

FILED
U.S. DISTRICT COURT
NEW ALBANY DIVISION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

AM
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

GEORGE MASSONG,

PLAINTIFF,

v.

DEARBORN COUNTY SHERIFF,
AND SERGEANT GARY STEELE,

DEFENDANTS.

)
) **4 : 12 -cv- 031 RLY -DML**
) CAUSE NO. _____
)
)

) **JURY TRIAL REQUESTED**
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)
)

COMPLAINT

I. Nature of Case

1. This lawsuit seeks money damages against the Dearborn County Sheriff and one of its correctional officers for injuries received by George Massong when the sheriff and his employees failed to provide Mr. Massong adequate medical care and failed to protect him from a brutal beating by other inmates at the jail.

II. Jurisdiction and Venue

2. This action is brought against Sergeant Gary Steele for violations of the fourteenth amendment to the U.S. Constitution, actionable pursuant to 42 U.S.C. § 1983.
3. This action is also brought against the Dearborn County Sheriff pursuant to Indiana's common law and its Tort Claims Statute, Ind. Code 34-13-3 *et seq.*
4. Venue is proper in this Court and Division, pursuant to 28 U.S.C. §1391, because the events giving rise to this action occurred in, and the defendants are residents of Dearborn County, Indiana, which is located in the New Albany Division of the Southern District of Indiana.

5. This Court has supplemental jurisdiction over plaintiff's state law claims against the defendant sheriff pursuant to 28 U.S.C. §1367.

III. Parties

6. Plaintiff George Massong is an adult resident of Indiana.
7. Defendant Dearborn County Sheriff is a law enforcement agency with its offices in Dearborn County, Indiana, and is a political subdivision of the state of Indiana. This defendant is sued only on plaintiff's state law claims.
8. Defendant Sergeant Gary Steele is an adult resident of Indiana and for the times relevant to this complaint was an employee of the Dearborn County Sheriff. This defendant is sued only on plaintiff's federal claims.

IV. Facts

9. From August 9 to 23, 2010, George Massong was a pre-trial detainee in the custody and care of the Dearborn County Sheriff at the Dearborn County Jail.
10. Mr. Massong has several medical conditions, including diabetes, for which he takes a number of prescription medications on a daily basis.
11. Mr. Massong is also allergic to seafood and should not consume any fish.
12. When Mr. Massong was taken to the Dearborn County Jail for his initial incarceration, his wife, Tracey Massong, brought her husband's prescription medications to the jail.
13. These medications: Lisinopril, epi-pen/antihistamine, Topamax, Zoloft, Suboxone, Omeprazole, and Metformin and were prescribed by Mr. Massong's treating physicians for

his medical conditions of high blood pressure, allergies, mood swings, bi-polar disorder, depression, pain, heartburn, and diabetes.

14. These medications were delivered to the jail in their original prescription containers with Mr. Massong's name on them.
15. Mrs. Massong also informed the Dearborn County Jail staff that Mr. Massong was a diabetic and allergic to seafood and therefore could not consume any fish.
16. Mrs. Massong asked Dearborn County Jail personnel if they needed verification of Mr. Massong's seafood allergy and was told "no."
17. Mrs. Massong assumed that, because no verification of his allergy was required, the jail staff would not serve him fish.
18. Dearborn County Jail personnel assured Mrs. Massong that her husband would receive his prescription medication.
19. Despite these assurances, the Dearborn County Jail staff did not provide Mr. Massong with his prescription medications.
20. The Dearborn County jail personnel also did not put Mr. Massong on a restricted diet, instead they served him fish, which he couldn't eat.
21. As a result of not receiving his prescription medication, being diabetic, and not receiving a special diet Mr. Massong became weak and unnecessarily suffered pain and hunger.
22. On August 17, 2010, Mr. Massong was in the Dearborn County Jail and shared a cell with another inmate.
23. There was a common area in which the prisoners in the cell block could congregate.
24. Under the rules and regulations of the Dearborn County Sheriff, inmates in the block are

supposed to stay either in the cells or in the common area and are not permitted to go into the cells of other inmates.

25. The reason for this rule is to protect the safety and the security of the jail inmates and the staff.
26. On August 17, 2010, inmates from the cell block went into George Massong's cell and started an altercation with him.
27. Among these inmates was Gerardo Delao, who was later criminally charged for his role in this altercation.
28. At the beginning of the attack, Mr. Massong hit the call button in his cell to ask for help.
29. Sergeant Steele responded to Mr. Massong's call by asking him what he wanted.
30. Mr. Massong replied "They are trying to kill me."
31. Sergeant Steele could see on the video monitor that other inmates were in George Massong's cell.
32. Sergeant Steele later stated in a report that he could not understand what Mr. Massong was saying and thought that the inmates were just playing around.
33. The inmates beat Mr. Massong for approximately 45 minutes and Sergeant Steele did not come to his assistance.
34. The inmates repeatedly beat Mr. Massong, inflicting serious injuries to his body and head.
35. When the inmates were done beating Mr. Massong, they told him they would kill him if he reported it.
36. Mr. Massong could not hit the call button again because the inmates were present in his cell and they would have further beaten him or may have even killed him if he attempted to hit

it again.

37. After the beating Mr. Massong went to the day area and was able to discretely make a brief telephone call to his wife.
38. Mr. Massong was unable to say much, but told his wife: "I was jumped and I need help."
39. Mrs. Massong was alarmed, telephoned the Dearborn County Jail and reported what her husband told her.
40. Dearborn County Jail correctional officers responded to Mrs. Massong's call and came into the cellblock and took Mr. Massong out.
41. When the officers saw Mr. Massong's injuries, they had him examined by the jail nurse.
42. The jail nurse noted that Mr. Massong's injuries were serious and he needed emergency medical treatment.
43. Mr. Massong was taken to the Dearborn County Hospital for examination and treatment.
44. The hospital determined that Mr. Massong suffered a broken nose, a concussion, and a broken elbow, among other injuries.
45. Mr. Massong's injuries to his head have resulted in him having permanent damage to his retinas, impaired vision, migraine headaches, a splintered nasal cavity, and memory loss.
46. When Sergeant Steele interviewed Mr. Massong after the incident, Sergeant Steele admitted hearing the call button but claims that he didn't know it was an emergency.
47. Mr. Massong was released from jail August 23, 2010.
48. Dearborn County Jail personnel did not return Mr. Massong's medication to him or give him the emergency room physician's prescription for pain which had not yet been filled.

V. Claims

49. Defendant Dearborn County Sheriff is legally responsible under Indiana state law, for its own actions and inactions, and, under the doctrine of *respondeat superior*, for the actions and inactions of its employees, including the failure to protect Mr. Massong from the assault and battery described herein, the failure to provide Mr. Massong with adequate health care, and the failure to provide him with adequate nutrition.
50. Sergeant Steele's actions constitute deliberate indifference to Mr. Massong's reasonable safety interests in violation of the due process clause of the fourteenth amendment to the U.S. Constitution, actionable pursuant to 42 U.S.C. § 1983.
51. The plaintiff reserves all rights to assert any claims consistent with the facts alleged above, pursuant to the notice pleading requirement of Federal Rule of Civil Procedure 8.

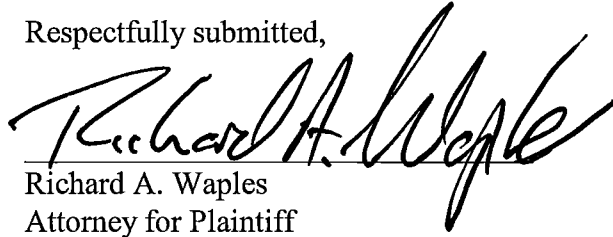
VI. Jury Trial Requested

52. Mr. Massong requests a jury trial on his claims.

VII. Relief Requested

53. Mr. Massong seeks all relief available under the law, including compensatory damages and costs, and all other appropriate relief, including punitive damages and attorney fees against Defendant Sergeant Gary Steele.

Respectfully submitted,

A handwritten signature in black ink, reading "Richard A. Waples". The signature is written in a cursive style with a horizontal line underneath the name.

Richard A. Waples
Attorney for Plaintiff

Dated: March 15, 2012

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