STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

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In the Matter of the Application of
JESSIE J. BARNES, #09-B-2707, on
Behalf of Those Similarly Situated,
Petitioners,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION, ORDER AND JUDGMENT
RJI #16-1-2012-0195.46
INDEX # 2012-421
ORI #NY016015J

-against-

BRIAN FISCHER, Commissioner, NYS Department of Corrections and Community Supervision, **KAREN BELLAMY**, Director, Inmate Grievance Program, **DAVID A. ROCK,** Superintendent, Upstate Correctional Facility, and **DONALD UHLER**, Deputy Superintendent of Security, Upstate Correctional Facility,
Respondents.

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On May 15, 2012 petitioner filed an assortment of documents in the Franklin County Clerk's office under Index No. 2012-421. These documents include a Petition for Judgment pursuant to Article 78 of the CPLR, verified on April 12, 2012; a Complaint, purportedly seeking "Judgment Pursuant to Article 6301 of the New York Civil Practice Law and Rules[1]," verified on April 12, 2012; and a Notice of Motion dated May 4, 2012 " . . . for an order determining that this action may be maintained as a class action pursuant to CPLR §901 . . .", supported by petitioner's Affidavit sworn to on May 4, 2012.

[1] In paragraph 27 of the Compliant, however, it is asserted that "[t]he plaintiffs pursuant to CPLR §3001 seeks a Declaratory Judgment."

All of the above-referenced papers are related, in one way or another, to petitioner's concerns with respect to the issuance of deprivation orders against Special Housing Unit (SHU) inmates in certain buildings at the Upstate Correctional Facility. "An order depriving an [SHU] inmate of a specific item, privilege or service may be issued when it is determined that a threat to the safety or security of staff, inmates, or State property exists." 7 NYCRR §305.2(a) "Each deprivation order must be reviewed on a daily basis by the deputy superintendent for security or, in his/her absence, the O.D. [Officer of the Day?] or higher ranking authority. If the O.D. is not present at the facility (weekends or holidays), the watch commander will personally review the deprivation order and sign the form indicating approval or discontinuance. This review shall be documented by the reviewing officer, who shall initial and date the order, adding any comments that are appropriate. If a deprivation order has been in effect for seven days, the superintendent and inmate shall receive a written notice of renewal on the seventh day and, thereafter, every seventh day that the order remains in effect." 7 NYCRR §305.2(c). "The written order and any notice of renewal thereof must briefly state the reason(s) for the deprivation and contain the following notice to the inmate: 'You may write to the deputy superintendent for security or his/her designee to make a statement on the need for continuing the deprivation order.' " 7 NYCRR §305.2(d).

Although the regulatory scheme described in the preceding paragraph does not include an administrative appeal process, an inmate who perceives himself/herself to be aggrieved by the issuance or ongoing maintenance of a deprivation order may initiate an inmate grievance proceeding pursuant to 7 NYCRR Part 701 and, if dissatisfied with the final results of the inmate grievance proceeding, seek judicial review in the context of a CPLR Article 78 proceeding. It is noted that one lower court has determined that although the issuance of a deprivation order pursuant to 7 NYCRR §305.2(a) is authorized

when it is determined that a threat to the safety or security of staff, inmates, or State property exists, the issuance of a deprivation order is not authorized merely as a disciplinary measure. *See Trammell v. Coombe*, 170 Misc 2d 471.

CPLR §3013 provides, in relevant part, that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action . . ." CPLR §3014 provides, in relevant part, that "[e]very pleading shall consist of plain and concise statements . . ." In addition to the obvious procedural irregularity of having a petition and separate complaint filed under the same index number, the Court finds those documents to be of a rambling/un-focused nature, as well as plagued by overly-broad/non-specific allegations of "facts."

While the petitioner makes vague reference to a variety of deprivation orders allegedly issued against him and "numerous other prisoners" over three calender years (2010, 2011 and 2012), he makes little effort to set forth specific facts underlying the issuance of any specific deprivation order much less to relate such facts to specific legal arguments with respect to the validity of a specific deprivation order. Rather, petitioner presents the sweeping argument in paragraph 19 of his petition that " . . . there is absolutely no legitimate justifiable penological interest or correctional goals related to reasons for respondents Fischer, Rock and Uhler to placed [sic] human beings on toilet paper deprivation orders, moreless [sic] for (7) seven consecutive days." Similarly, in paragraphs 21, 22 and 26 of the petition the following is asserted:

> "21. That by reason of respondent Fischer . . . gross negligent management of his subordinates Rock and Uhler they have established an institution of deceit and corruption with brutal prevalent enforcement of unconscionable T-shirt, paper, toilet paper, sheets, mattress, towels, blankets or exercise deprivation orders upon all those similarly situated here at Upstate in 8, 9, 10 or 11 buildings on a daily basis for numerous consecutive days unrelated

> to any justifiable reasons of . . . safety security or good order of facility . . . [or] penological interests or correctional goals . . .” (Citations omitted).
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> 22. The deprivation orders are degrading, dehabilitating [sic] and dehuminizing treatment which annihilate all those similarly situated here at Upstate state created liberty interest rights protected by Correction Law §137 subds 2, 5 and further subjected the petitioners to extreme and outrageous infliction of emotional distress . . .”(Citations omitted).
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> 26. Respondents Rock and Uhler enforcement of the bulk of these prevalent practice arbitrary and malicious deprivation orders are issued strictly on basis of abuse of authority by rude, lawless, renegade correction officers and sergeant under false pretenses devoid of any safety, security or correctional goal related reasons as required by 7 NYCRR §305.2 to bias affect [sic] of prejudice of all those similarly situated in Upstate specific housing units guaranty under due process of law clause of the XIV amendment of the U.S. Const. . .” (Citation omitted).

In order to address the broad, non-specific allegations noted above, it would appear that the respondents would be obligated to defend - against any conceivable defect - every deprivation order issued in 2010, 2011 or 2012 against any inmate confined in buildings 8, 9, 10 or 11 at the Upstate Correctional Facility since, as more fully addressed below, the petition currently before the Court is all but devoid of reference to any specific challenge to any specific deprivation order.

In paragraph 23 of the petition reference is made to an exercise deprivation order issued against petitioner on April 15, 2012. A copy of the deprivation order is annexed to the petition as Exhibit A. In the deprivation order the reason for the issuance of said order is stated as follows: “Inmate refused to close exercise pen door after exercise period was over.” The deprivation order reflects daily reviews on April 16, 2012, April 17, 2012, April 18, 2012, April 19, 2012 and April 20, 2012. In each daily review it is reported that petitioner “ . . . is being counseled for his behavior.” The ensuing entry for April 21, 2012 indicates that the exercise deprivation order was “released” on that date. Although it appears that petitioner wrote several letters to respondent Fischer with respect to the

exercise deprivation order of April 15, 2012, there is no allegation that he filed a grievance complaint with respect thereto. In addition, in paragraph 24 of the petition, petitioner erroneously suggests that the stated reason for the issuance of the exercise deprivation order was as follows: "Inmate is being counseled for his behavior." As noted above, the reference quoted by petitioner is to the comment set forth in the daily reviews of the deprivation order. *See* 7 NYCRR §305.2(c). Again, as noted above, the stated reason for the issuance of the deprivation order was petitioner's alleged refusal to close his exercise pen door.

Exhibit B, annexed to the petition, comprises copies of letters from petitioner to respondents Uhler and Fischer with respect to various deprivation orders (including three letters with respect to the exercise deprivation order of April 15, 2012). However, with the exception of the exercise deprivation order of April 15, 2012, no copies of any deprivation orders are annexed to the petition.

The only specific reference in the petition to an inmate grievance proceeding initiated with respect to any alleged deprivation order is Inmate Grievance UST-47511-11, filed on October 21, 2011, a copy of which is annexed to the petition as part of Exhibit D. Although, as alluded to previously, no copies of any deprivation orders are annexed to the petition (with the exception of the exercise deprivation order of April 15, 2012), the inmate grievance complaint filed under UST-47511-11 alleged, in part, that "[o]n October 15, 2011 this character [CO] Jones worked again . . . and this John Doe officer refused to give me nail clippers saying you are on a razor deprivation . . ." In addition, the inmate grievance compliant goes on to allege, in relevant part, as follows:

> "On Sunday October 16, 2011 I was sitting in my cell[.] Sgt. Getman approached my cell[.] I had a wet t-shirt hanging off to the side of my window screen in back of my cell not impeding no view nothing. So regardless if I refused to take it down or not it is not a justifiable reason for

> anyone to brutalize me. This is sick and shocking abuse at this facility they are practicing barbaric punishment at this facility that is horrendously shocking to the conscious decency of modern day society . . . All these deprivations are illegal . . . [Respondent] Rock is a tyrant he is sick all the staff brags that he is the person order all this sick barbaric lawlessness. This is an institution of deceit and corruption nothing is off limits. The abuse and corruption is unconscionable the disgusting abuse going on at this facility in 2011 is unthinkable. Toilet paper, sheets, towels washcloth under-wear, t-shirts, cloths and blanket is unconstitutional [citing *Trammell*] . . . [Respondent] Uhler . . . is just as bad and worser with his open lies exaggeration falsification of document and no regard for law or prisoners period. These are worse prison administration in this county no place in U. S. is the is this abuse be practiced. This prison is more of a slave plantation or nazi concentration camp."

Among the actions requested by petitioner in the context of Inmate Grievance UST-47511-11 was that " . . . these unconstitutional deprivation order cease and all named be held liable for these unconstitutional deprivation orders . . ."

A copy of the final Inmate Grievance Program Central Office Review Committee (CORC) determination with respect to Inmate Grievance UST-47511-11 is also annexed to the petition as part of Exhibit D. The CORC denied petitioner's grievance, noting " . . .that the grievant was placed on a razor deprivation order as a result of his own actions and that there is no record of a t-shirt deprivation order for him in the month of October." With respect to the t-shirt issue, the CORC noted that "[t]he grievant refused to take his t-shirt down from the window and exit his cell when directed to do so by staff, and Sergeant R . . . attempted to convince him to comply before an extraction was authorized."

For what it is worth, the Court notes that the razor deprivation order referenced in Inmate Grievance UST-47511-11, which was apparently in effect on October 15, 2011, appears to be the same razor deprivation order addressed by this Court in the context of *Barnes v. Fischer, et al* (Franklin County Index #2011-1211). By Decision and Judgment in that proceeding, dated October 1, 2012, a razor deprivation order of July 19, 2011, which had been upheld by the CORC on November 16, 2011, was determined to be no

longer of any force in effect based upon the Court's finding that DOCCS officials had failed to properly follow-up the issuance of the deprivation order with all of the daily reviews and/or weekly renewals mandated under the provisions of 7 NYCRR §302.2(c).

To sum up, the Court has before it an overly-broad, rambling petition purporting to challenge numerous, often non-specified deprivation orders allegedly issued against numerous DOCCS inmates at the Upstate Correctional Facility over three calender years.[2] This Court, which handles numerous proceedings initiated by *pro se* inmate petitioner's have various DOCCS facilities, recognizes that in the absence of the availability of assigned counsel both the Court and the Attorney Generals office must, at times, endeavor to make the best of substandard pleadings. Otherwise, scarce judicial resources would be wasted and an endless effort to compel compliance with technical legal requirements by individuals far too often ill-equipt to comply. In the case at bar, however, the Court finds that petitioner's failure to meet the standards set forth in CPLR §§3013 and 3014 is particularly egregious and that respondents would be unduly prejudiced if required to attempt to fashion responsive pleadings.

It is, therefore, the decision of the Court and it is hereby

ORDERED, that petitioner's applications for injunctive relief and class status are denied; and it is further

ADJUDGED, that the petition and complaint are dismissed without prejudice.

Dated: April 23, 2013 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice

[2] For what it is worth, this Court, which handles numerous proceedings initiated by pro se inmate petitioners at the Upstate Correctional Facility, is unaware of any previous challenge to the issuance or maintenance of a deprivation order by any inmate at Upstate, with the exception of the afore-mentioned razor deprivation order challenge initiated by Mr. Barnes under Franklin County Index #2011-1211.