

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**ERNEST BILLIZONE,**

CIVIL ACTION NO. \_\_\_\_\_

vs.

SECTION:

**JAMES LEBLANC,**

MAGISTRATE:

Secretary of Louisiana Department  
of Public Safety and Corrections;

**JEFFERY TRAVIS,** Chief of Operations,  
Louisiana Department of Public Safety and  
Corrections, **STEVE RADER,** Warden,

Dixon Correctional Institute; **IVY MILLER,**  
Classification Director, Dixon Correctional

Institute; **JANET LORENA,** Deputy Warden,  
Dixon Correctional Institute; **COLONEL**

**BRUMFIELD, COLONEL SMITH, FNU THURMAN,** and

**JOHN DOES 1-2,** Disciplinary Board,  
Dixon Correctional Institute.

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**COMPLAINT**

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**INTRODUCTION**

1. This is an action pursuant to 42 U.S.C. § 1983 for damages and declaratory and injunctive relief to redress Defendants' violations of the First and Fourteenth Amendments to the United States Constitution.

**JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b). At all times relevant, all parties were residents of or doing business in this District.

## THE PARTIES

4. Plaintiff, Ernest Billizone, is an individual who at all times relevant has been residing in Dixon Correctional Institute in East Feliciana Parish, Louisiana, and at Elayn Hunt Correctional Center in Iberville Parish, Louisiana, both facilities being within the district of this Court.
5. Defendant James M. LeBlanc, who is and at all times pertinent was, the Secretary of the Louisiana Department of Public Safety and Corrections, located in East Baton Rouge Parish, Louisiana. In that capacity he is responsible for promulgating prison rules and regulations, including the Louisiana Department of Public Safety and Corrections Disciplinary Rules and Procedures for Adult Offenders (“Louisiana Disciplinary Rules and Procedures”), including Rule 30k of the Louisiana Disciplinary Rules and Procedures. He is also the final non-judicial authority for deciding disciplinary appeals and grievances brought by prisoners through the Administrative Remedy Procedure established by Title 22 of the Louisiana Administrative Code. He is sued in his official and individual capacities.
6. Defendant Jeffery Travis, who is the Chief of Operations/Adult Services of the Louisiana Department of Public Safety and Corrections, located in East Baton Rouge Parish, Louisiana. He was a non-judicial authority who decided Plaintiff’s disciplinary appeals brought pursuant to the Administrative Remedy Procedure established by the Title 22 of the Louisiana Administrative Code. He is sued in his official and individual capacities.
7. Defendant Warden Steve Rader, who is and at all times pertinent was, the Warden of Dixon Correctional Institute, located in East Feliciana Parish, Louisiana. In that capacity, he is and was responsible for the proper and legal administration of Dixon Correctional Institute,

including the protection of inmates' federal and constitutional rights such as freedom of speech and access to courts. He is and was also responsible for reviewing grievances and disciplinary appeals brought by prisoners through the Administrative Remedy Procedure established by Title 22 of the Louisiana Administrative Code. He is sued in his official and individual capacities.

8. Defendant Janet Lorena, who is and at all times pertinent was, Deputy Warden at Dixon Correctional Institute, located in East Feliciana Parish, Louisiana. In that capacity, she was responsible for monitoring and supervising the conduct of prisoners in various camps and cellblocks at the prison. She also wrote the first disciplinary report concluding that Ernest Billizone violated Rule 30k. She is sued in her official and individual capacities.
9. Defendant Ivy Miller, who is and at all times pertinent was, Classification Director at Dixon Correctional Institute, located in East Feliciana Parish, Louisiana. He wrote two disciplinary reports concluding that Ernest Billizone violated Rule 30k. He is sued in his official and individual capacities
10. Defendants John Doe 1-2, hereinafter referred to as "Disciplinary Board Chairman" and "Disciplinary Board Member," who were members of a Disciplinary Board hearing held on July 23, 2008 at Dixon Correctional Institute, located in East Feliciana Parish, Louisiana. In that capacity, they were members of the Disciplinary Board that issued the verdict finding Ernest Billizone guilty of violating Disciplinary Rule 30k and sentenced him. The names of the Defendants are illegible on the Disciplinary Report counsel reviewed in preparing the Complaint. They are sued in their official and individual capacities.
11. Defendants Colonel Brumfield, Colonel Smith and FNU Thurman were members of a

Disciplinary Board hearing held on October 22, 2008 at Dixon Correctional Institute, located in East Feliciana Parish, Louisiana. In that capacity, they were members of the Disciplinary Board that issued the verdict finding Ernest Billizone guilty of violating Disciplinary Rule 30k and sentenced him. They are sued in their official and individual capacities.

### FACTS

12. Plaintiff was at all pertinent times, a prisoner incarcerated at Dixon Correctional Institute in Jackson, Louisiana, herein after "Dixon." Before the filing of this litigation, Plaintiff was transferred to Elayn Hunt Correctional Center in St. Gabriel, Louisiana, hereinafter "Hunt."
13. Plaintiff has been disciplined for the contents of three written correspondences he sent to prison administrative officials. The correspondences do not threaten violence or contain foul language and do not threaten prison security.
14. The writings that led to the discipline are two letters directed to prison administrative officials and one written administrative remedy procedure (A.R.P.) grievance.
15. A prisoner has a long recognized First Amendment right to file A.R.P. grievances and complain about prison employee behavior.
16. Additionally, according to Federal and Louisiana law a prisoner must first file an A.R.P. before being able to file claims in state or federal court.
17. In response to the three written correspondences Ernest Billizone sent to prison officials, defendants punished Billizone pursuant to a disciplinary rule that unconstitutionally chills prisoner's First Amendment rights to free speech, petition for redress of grievances and access courts.

18. Secretary Leblanc has the sole authority to change the disciplinary rules, regulations, and procedures. Secretary Leblanc was also the final non-judicial authority who punished Billizone for filing written grievances and writing complaints about prison employee behavior.
19. In at least one other instance, another prisoner was issued a disciplinary report by defendant Ivy Miller for the contents of a grievance that alleged that Mr. Miller does not properly classify prisoners.
20. Additionally, at least one other prisoner at another Department of Public Safety and Corrections facility has been issued a disciplinary report for violating Rule 30k based on the content of a written grievance about employee behavior.

***First disciplinary punishment: Spreading Rumors***

21. On June 27, 2008, Plaintiff Ernest Billizone filed an A.R.P grievance, in which he complained that the recent denial of his request for work release was not according to the official criteria for work release eligibility, as listed in a recent Louisiana Department of Public Safety Appendix regarding selection criteria for entry to the Department's Adult Work Release Facilities. In addition, Mr. Billizone wrote that the Director of Classification for Dixon Correctional Institute, Ivy Miller, appeared to have a conflict of interest and should not be responsible for classifying inmates for programs, including eligibility for Work Release facilities. In the A.R.P. grievance Billizone alleged that "Ivy Miller's brother Britt Miller was killed by inmates, and there is no way he does not feel

- hate or something against inmates.” He also requested that he not be retaliated against for filing the written A.R.P. See attached Exhibit A.
22. On July 22, 2008, defendant Deputy Warden Janet Lorena (hereinafter referred to as “Deputy Warden Lorena”) issued Plaintiff Ernest Billizone a disciplinary report, the basis for which was the written Administrative Remedy Procedure grievance (hereinafter referred to as “A.R.P grievance”) filed by Billizone and described in paragraph 18, supra. See attached Exhibit B.
23. In her disciplinary report defendant Deputy Warden Lorena cited Billizone for a violation of “Rule 30K,” stating that Plaintiff was “spreading rumors [,] a violation of general behavior prohibited #30k” by filing the written A.R.P. grievance. Id.
24. Louisiana Department of Public Safety and Corrections’ Disciplinary Rules and Procedures for Adult Offenders Rule 30k prohibits “the communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest, offender or their families; (this rule shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance).” See attached Exhibit C, page 28.
25. This rule is unconstitutionally overbroad, vague and has a chilling effect on behavior protected by the First Amendment to the United States Constitution.
26. Prior to changes instituted on January 20, 2005, Rule 30k prohibited “spreading rumors about an employee, visitor, guest, or inmate.” Currently, and at the time of defendant Lorena’s action, Rule 30K does not prohibit the “spreading of rumors.” Id.

27. By improperly issuing a disciplinary report for “spreading rumors,” defendant Deputy Warden Lorena punished Billizone for behavior, “spreading rumors,” that is unconstitutionally vague and overly broad, as articulated in Cassels v. Stalder, 342 F.Supp. 2d 555 (M.D. La 2004).
28. By issuing a disciplinary report to a prisoner based on an A.R.P. he wrote and filed, defendant Deputy Warden Lorena unconstitutionally retaliated against Billizone.
29. Defendant Deputy Warden Lorena also violated Plaintiff’s rights by issuing a disciplinary report based on a rule that is vague, overbroad and unconstitutionally chills a prisoner’s recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts.
30. A prisoner’s recognized First Amendment rights are impermissibly chilled when the prisoner fears any consequence beyond having his grievance denied.
31. Prison officials cannot properly bring a disciplinary action against a prisoner for filing a grievance that is determined by those officials to be without merit any more than they can properly bring a disciplinary action against a prisoner for filing a lawsuit that is judicially determined to be without merit.
32. On the same day defendant Deputy Warden Lorena issued the disciplinary report, July 22, 2008, she directed Major Ronald Moore and Captain Allen to immediately place Billizone in administrative segregation. This order was improper and in violation of Title 22 of the Louisiana Administrative Code.
33. Title 22 of the Louisiana Administrative Code provides in pertinent part:  

Administrative Segregation/Confinement Guidelines (formerly referred to as room confinement). An offender whose continued

presence in the general population poses a threat to life, property, self, staff, other offenders, or to the security or orderly running of the institution, or who is the subject of an investigation conducted by noninstitutional authorities, or who is pending review for or assignment to a special unit, or pending reassignment within an institution or to another institution, may (with the approval of the highest ranking supervisor on duty in the unit where the incident occurred), be placed in administrative segregation/ confinement. The supervisor, before the conclusion of his tour of duty, will review relevant documentation for completeness and correctness, and investigate as needed to confirm the reasonableness of the allegation or circumstances prompting the placement.

34. None of the provisions of Title 22, supra, applied to Billizone. Billizone was not “An offender whose continued presence in the general population poses a threat to life, property, self, staff, other offenders, or to the security or orderly running of the institution,” nor “who is the subject of an investigation conducted by noninstitutional authorities, nor pending review for assignment or reassignment.”
35. On July 23, 2008, a disciplinary board hearing was held on Billizone’s disciplinary charge issued on July 22, 2008. The disciplinary board was composed of the Disciplinary Board Chairman and a Disciplinary Board Member, “John Doe 1-2” defendants. At the conclusion of the brief hearing, Ernest Billizone was sentenced to a loss of 90 days of good time and a job change.
36. Before the job change, Billizone’s job classification allowed him to receive employment certification in an indoor climate controlled setting. His punishment was a job change to physical labor in the fields, exposed to the heat and elements. Additionally, no certification was available for this job position and the field work was contrary to a medical duty status that prohibited the type of physical labor field work demanded.



37. By disciplining Billizone based on a disciplinary report for “spreading rumors,” Defendants John Doe 1-2 punished him for behavior, “spreading rumors,” that is unconstitutionally vague, as articulated in Cassels v. Stalder, 342 F.Supp. 2d 555 (M.D. La 2004).
38. Defendant John Doe 1-2 also violated Plaintiff’s First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner’s recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts. Defendants also retaliated against Billizone by punishing him for exercising his First Amendment rights.
39. On July 24, 2008, Ernest Billizone filed an appeal of the Disciplinary Board’s decision to defendant Warden Steve Rader pursuant to Louisiana DPSC Disciplinary Rules and Procedures for Adult Offenders. See attached Exhibit C and D. On August 11, 2008, Ernest Billizone’s appeal was denied in an Appeal Decision by the defendant Warden Steve Radar. See attached Exhibit E.
40. Therefore, Warden Steve Rader punished Billizone for behavior, “spreading rumors,” that is unconstitutionally vague and overly broad, as articulated in Cassels v. Stalder, 342 F.Supp. 2d 555 (M.D. La 2004).
41. Warden Rader also violated Plaintiff’s First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner’s recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts. Warden Rader also retaliated against Billizone by punishing him for exercising his First Amendment rights.

42. Warden also enforced a rule that is unconstitutional and failed to supervise defendants Deputy Warden Lorena and Does 1-2.
43. On August 11, 2008, the same day as his receipt of the Warden's denial, Ernest Billizone appealed the denial to defendant James LeBlanc, the Secretary of the Louisiana Department of Safety and Corrections. See attached Exhibit E.
44. On December 9, 2008, defendant Secretary James LeBlanc issued a decision in Billizone's appeal. The Secretary upheld the guilty verdict and the sanction of job change. However, the Secretary found that the sanction of a forfeiture of 90 days good time was excessive and restored the lost good time to Billizone. See attached Exhibit F.
45. Defendant secretary James LeBlanc punished Billizone for behavior that is unconstitutionally vague, as articulated in Cassels v. Stalder, 342 F.Supp. 2d 555 (M.D. La 2004).
46. Defendant Secretary LeBlanc also violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts. He also retaliated against Billizone by punishing him for exercising his First Amendment rights.
47. The appeal to the Secretary was effectuated by defendant Jeffery Travis. See attached Exhibit F.
48. Defendant Jeffery Travis punished Billizone for behavior that is unconstitutionally vague, as articulated in Cassels v. Stalder, 342 F.Supp. 2d 555 (M.D. La 2004).

49. Defendant Travis violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts. He also retaliated against Billizone by punishing him for exercising his First Amendment rights.
50. Defendant Travis enforced a rule that is unconstitutional and failed to supervise defendants Rader, Lorena, and Does 1-2.
51. Defendant Leblanc also enforced a rule that is unconstitutional and failed to supervise defendants Travis, Rader, Lorena, and Does 1-2.

***Second disciplinary punishment: Letter to an Employee's Supervisor***

52. In September 2008 Plaintiff Billizone wrote a letter to the head of the Adult Services for the Louisiana Department of Public Safety and Corrections. In the letter Billizone reiterated the complaints that were contained within the ARP grievance described in paragraph 18, supra, stating that defendant Ivy Miller's classification decision denying plaintiff work release status was "not according to what the new screening criteria set forth in "New Work Release Appendix III." The letter also stated that other prisoners have written administrative remedy procedures "for these type of actions" by Mr. Miller. See attached Exhibit G.
53. On October 15, 2008, defendant Classification Director Ivy Miller issued Plaintiff Ernest Billizone a disciplinary report, the basis for which was the letter Billizone wrote to the

Director of Adult Services for the Department of Public Safety and Corrections described in paragraph 48, supra. See attached Exhibit H.

54. In his disciplinary report Ivy Miller cited Billizone for a violation of “Rule 30K,” stating that “[i]n [his] letter, inmate Billizone states ‘Ivy Miller should not be in charge of classification of inmates because of his vindictiveness from his family member being killed by inmates at Angola’...I feel that inmate Billizone is intending to intimidate me to harm my credibility by making such false statements.” Id.
55. By issuing a disciplinary report to a prisoner based on a letter a prisoner wrote to prison administrators about an employee’s behavior, defendant Ivy Miller unconstitutionally retaliated against Billizone.
56. Defendant Miller also violated Plaintiff’s First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner’s recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
57. Additionally, defendant Miller violated Billizone’s First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the contents of written grievances about employee behavior.
58. A prisoner’s recognized right to send prison administrators written complaints about employee behavior is unconstitutionally chilled when the prisoner fears any consequence beyond having his complaints ignored.

59. After writing the disciplinary report on October 15, 2008, defendant Ivy Miller instructed staff to place Billizone in administrative segregation. Mr. Billizone was in the cellblock for approximately one week for a full disciplinary hearing.
60. Billizone was not properly placed in administrative segregation, according to the regulations cited *supra*. Defendant Ivy Miller violated Title 22 of the Louisiana Administrative Code when he ordered that Billizone be placed in Administrative Segregation.
61. On October 22, 2008, a disciplinary board hearing was held in this matter. The disciplinary board was composed of defendants Colonel Brumfield, Colonel Smith and Mr. Thurman. Billizone was represented by inmate counsel substitute, but also made oral arguments on his own behalf. At conclusion of the hearing, Billizone was sentenced to 90 forfeiture of good time and 30 days room confinement.
62. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendants Colonel Brumfield, Colonel Smith and Mr. Thurman violated Billizone's First Amendment rights.
63. Defendants Colonel Brumfield, Colonel Smith, and Mr. Thurman violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts.
64. Additionally, defendants Colonel Brumfield, Colonel Smith, and Mr. Thurman violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional

as applied to discipline prisoners for the contents of written grievances about employee behavior.

65. Defendants Colonel Brumfield, Colonel Smith, and Mr. Thurman also enforced a rule that is unconstitutional and failed to supervise defendant Miller.
66. On October 22, 2008, Billizone filed an appeal of the Disciplinary Board's decision to defendant Warden Steve Rader pursuant to Louisiana DPSC Disciplinary Rules and Procedures for Adult Offenders. See attached Exhibit I. On November 20, 2008, Billizone's appeal was denied in an Appeal Decision by defendant Warden Steve Rader. See attached Exhibit J.
67. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendant Warden Steve Rader violated Billizone's First Amendment rights.
68. Defendant Warden Steve Rader violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts.
69. Additionally, defendant Warden Steve Rader violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the contents of written grievances about employee behavior.
70. Warden Steve Rader also enforced a rule that is unconstitutional and failed to supervise defendants Brumfield, Smith, Thurman, and Miller.

71. On November 24, 2008, Billizone appealed the denial to defendant James LeBlanc, the Secretary of the Louisiana Department of Public Safety and Corrections.
72. On December 9, 2008, defendant Secretary LeBlanc issued a decision in Billizone's appeal. The Secretary upheld the guilty verdict and the sanction of 30 days room confinement. However, the Secretary found that the sanction of a forfeiture of 90 days good time was excessive and restored the lost good time to Mr. Billizone. See attached Exhibit K.
73. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendant Secretary LeBlanc violated Billizone's First Amendment rights.
74. Defendant Secretary LeBlanc violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
75. Additionally, defendant Secretary LeBlanc violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the contents of written grievances about employee behavior.
76. The appeal to the Secretary was effectuated by defendant Jeffery Travis. *Id.*
77. Defendant Travis violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.

78. Defendant Travis enforced a rule that is unconstitutional and failed to supervise defendants Rader, Brumfield, Smith, Thurman and Miller.
79. Defendant Leblanc also enforced a rule that is unconstitutional and failed to supervise defendants Travis, Rader, Brumfield, Smith, Thurman and Miller.

***Third disciplinary punishment: Letter to Defendant Warden Rader***

80. In September of 2008 Plaintiff Billizone wrote a letter to defendant Warden Radar, in response to a letter the Warden wrote to Ernest Billizone. In his memo the Warden wrote: "You have been informed on several occasions that it is mandatory for you attend [sic] certain reentry programs in order to receive a favorable recommendation for work release. To date, you still have not attempted to attend any of the programs available." See attached Exhibit L.
81. The cited language from defendant Warden Rader was arguably incorrect. In fact, Billizone completed the Living in the Balance Program- 'Moving from a Life of Addiction to a Life of Recovery' on July 23, 2008. See attached Exhibit M.
82. In response to the Warden's memo, Billizone wrote a letter in reply dated September 13, 2008, a portion of which stated:

"You are lying by saying I have been informed several times that it is mandatory for me to attend certain reentry programs in order to receive a favorable recommendation for work release. That is a lie, and not a mandatory requirement to go to work release as per the new appendix III criteria. D.C.I. is violating those rules and creating their own! Also, you stated I have to date, still not attempted to attend any of the programs available. This is a bald faced lie and it proves that nothing was read or checked in my behalf, but that D.C.I. is in fact covering up pertinent, relevant facts. Because I have completed "Living in Balance substance abuse program," and several of the chaplains discipleship programs, "Making Peace with your Past," etc. and I have the certificates which I



obtained from D.C.I. in my box! So this goes to show that the credibility of your words are not reliable, nor is your information.”

See attached Exhibit N.

83. On October 15, 2008, defendant Classification Director Ivy Miller issued Plaintiff Ernest Billizone a disciplinary report, the basis for which was the letter Billizone wrote to Warden Steve Rader (“Warden”) on September 13, 2008, described in paragraph 80 above. See attached Exhibit O.
84. In his disciplinary report defendant Ivy Miller cited Billizone for a violation of “Rule 30K,” stating that “[i]n this letter, inmate Billizone “repeatedly refers to Warden Rader as a liar and that his statements are lies. These statements are malicious and inflammatory in nature.” Id.
85. Ivy Miller violated Plaintiff’s First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner’s recognized First Amendment rights to free speech, petition government for redress of grievances and access to courts.
86. By issuing a disciplinary report to a prisoner based on a letter a prisoner wrote to the Warden, defendant Ivy Miller unconstitutionally retaliated against Billizone.
87. Additionally, defendant Ivy Miller violated Billizone’s First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the content of written grievances about employee behavior.
88. A prisoner’s recognized right to complain about employee behavior is unconstitutionally chilled when the prisoner fears any consequence beyond having his complaints ignored.

89. After writing the disciplinary report on October 15, 2008, Ivy Miller instructed staff to place Billizone in administrative segregation. Billizone was not properly placed in administrative segregation, according to the regulations cited *supra*. Ivy Miller violated Title 22 of the Louisiana Administrative Code when he ordered that Billizone be placed in Administrative Segregation.
90. On October 22, 2008, a disciplinary board hearing was held in this matter. Defendants Colonel Brumfield, Colonel Smith, and Mr. Thurman were members of the disciplinary board. At conclusion of the hearing, Billizone was sentenced to 90 days forfeiture of good time and 90 days working cell blocks.
91. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendants Colonel Brumfield, Colonel Smith, and Mr. Thurman violated Billizone's First Amendment rights.
92. Colonel Brumfield, Colonel Smith, and Mr. Thurman violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
93. Additionally, Colonel Brumfield, Colonel Smith, and Mr. Thurman violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the content of written grievances about employee behavior.
94. Defendants Brumfield and Thurman enforced a rule that is unconstitutional and failed to supervise defendant Miller.

95. On October 22, 2008, Billizone filed an appeal of the Disciplinary Board's decision to defendant Warden Steve Rader pursuant to Louisiana DPSC Disciplinary Rules and Procedures for Adult Offenders. On November 20, 2008, Billizone's appeal was denied in an Appeal Decision by defendant Warden Steve Radar. See attached Exhibit J.
96. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, Colonel Warden Steve Rader violated Billizone's First Amendment rights.
97. Defendant Warden Steve Rader violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
98. Additionally, defendant Warden Steve Rader violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied to discipline prisoners for the content of written grievances about employee behavior.
99. Defendant Warden Steve Rader also enforced a rule that is unconstitutional and failed to supervise defendants Brumfield, Thomas, Thurman, and Miller.
100. On November 24, 2008, Billizone appealed the denial to defendant James LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections.
101. On December 9, 2008, the defendant Secretary LeBlanc issued a decision in Billizone's appeal. The Secretary upheld the guilty verdict and the sanction of custody change. However, the Secretary found that the sanction of a forfeiture of 90 days good time was excessive and restored the lost good time to Mr. Billizone. See attached Exhibit K.

102. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendant Secretary LeBlanc violated Billizone's First Amendment rights.
103. By disciplining Billizone pursuant to Rule 30k, defendant Secretary LeBlanc violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
104. Additionally, defendant Secretary LeBlanc violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied when used to discipline prisoners for the contents of written grievances about employee behavior.
105. The decision in the appeal to the Secretary was effectuated by defendant Jeffery Travis.
106. By failing to overturn and by enforcing a disciplinary report Billizone received in retaliation for a written grievance about an employee's behavior, defendant Travis violated Billizone's First Amendment rights.
107. Defendant Travis violated Plaintiff's First Amendment rights by disciplining Billizone based on a rule that is vague, overbroad and unconstitutionally chills a prisoner's recognized First Amendment rights to free speech, petition government for redress of grievances, and access to courts.
108. Additionally, defendant Travis violated Billizone's First and Fourteenth Amendment Rights because Rule 30k is unconstitutional as applied when used to discipline prisoners for the contents of written grievances about employee behavior.

109. Defendant Travis enforced a rule that is unconstitutional and failed to supervise defendants Rader, Brumfield, Thomas, Thurman and Miller.
110. Defendant Leblanc also enforced a rule that is unconstitutional and failed to supervise defendants Travis, Rader, Brumfield, Thomas, Thurman and Miller.
111. The retaliatory acts by defendants have been injurious to Billizone.
112. The retaliatory adverse act led to harm to Mr. Billizone. For example, as a result of the retaliation, Billizone was placed on severe cell restriction. Before he was disciplined for the Rule 30k violations, Billizone was housed in the dorm area where he is able to interact with other prisoners, ceiling fans controlled the heat, natural light illuminated the room, he had access to an adjoining recreation room with recreational activities, and he was able to walk outside during his free time.
113. While awaiting the hearings for the Rule 30k violations, Billizone was placed in the cellblocks. While housed in the cellblocks, Billizone was largely confined to a room roughly 8' x 10,' that he shared with another prisoner. A prisoner in the cellblock is confined to the cellblock and can only leave for very limited periods of time during the day.
114. While Billizone was being punished with 30 days room confinement, he could only leave his cell to work or shower.
115. After he was released from room confinement, he was then placed in a working cell block, where he was also largely confined to his cell.
116. As part of his discipline he also suffered severe canteen restrictions.

117. Before he was disciplined for the Rule 30k violations, Billizone's work status was Culinary Arts, where he cooked indoors in climate controlled setting and received other benefits.
118. As part of his punishment for the Rule 30k violations, Billizone was made to work in the fields, a much lower job status than Culinary Arts. He worked in fields and was exposed to the elements. Additionally, his work in the fields was contrary to a medical duty status ordered by a doctor employed at Dixon.
119. As part of his punishment for the Rule 30k violations, Billizone was placed in the working cell blocks for approximately three months. Unlike when he lived in the dorms, when he returned from his job assignment for meals he was made to strip nude, bend over, squat, and cough in a room full of nude prisoners and clothed prison employees. Unlike when he housed outside the working cell blocks, he could not wear regular prison clothing, was largely confined to his cell, and his access to legal materials was limited.
120. Billizone's is improperly classified due to his conviction for violating Disciplinary Rule 30k, resulting in lost privileges and benefits.
121. At all times relevant, Defendants were acting under color of law within the meaning of 42 U.S.C. § 1983, *et seq.*, and acted knowingly, intentionally and with reckless disregard to Plaintiff's rights.

### CLAIMS

122. Disciplinary Rule 30k is facially invalid, as it infringes upon an individual's clearly established rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access the courts secured by the First Amendment to the United States Constitution, as

extended to the States by the Fourteenth Amendment.

123. Disciplinary Rule 30k is also facially invalid in that it is unconstitutionally overbroad and vague, such that it chills the exercise of clearly established rights, and provides no ascertainable standard to which conduct may be conformed.
124. The application of Disciplinary Rule 30k to Billizone's conduct, filing a written grievance and writing letters to prison officials, violated his clearly established rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
125. The application of Disciplinary Rule 30k to Billizone's conduct, filing a written grievances and writing letters to prison officials, was done in retaliation because he exercised his First Amendment rights, therefore it violated his rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts secured by the First and Fourteenth Amendments to the United States Constitution.
126. Disciplining Billizone based on conduct, "spreading rumors," found to be unconstitutionally broad and vague and that is not prohibited by the Louisiana Department of Public Safety and Corrections, violated Plaintiff's rights secured by the First and Fourteenth Amendments to the United States Constitution.
127. As a result, Mr. Billizone is due declaratory and injunctive relief.
128. Mr. Billizone is also due nominal and punitive damages for his claim arising out of the discipline he received as a result of "spreading rumors."
129. In addition, Mr. Billizone is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Ernest Billizone, prays that, in due course, this Honorable Court grant the following relief:

- A. Declare that the application of Disciplinary Rule 30k to Mr. Billizone's conduct violated his rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
- B. Declare that Disciplinary Rule 30k infringes upon an individual's rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
- C. Declare that Disciplinary Rule 30k is unconstitutionally overbroad on its face and its existence and potential application chills the exercise of clearly established rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts, secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
- D. Declare that Disciplinary Rule 30k is void for vagueness because it provides no ascertainable standard to which conduct may be conformed, and thus chills and prevents the exercise of clearly established rights to (i) freedom of speech and expression, (ii) petition for redress of grievances, and (iii) access to courts secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
- E. Declare that the Defendants' actions in disciplining Mr. Billizone in retaliation for filing a



written grievance violated his rights to (i) freedom of speech, (ii) petition for redress of grievances, and (iii) access to courts secured by the First and Fourteenth Amendments to the United States Constitution.

- F. Order Defendants to expunge from their records (whether maintained by the State, the Louisiana Department of Public Safety & Corrections, Dixon Correctional Institute, or any other person or entity) any reference to any finding that Ernest Billizone violated Disciplinary Rule 30k, any reference to any Administrative Remedy Procedure or appeal from any Administrative Remedy Procedure concerned with Ernest Billizone's violation or alleged violation of Rule 30k.
- G. Enjoin Defendants, their agents or employees, and anyone acting in concert with them from issuing Disciplinary Rule 30k violations for the content of written grievances or letters to prison officials.
- H. Enjoin Defendants, their agents or employees, and anyone acting in concert with them from imposing any punishment arising out of Billizone's alleged violation of Rule 30k.
- I. Enjoin Defendants, their agents or employees, and anyone acting in concert with them from preventing or hindering Billizone from, or retaliating against him for, exercising any right guaranteed by the Constitution of the United States.
- J. Grant equitable relief reinstating all lost privileges and benefits resulting from Billizone's improper reclassification after being charged for violation of Disciplinary Rule 30k.
- K. Award nominal and punitive damages to Billizone for claims based the disciplinary report he received for "spreading rumors."
- L. Order Defendants to pay (i) costs actually expended and (ii) attorney's fees authorized by

statute.

M. Order any other relief this Court deems just and necessary.

**Respectfully Submitted,**



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