeder ("Dr. H"), has testified that he uses this same policy with all of his patients, free world or inmate, and considers it medically sound and quite appropriate.

On September 20, 2003, Nelson resided at the McPherson Unit of the ADC. She was pregnant and at that time under the medical care of Dr. H. In many respects, her medical situation was no different than any of his other pregnant patients. Dr. H advises all patients, free world or inmate, to time their contractions when they go into what they believe is labor. If their contractions occur every five minutes or less, steadily for the period of an hour, they are to report to his office or the hospital.

When Nelson's labor pains began, she reported to the infirmary. There, staff timed her contractions and initially found them to be six to eight minutes apart. Later, when Nelson's contractions were five minutes or less apart, she was transported to the Newport Hospital. It took approximately 10-15 minutes for her to travel from the McPherson Unit to the hospital. Nelson arrived at the hospital at approximately 4:00 p.m. Dr. H was contacted and he arrived shortly thereafter. He examined Nelson and found her to be in the normal progression of labor. At 6:15 p.m., she was taken to the delivery room where nine minutes later she delivered a healthy 9 lb. 7.5 oz. boy.

Nelson's labor and delivery process was no different than any of Dr. H's other patients. They are advised not to come to his office or go to the hospital until their labor pains are five minutes or less apart, for a period of one hour. His reasoning for this is that there is a lot of false labor with respect to

pregnancies. If labor pains are more than five minutes apart, one of two things will happen: (1) contractions will stop and the patient doesn't need to be at the hospital; or, (2) contractions will come down to five minutes apart and there is a good chance the patient will deliver.

However, Nelson had an advantage which Dr. H's free world patients do not - she had the assistance of infirmary staff to help her time her contractions and to generally observe her during her labor. Admittedly, no pelvic exams were performed and there was no fetal monitor attached; however, no free world patient has any such capabilities at her home. In actuality, with the exception of the infirmary staff assistance referenced above, Nelson's situation was no different than any other pregnant woman who goes into labor at her residence and is ultimately transported to the hospital for delivery of a child.

Dr. H has been a practicing OBGYN for almost 30 years. He is appropriately licensed and has practiced in Newport, Arkansas, for more than 20 years. Nelson has presented no evidence that Dr. H's policy regarding labor and delivery, which he utilizes in the care of his free world patients and which he instituted for CMS at the McPherson Unit, is even medically unsound, much less unconstitutional.

In order to establish CMS's policy is unconstitutional, Nelson must present evidence "that the course of treatment, or lack thereof, so deviated from professional standards that it amounted to deliberate indifference in violation of the Eighth Amendment right to be free from cruel and unusual punishment." Dulaney at 1243. Here we have testimony from Dr. H, a non-defendant, that the policy was followed and Nelson received appropriate care. In the face of medical records indicating the treatment was provided and physician testimony indicating that the care provided was adequate, an inmate cannot create a question of fact by merely stating that "she did not feel she received treatment". Dulaney at 1240.

There is no evidence that the policy utilized by CMS so deviated from professional standards that it amounted to an Eighth Amendment violation. There is evidence from a qualified medical practitioner that the policy is time tested and sound. Nelson has not created a question of fact about the constitutionality of CMS's policy. Her case should be dismissed as to CMS.

(B) PRISON LITIGATION REFORM ACT: Nelson was incarcerated at the time the incidents in the Complaint allegedly occurred and at the time she filed this action. Accordingly, she was obligated to comply with all of the requirements of the PLRA. This she failed to do.

Attached to Nelson's Amended Complaint were three grievances - No. MCP-03-2970 (medical policies regarding labor and child birth); MCP-04-0204 (denial of medical care by Defendant Turensky); and MCP-04-0488 (retaliation by Defendant Turensky). Also, although not attached to the Complaint, Nelson exhausted as to Grievance MCP-04-0862. That grievance regarded the need for proper medical treatment for leg and back pain, as well as treatment for a hernia. A thorough review of all four grievances establishes that Nelson appears to have cited most, if not all, of the issues referenced in her Complaint. However, Nelson did not name CMS, Mobley, or Norris in any of the grievances; the only defendant named was Turensky.

In Abdul-Muhammad v. Kempker, et al, 450 F.3d, 350 (8th Cir. 2006), the Eighth Circuit considered the necessity of putting all defendants on notice by naming them in a grievance before suing them. There, the Eighth Circuit held:

> ". . . a prisoner who files a complaint in federal court asserting multiple claims against multiple prison officials based on multiple prison grievances must have exhausted each claim against each defendant in at least one of the grievances." Abdul-Muhammad at 352.

Thus, the Eighth Circuit made it clear that when suing multiple defendants, all should be named in at least one grievance related to the issues at hand. When the plaintiff failed to do so, the Eighth Circuit found: "Dismissal of the complaint on this ground in the present case was proper." Abdul-Muhammad at 352.

Clearly, Nelson did not comply with the requirements of the PLRA. Though she sued four defendants, only one of them is named in the various grievances she filed. This is true even though she contends that the three non-named defendants are responsible for many policies and procedures which she alleges are unconstitutional. Because she failed to exhaust "each claim against each defendant in at least one of the grievances", dismissal of the Complaint is required. See Barber v. Hurst, U.S.D.C. # 5:05CV00347.

While Nelson might argue that such a requirement is technical and that it elevates substance over form, the Supreme Court has ruled that technical compliance with all administrative requirements for exhaustion is mandatory under the PLRA. Woodford v. Ngo, 126 S. Ct. 2378, 165 L. Ed. 2d 368; 2006 U.S. Lexis 4891 (2006). "Because exhaustion requirements are designed to deal with parties who do not want to exhaust, administrative law creates an incentive for these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full opportunity to adjudicate their claims. . . . Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." Woodford at 2385-2386.

Although Woodford dealt with time constraints, the decision nonetheless makes clear the fact that technical compliance with all requirements is mandatory under the PLRA. Nelson failed to name

all defendants in the grievances she filed which relate to the issues in this suit. Therefore, she has failed to comply with the requirements of the PLRA and this action should be dismissed in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alan Humphries, do hereby certify that on _____, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to:

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