

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

|                                   |   |                                   |
|-----------------------------------|---|-----------------------------------|
| Victor M. Gonzalez, Administrator | ) |                                   |
| of the Estate of Roger Gonzalez,  | ) |                                   |
| deceased,                         | ) | No. 15-cv-00776                   |
|                                   | ) |                                   |
| Plaintiff,                        | ) | Judge Philip G. Reinhard          |
|                                   | ) | Magistrate Judge Iain D. Johnston |
| vs.                               | ) |                                   |
|                                   | ) | Jury Demanded                     |
| Wexford Health Sources, Inc. and  | ) |                                   |
| Arthur Davida,                    | ) |                                   |
|                                   | ) |                                   |
| Defendants.                       | ) |                                   |

**DEFENDANT ARTHUR DAVIDA, M.D.'S ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF'S SIXTH AMENDED COMPLAINT AT LAW**

NOW COME the DEFENDANT, ARTHUR DAVIDA, M.D., by and through his attorneys CONNOLLY KRAUSE LLC and for his Answer and Affirmative Defenses to Plaintiff's Sixth Amended Complaint [Dkt.#244], states as follows:

**Jurisdiction**

1. This is a civil action arising under 42 U.S.C. § 1983, the Illinois Wrongful Death Act, 740 ILCS 180/1 et seq., and the Illinois Survival Statute, 755 ILCS 5/1-1 et seq. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 and 28 U.S.C. § 1367(a).

**ANSWER:** Defendant admits that this is a civil action. Defendant denies liability. Defendant admits jurisdiction. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

**Parties**

2. Plaintiff Victor M. Gonzalez is the duly appointed Independent Administrator of the Estate of Roger Gonzalez, deceased.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

3. Defendant Wexford Health Sources, Inc. (hereinafter “Wexford”) is a foreign corporation that, pursuant to a written contract with the State of Illinois, provides health care to inmates held by the Illinois Department of Corrections. Plaintiff asserts federal and state law claims against Wexford.

**ANSWER:** Defendant admits that Wexford is a foreign corporation that, pursuant to written contract with the State of Illinois, provides healthcare to inmates at some facilities held by the Illinois Department of Correction. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

4. Defendant Arthur Davida was, in October of 2014, a physician employed by defendant Wexford at the NRC Stateville Correctional Facility of the Illinois Department of Corrections (hereinafter “NRC”) in Crest Hill, Illinois. Plaintiff asserts federal and state law claims against Davida, who is sued in his individual capacity.

**ANSWER:** Defendant denies that Plaintiff asserts State Law claims against Dr. Davida. Defendant admits that he is sued in his individual capacity. Defendant denies liability. Defendant admits that in October 2014 he was a physician employed by Wexford at NRC Stateville Correctional Center of the Illinois Department of Corrections.

5. Plaintiff’s claims, explained in more detail below, are as follows:

| Defendant     | Claims   |
|---------------|--|
| Arthur Davida | Section 1983 deliberate indifference in failure to impose a “medical hold” |

|                               |  |
|-------------------------------|--|
| Wexford Health Sources, Inc., | Section 1983 deliberate indifference from failure to have implemented a “medical hold” policy and respondeat superior liability under Illinois law for the negligence of Wexford employees |
|-------------------------------|--|

**ANSWER:** Defendant admits that the only claim asserted against him is under Section 1983 for deliberate indifference. Defendant denies decedent’s rights were violated and denies liability. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

**The Serious Medical Needs of Plaintiff’s Decedent**

6. Plaintiff’s decedent entered the McHenry County Correctional Facility (hereinafter “Jail”) on October 18, 2013 as a pre-trial detainee.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

7. On entry to the Jail, plaintiff’s decedent weighed 400 pounds and had a variety of serious medical needs, including but not limited to:

- a) Chronic hepatitis C with liver failure,
- b) renal failure,
- c) leg edema,
- d) cirrhosis,
- e) congestive heart failure, and
- f) morbid obesity.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation of this paragraph that on entry to the Jail that Plaintiff weighed 400 pounds. Defendant denies that Plaintiff had a variety of serious medical needs and denies that (a) – (f) are serious medical needs.

8. On September 2, 2014, following his plea of guilty, plaintiff’s decedent was transferred from Centegra Hospital to the Northern Receiving Center (“NRC”) of the Illinois

Department of Corrections, where defendant Davida was responsible for the medical treatment provided to plaintiff's decedent.

**ANSWER:** Defendant admits that he was one of the physicians responsible for medical treatment of certain patients at NRC including patient's decedent. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

9. Plaintiff's decedent weighed about 460 pounds when he was transferred to the NRC.

**ANSWER:** Defendant admits that Plaintiff's decedent weighed about 460 pounds when he transferred to the NRC.

#### **Events at NRC**

10. Defendant Davida was informed on September 2, 2014 that on August 15, 2014, while in the custody of the Sheriff of McHenry County, plaintiff's decedent had been found unresponsive and was transported to Centegra Hospital where he remained until he was transferred to the Illinois Department of Corrections.

**ANSWER:** Defendant admits that by the medical records he was informed on or about September 2, 2014 of the details contained in the records of the referenced Centegra Hospitalization. Defendant denies the remaining allegations of this paragraph.

11. Defendant Davida was also informed on September 2, 2014 that a physician at Centegra Hospital had written the following in the medical records of the plaintiff's decedent:

Basically, he comes to the hospital with vastly elevated serum ammonia level, gets put on lactulose and rifaximin to which the morning level decreases and the patient returns to his baseline. Then he is released from the hospital, and comes back with the same type pictures a few days later.

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This patient is critically ill and will definitely need more than two midnights in hospital secondary to his risk of comorbidities, permanent disability and death.

**ANSWER:** Defendant denies the allegations of this paragraph.

12. As a result of the foregoing, defendant Davida knew on September 2, 2014 that plaintiff's decedent was critically ill and required medical attention lest he suffer permanent disability or death.

**ANSWER:** Defendant denies the allegations of this paragraph.

13. Defendant Davida was informed on or about September 5, 2014 of the results of blood tests taken of plaintiff's decedent on September 2, 2014. These blood tests showed a variety of abnormal readings.

**ANSWER:** Defendant admits that he was informed on or about September 5, 2014 of the blood tests taken of plaintiff's decedent on or about September 2, 2014. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

14. On September 22, 2014, medical personnel employed by defendant Wexford ordered a repeat of the blood tests that had been taken of plaintiff's decedent on September 2, 2014. The results of these blood tests were available to Wexford employees on September 24, 2014 and showed that plaintiff's decedent had become more ill.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation that on September 22, 2014, medical personnel employed by defendant Wexford ordered a repeat of the blood tests that had been taken of plaintiff's decedent on September 2, 2014. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation that on September 24, 2014 the results of these blood tests were available to Wexford

employees. Defendant denies that the blood tests showed that plaintiff's decedent had become more ill.

15. Plaintiff's decedent continued to become increasingly ill, and on October 22, 2014, he was sent from the NRC to the University of Illinois Hospital, where he remained until October 31, 2014 when he was returned to the NRC.

**ANSWER:** Defendant admits that on October 22, 2014, plaintiff's decedent was sent from the NRC to the University of Illinois Hospital, where he remained until October 31, 2014 when he was returned to the NRC. Defendant denies the remaining allegations of this paragraph.

**Transfer to the Robinson Correctional Center**

16. Plaintiff's decedent was transferred from the NRC to the Robinson Correctional Center in the morning of November 6, 2014.

**ANSWER:** Defendant admits that Plaintiff's decedent was transferred from the NRC to the Robinson Correctional Center on November 6, 2014. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

17. The transfer involved a six to seven hour ride by van.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

18. It was obvious when plaintiff's decedent left the NRC that the transfer would be harmful to his health.

**ANSWER:** Defendant denies that when plaintiff's decedent left the NRC that the transfer would be harmful to his health. Defendant denies that it was obvious that when plaintiff's decedent left the NRC that the transfer would be harmful to his health.

19. At all times relevant, Wexford's contract with the State of Illinois required that Wexford employees place an inmate on a "medical hold" to prevent a transfer that would be injurious to the inmate's health.

**ANSWER:** Defendant denies that the allegations of this paragraph are the language of the Wexford contract with the State of Illinois. Defendant denies the remaining allegations of this paragraph.

20. At all times relevant, defendant Wexford knew that there was a serious risk of harm if the transfer of an inmate from one IDOC facility to another:

- a) interfered with medical treatment that the inmate was receiving for serious medical needs, or
- b) involved a lengthy drive by van that would be injurious to the inmate's health.

**ANSWER:** The allegations of this paragraph are not directed against this defendant. If the allegations of this paragraph are directed against this defendant, then the allegations of this paragraph are denied, including subparagraphs (a) and (b).

21. At all times relevant, defendant Wexford knew that failing to inform its physicians that they were required to place an inmate on a "medical hold" under the circumstances set out above would result in harm to inmates.

**ANSWER:** The allegations of this paragraph are not directed against this defendant. If the allegations of this paragraph are directed against this defendant, then the allegations of this paragraph are denied.

22. Defendant Wexford did not inform its physicians, including defendant Davida, about the above described "medical hold" power.

**ANSWER:** Defendant denies the allegations of this paragraph.

23. Defendant Davida did not know on November 6, 2014 that he had the power to place a “medical hold” on the transfer of plaintiff’s decedent to the Robinson Correctional Center.

**ANSWER:** Defendant denies that he did not know on November 6, 2014 that he had the power to place a “medical hold.” Defendant denies that Plaintiff’s decedent required a “medical hold” on November 6, 2014. Defendant denies the remaining allegations of this paragraph.

24. Defendant Davida would have instituted a “medical hold” and thereby prevented the transfer of plaintiff’s decedent to the Robinson Correctional Center if he knew that he had that power.

**ANSWER:** Defendant denies that he did not know that he had the power to institute a “medical hold.” Defendant denies the remaining allegations of this paragraph.

25. In the alternative to the facts alleged in paragraphs 23-24 above:

- a) Defendant Davida knew that he had the power to place a hold on the transfer of plaintiff’s decedent from the NRC.
- b) Defendant Davida knew that plaintiff’s decedent would suffer harm if he was transferred from the NRC.
- c) Defendant Davida had a duty, under state and federal law, to prevent plaintiff’s decedent from suffering unnecessary harm while in the custody of the Illinois Department of Corrections.
- d) Defendant Davida breached the aforesaid duty when he turned a blind eye to the fact that plaintiff’s decedent would suffer harm if transferred from the NRC to Robinson and refused to place a hold on the transfer.
- e) Defendant Davida thereby caused harm to plaintiff’s decedent.

**ANSWER:** Defendant reincorporates his answers to paragraphs 23-24 into this paragraph.

As to subparagraph (a), defendant admits that he knew that he had the power to place a hold on the transfer of plaintiff’s decedent from the NRC and denies that Plaintiff’s decedent required a medical hold.



As to subparagraph (b), defendant denies that he knew that Plaintiff's decedent would suffer harm if he was transferred from the NRC. Defendant further denies that Plaintiff's decedent suffered harm from the transfer.

As to subparagraph (c), defendant admits all duties imposed under state and federal law but denies that plaintiff has alleged a duty and denies the allegations of this subparagraph (c). Defendant denies that plaintiff's decedent suffered unnecessary harm from his actions or inactions. Defendant denies the remaining allegations of this sub paragraph.

As to subparagraph (d), defendant denies that he breached any aforesaid or any duty owed to Plaintiff/decedent. Defendant denies that he turned a blind eye. Defendant denies the remaining allegations of this subparagraph.

As to subparagraph (e), defendant denies that he caused harm to plaintiff's decedent. Defendant denies the remaining allegations of this subparagraph.

Defendant denies the remaining allegations of this paragraph.

26. Defendant Wexford's failure to have implemented the above described "medical hold" requirement in an explicit policy and any failure to have informed its physicians, including defendant Davida, about that power amounted to deliberate indifference to a known risk of serious harm and was a cause of the death of plaintiff's decedent.

**ANSWER:** Defendant denies that Wexford failed to have implemented "medical Hold" requirement from contract requirement in an explicit policy. Defendant denies that Wexford failed to have informed its physicians of medical hold policy. Defendant denies that Wexford failed to inform him of Wexford medical hold policy. Defendant denies deliberate indifference. Defendant denies that the medical hold policy amounted to deliberate indifference. Defendant denies that the medical hold policy amounted to deliberate indifference to a known risk of serious harm.

Defendant denies that plaintiffs decedent had a known risk of serious harm. Defendant denies that the medical hold policy was a cause of death of plaintiff's decedent. Defendant denies the remaining allegations of this paragraph.

27. The contractual requirement referred to in paragraph 19 above means that defendant Wexford consciously chose the approach that it took when it failed to implement that contractual requirement.

**ANSWER:** Defendant incorporates his answer to paragraph 19 into this paragraph. Defendant denies that Wexford failed to implement the contractual requirement. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph.

28. Defendant Wexford's failure to have implemented the above described "medical hold" requirement reflects reckless or callous indifference to the federally protected rights of inmates confined in the Illinois Department of Corrections and warrants an award of punitive damages.

**ANSWER:** Defendant denies that Wexford failed to have implemented the above described "medical hold" requirement. Defendant denies the described "medical hold" requirement reflects reckless or callous indifference. Defendant denies that inmates confined in the Illinois Department of Corrections rights were violated. Defendant denies that any award of punitive damages is warranted. Defendant denies the remaining allegations of this paragraph.

#### **Arrival at the Robinson Correctional Center**

29. Plaintiff's decedent arrived at the Robinson Correctional Center without shoes, wearing socks and gauze wrapping on his ankles. One foot was a dark purple color. Plaintiff's

decedent was wearing dirty pajamas with urine stains on them and a medical gown to cover his scrotum. His scrotum was swollen to the size of a basketball and leaking.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

30. Medical staff recognized upon the arrival of plaintiff's decedent at the Robinson Correctional Center that the prison did not have the proper equipment to handle plaintiff's decedent, such as a bed that could accommodate his size.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

31. Nursing staff at Robinson informed a physician employed by defendant Wexford about the arrival of plaintiff's decedent and the fact that plaintiff's decedent had a variety of serious medical problems, including acute chronic heart failure, ascites (accumulation of fluid in the peritoneal cavity), stage 3 renal disease, morbid obesity, anemia, hepatitis C, chronic obstructive pulmonary disease, liver disease, and hypertension.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

32. Nursing staff also informed the above referred physician that plaintiff's decedent weighed about 500 pounds, had a catheter, a scrotum that was swollen to the size of a basketball and leaking, and that plaintiff's decedent could not transfer, stand, or move himself in any way. The nurse also informed the physician that plaintiff's decedent had an elevated ammonia level that caused him to not be able to speak coherently or to stay awake.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

33. Later in the day on November 6, 2014, a physician employed by the Illinois Department of Corrections ordered that plaintiff's decedent receive medical attention at a hospital emergency room.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

34. On November 6, 2014, an ambulance transported plaintiff's decedent from the Robinson Correctional Center to Crawford Memorial Hospital in Robinson, Illinois; plaintiff's decedent arrived at the hospital at 8:48 p.m.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

35. Plaintiff required hospitalization on November 6, 2014 as the direct and proximate result of his transfer that day from NRC to the Robinson Correctional Center.

**ANSWER:** Defendant denies that plaintiff's decedent's hospitalization on November 6, 2014 was a direct and proximate result of his transfer that day from NRC to the Robinson Correctional Center. Defendant denies the remaining allegations of this paragraph.

#### **Crawford Memorial Hospital**

36. Medical staff at Crawford Memorial Hospital measured the weight of plaintiff's decedent at 489 pounds upon his arrival on November 6, 2014.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

37. Plaintiff's decedent was returned to the Robinson Correctional Center at about 9:14 p.m. on November 6, 2014

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

**Return to the Robinson Correctional Center**

38. Plaintiff's decedent remained at the Robinson Correctional Center until the morning of November 9, 2014 when he was returned to the Emergency Room at Crawford Memorial Hospital.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

39. Dr. Vipin Shah, a physician employed by defendant Wexford and acting within the scope of that employment, attended to plaintiff's decedent at Robinson following his return from Crawford Memorial Hospital.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

40. Dr. Shah did not meet the standard of care, as explained in the expert report previously disclosed to defendants.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

41. As a result of this breach of duty, the condition of plaintiff's decedent worsened, causing him to experience great pain and suffering and resulting in his death.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

42. At about 7:10 a.m. on November 9, 2014 a nurse at the Robinson Correctional Center was unable to measure plaintiff's blood pressure and plaintiff was evacuated by ambulance to the Crawford Memorial Hospital Emergency Room.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

43. Plaintiff's decedent experienced cardiac arrest at the Crawford Memorial Hospital Emergency Room and died on November 9, 2014.

**ANSWER:** Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

44. Plaintiff's decedent was deprived of his life and experienced great pain and suffering as a result of the foregoing wrongful acts.

**ANSWER:** Defendant denies the allegations of this paragraph.

45. Plaintiff hereby demands trial by jury.

**ANSWER:** Defendant Arthur Davida, M.D. demands a trial by jury.

WHEREFORE plaintiff requests that appropriate damages be awarded against each defendant.

**ANSWER:** Defendant denies liability and denies plaintiff is entitled to any damages against any defendant.

WHEREFORE, Defendant, ARTHUR DAVIDA, M.D., denies that plaintiff is entitled to any of the relief he seeks, including compensatory damages and punitive damages, and respectfully requests this Honorable Court to enter an Order granting judgment in favor of Defendant and against Plaintiff, dismissing his Sixth Amended Complaint (Dkt. 244) with prejudice and with costs including attorney fees pursuant to 42 U.S.C. § 1988(b) and for such other relief as this Court deems appropriate and just.

### **AFFIRMATIVE DEFENSES**

Without prejudice to the denials of the allegations contained in Plaintiff's Sixth Amended Complaint (Dkt. 244), Defendant, ARTHUR DAVIDA, M.D. without waiving the obligations of Plaintiff to prove every factual element of his claims, states as and for his Affirmative Defenses as follows:

#### **1. Qualified Immunity**

At all times relevant to Plaintiff's claims, the Defendant charged herein Arthur Davida, M.D. acted in the good faith performance of his official duties without violating Plaintiff's decedents clearly established constitutional rights. Defendant is protected from liability by the doctrine of qualified immunity.

#### **2. Official Capacity Claim Barred**

To the extent that Plaintiff's decedents claims are against Defendant in his official capacity the claims are barred by the Eleventh Amendment.

#### **3. Statute of Limitations**

1. Plaintiff's claims are barred by the statute of limitations, and they should be dismissed.

2. Plaintiff, Victor M. Gonzalez, Administrator of the Estate of Roger Gonzalez, deceased filed the original complaint on January 27, 2015. [Dkt.#1]. This original complaint did not name Arthur Davida as a defendant.

3. Plaintiff, Victor M. Gonzalez, Administrator of the Estate of Roger Gonzalez, deceased filed the amended complaint on November 8, 2016. [Dkt.#2]. Defendant Arthur Davida was named as a defendant for the first time on November 8, 2016.

4. Defendant Arthur Davida was a medical doctor at Stateville NRC Correctional Center where he rendered medical care or was a treating physician of decedent from September 2, 2014 until the Illinois Department of Corrections transferred decedent Roger Gonzalez on the morning of November 6, 2014 from Stateville NRC to Robinson Correctional Center.

5. Upon transfer of Roger Gonzalez on November 6, 2014 to Robinson Correctional Center, Dr. Davida ceased being a treating physician for decedent.

6. The only allegations against Dr. Davida are for alleged failure to institute a “medical hold” to prevent the transfer of decedent from Stateville NRC to Robinson Correctional Center.

7. Decedent was transferred on November 6, 2014 from the care of Dr. Davida. Any physician patient relationship between Dr. Davida and decedent Roger Gonzalez ceased upon transfer. Dr. Davida had no further personal involvement in the care of decedent upon his transfer out of Stateville NRC on November 6, 2014. Dr. Davida was not consulted for medical care for decedent after his transfer on November 6, 2014.

8. Dr. Davida did not see patients at Robinson Correctional Center. Once decedent Roger Gonzalez left Stateville NRC, Dr. Davida no longer had the power or ability to render patient care to decedent.

9. A section 1983 deliberate indifference cause of action must be based upon personal liability. Dr. Davida no longer had the personal ability to care for or treat decedent after November 6, 2014. Dr. Davida did not provide any medical care or consultation for decedent between his transfer on November 6, 2014 and his death on November 9, 2014.



10. In Illinois, deliberate indifference claims under Illinois law have a two-year limitation period to file an action.

11. Plaintiff's claims against Dr. Arthur Davida do not allege a continuous course of treatment and end upon transfer from Stateville NRC on November 6, 2014. Plaintiff's Amended Complaint has accrued in excess of two years of Plaintiff filing his complaint on November 8, 2016.

12. Arthur Davida was not named as defendant in this litigation until November 8, 2016 (Dkt. 70), in excess of two years after he stopped treating plaintiff's decedent. Plaintiff had until on or before November 6, 2016 in which to file a claim against Dr. Davida. Plaintiff's amended complaint was filed two days beyond the statute of limitations.

13. Plaintiff's sixth amended complaint must be dismissed with prejudice for failure to file prior to the expiration of the statute of limitations.

#### **4. Compensatory Damages Barred**

To the extent that Plaintiff is suing the Defendant for compensatory damages for mental or emotional injury suffered without a prior showing of physical injury, his claim is barred by the Prison Litigation Reform Act.

#### **5. Failure to State Claim with Specificity**

Defendant's personal involvement has not been established with sufficient specificity to state a claim upon which relief may be granted.

#### **6. Failure to Properly Name Defendants.**

Defendant has not been properly named in the caption of Plaintiff's Sixth Amended Complaint.

#### **7. Res Judicata**

To extent Plaintiff has previously litigated the same issues in a prior action that are now involved in this lawsuit, Plaintiff's suit is barred by the doctrine of res judicata.

## **8. Set-Off**

1. The Illinois Joint Tortfeasor Contribution Act, (the "Act") creates a statutory right of contribution in actions "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property." 740 ILCS 100/2(a); *see Bulson v. Helmold*, 2018 U.S. Dist. LEXIS 187850 at 5-6 (N.D. Ill. 2018).

2. Pursuant to the Act, "when a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury...it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater." 740 ILCS 100/2(c); *see Bulson*, 2018 U.S. Dist. LEXIS 187850 at 5-6.

3. A setoff is "a procedural device for adjusting a verdict to avoid a windfall to the plaintiff" generally styled as a Rule 59(e) motion to alter or amend the judgment. *See Fox ex rel. Fox v. Barnes*, 2013 WL 2111816 at 2 (N.D. Ill. May 15, 2013) (citing *Zivitz v. Greenberg*, 279 F.3d 536, 539 (7<sup>th</sup> Cir. 2002); *Smith v. Altman*, No. 12 C 4546 (N.D. Ill. September 21, 2015)).

4. On July 10, 2020, Defendants, Wexford and Davida, filed a motion for entry of an order granting a set-off in the amount of a confidential settlement between Plaintiff and previous co-defendant(s) reviewed in-camera by this Honorable Court. (Dkt. 241).

5. On July 15, 2020, this Honorable Court entered an order denying Defendants, Wexford and Davida's, request for a set-off as premature because no liability had been established. (Dkt. 246).

6. In the event that a judgment is entered against Defendant Wexford and/or Defendant Davida, Defendant Wexford and Defendant Davida are entitled to a set-off in the amount of the confidential settlement reached between Plaintiff and previous co-defendant(s) as reviewed in-camera by this Honorable Court.

WHEREFORE, Defendant, DR. ARTHUR DAVIDA, respectfully requests this Honorable Court to enter an Order granting judgment in favor of Defendant and against Plaintiff, dismissing his Sixth Amended Complaint (Dkt. 244) with prejudice and with costs including attorney fees pursuant to 42 U.S.C. § 1988(b) and for such other relief as this Court deems appropriate and just.

Respectfully Submitted,

DR. ARTHUR DAVIDA,

By: /s/ Robert S. Tengesdal  
Attorney for Defendant

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2020, I caused the foregoing document to be filed electronically with the Clerk of the Court through ECF. All of the participants in the case are registered CM/EFC users and will be served by the CM/EFC system.

By: /s/ Robert S. Tengesdal