

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
CIVIL DIVISION - ROOM NO. 13  
CAUSE NO. 49D13-0905-PL-23351

JOHN DOES I-III, *et al.*, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
INDIANA DEPARTMENT OF )  
CORRECTION, *et al.*, )  
 )  
Defendants. )

**FILED**

214

DEC 15 2009

*Elizabeth L. White*  
CLERK OF THE MARION CIRCUIT COURT

**Notice of Filing of Deposition in Support of Motion for Class Certification**

Come now plaintiffs, by their counsel, and file the attached deposition of Brent Myers, the Indiana Department of Correction employee who supervises the sex and violent offender registry.<sup>1</sup> This deposition is submitted at this time in support of plaintiffs' motion for class certification and establishes:

1. There are currently 9,700 sex offenders who have current and active registration requirements and who are listed on Indiana's sex and violent offender registry. (Deposition at 20).
2. Of this number, approximately 2,000 of the persons committed their offenses prior to July 1, 1994. (Deposition at 21-22).
3. The Department of Correction is not taking any actions in response to the Indiana Supreme Court's decision in *Wallace v. State*, 905 N.E.2d 371 (Ind.

<sup>1</sup> Deposition testimony is admissible on issues of class certification. *See e.g., Drossin v. National Action Financial Services, Inc.*, 255 F.R.D. 608, 614-15 (S.D. Fla. 2009); *Williams v. County of Niagara*, 2008 WL 4501918, \*3 (W.D.N.Y. Sept. 29, 2008); *Ditty v. Check Rite, Ltd.*, 182 F.R.D. 639 (D. Utah 1998). *See also, Matter of Tina T.*, 579 N.E.2d 48, 55 (Ind. 1991) ("[I]t is important to note that our rule [23] is based on Federal Rule 23, and it is therefore appropriate to look to the application given to that rule by federal courts when considering the application to be given to our own.")

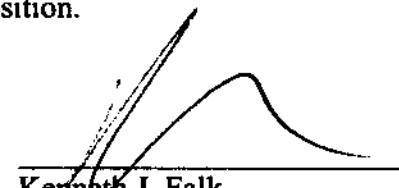
A signed copy of the deposition has not yet been sent to counsel. received, the signature page will be submitted to the Court.

DEC 16 2009



2009), other than to post a notice on the sex and violent offender registry that if an offender believes the case applies to him or her the offender should contact an attorney. (Deposition at 23-26, Ex. 3 to Deposition). The Department of Correction is therefore not –in the absence of a court order – removing persons' names from the sex and violent offender registry in response to *Wallace*. (*Id.*)

WHEREFORE, plaintiffs submit the attached deposition.



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#### Certificate of Service

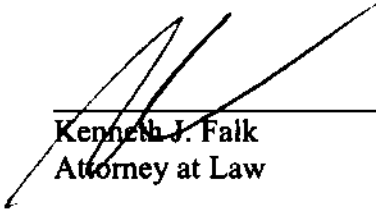
I hereby certify that a copy of the foregoing was served on the below named person(s) by first class U.S. postage, pre-paid, on this 15th day of December, 2009 and via e-mail (without the attached deposition).

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STATE OF INDIANA  
SS:  
COUNTY OF MARION

IN THE MARION COUNTY SUPERIOR COURT  
CAUSE NO. 49D13-0905-PL-023351

JOHN DOES I-III, et al.,  
Plaintiffs,

vs.

INDIANA DEPARTMENT OF CORRECTIONS, et al.,  
Defendants.

~~~~~

The deposition upon oral examination of  
BRENT MYERS, a witness produced and sworn before me,  
Kim Cotton Olson, Notary Public, RPR, CSR, in and for  
the County of Hamilton, State of Indiana; taken on the  
7th day of December, 2009, in the offices of the  
Attorney General, 302 West Washington Street, IGCS,  
Fifth Floor, Indianapolis, Marion County, Indiana;  
pursuant to Notice and the Indiana Rules of Trial  
Procedure. This Deposition was taken on behalf of the  
Plaintiff in this matter.



1 this case?

2 A. Yes.

3 Q. Have you seen it before?

4 A. Yes, I have.

5 Q. And are you being produced by the  
6 Indiana Department of Correction to answer  
7 the questions that's the subjects of which I  
8 outlined in the notice of Deposition Exhibit  
9 1?

10 MR. ARTHUR: Is your's complete?

11 MR. FALK: Did I miss a page?

12 MR. ARTHUR: Okay, yeah, he's got it.  
13 He has a back side. I've got another one.  
14 I want to make sure the one in the record is  
15 right.

16 MR. FALK: Thank you. Mine is not  
17 complete. Thank you very much.

18 Q. And I have deposed you before; is  
19 that correct?

20 A. Yes.

21 Q. So you understand what a deposition  
22 is?

23 A. Yes.

24 Q. And I'm going to ask you some of the  
25 same questions that I asked you before and I

1 Q. And as I understand it, this is the  
2 tool used to list individuals who have been  
3 convicted of certain sex or violent offenses  
4 and provide notification of certain  
5 information to the public; is that correct?

6 A. Yes.

7 Q. And it is my understanding since July  
8 1st of 2006, the DOC has had the  
9 responsibility for the registry; is that  
10 correct?

11 A. Yes.

12 Q. And this means that the DOC oversees  
13 the registry, adds people to the registry  
14 when they're released from the DOC,  
15 determines registration statuses for people  
16 that come to Indiana from other  
17 jurisdictions; is that correct?

18 A. Yes.

19 Q. And your job is the director of  
20 registration and victim services; is that  
21 correct?

22 A. Yes.

23 Q. And your job is to oversee  
24 registration activities for the DOC; is that  
25 correct?

1 may ask you sort of yes or no questions  
2 based on what we talked about before so we  
3 can speed things along; is that okay?

4 A. Yes.

5 Q. You are currently employed by the  
6 Department of Correction?

7 A. Yes.

8 Q. And we'll call that the DOC for  
9 purpose of deposition?

10 A. Fair.

11 Q. And you've been employed by the DOC  
12 since I believe September of 2005; is that  
13 correct?

14 A. Yes.

15 Q. And your current job is the director  
16 of registration and victim services --

17 A. Yes.

18 Q. -- for the DOC? And you have a  
19 bachelors and masters from Ball State; is  
20 that correct?

21 A. Yes.

22 Q. And today we'll be talking about the  
23 Indiana Sex and Violent Offender Registry.  
24 Do you understand that?

25 A. Yes.

1 A. Yes.

2 Q. And I believe we established in an  
3 earlier deposition in another case that you  
4 are the DOC specialist in this area?

5 A. Yes.

6 Q. Among other areas?

7 A. Yes.

8 Q. And specifically I think this is  
9 known as the sex offender registration and  
10 registry or SORR; is that correct?

11 A. Yes.

12 Q. And it is also your job to formulate  
13 policies and procedures relating to SORR; is  
14 that correct?

15 A. Yes.

16 Q. As I understand it if the sex or  
17 violent offender is in the DOC then the DOC  
18 will take information about the offender and  
19 create a registry listing; is that correct?

20 A. Yes.

21 Q. And when the person is released, they  
22 will then have to go to their local law  
23 enforcement to register address and other  
24 information; is that correct?

25 A. Yes.

1 Q. And the local law enforcement will  
2 enter this directly onto the registry?  
3 A. Yes.  
4 Q. Onto the database?  
5 A. Yes.  
6 Q. The database that you and the DOC  
7 supervise; is that correct?  
8 A. Yes.  
9 Q. Now if the person is convicted of a  
10 sex offense and for some reason is not sent  
11 to the DOC then it is my understanding that  
12 the local law enforcement will directly input  
13 that information into the registry directly;  
14 is that correct?  
15 A. Yes.  
16 Q. But again, you maintain the registry?  
17 A. Yes.  
18 Q. And by you I mean the DOC and your  
19 office; is that correct?  
20 A. Yes.  
21 Q. Now I'm showing you what's been  
22 marked as Exhibit 2 and I will tell you what  
23 I've done with Exhibit 2 is I've just taken  
24 a registry listing off of the internet  
25 registry and made it anonymous. Do you at

1 least recognize the format?  
2 A. Yes.  
3 Q. And if this was an actual listing  
4 then above where it says sex predator there  
5 would be the picture of the offender; is  
6 that correct?  
7 A. Yes.  
8 Q. And then you would have information  
9 released -- information as to when the person  
10 was released from the DOC where it says  
11 released?  
12 A. From the DOC or another jurisdiction.  
13 Q. Released from incarceration if they  
14 are -- have been released and it would also  
15 have the next time they have to register and  
16 when the last time they registered were; is  
17 that correct?  
18 A. Yes.  
19 Q. And it would have right below where  
20 it says offender detail it would have the  
21 person's name and home address and maybe a  
22 work address if the person works; is that  
23 correct?  
24 A. Yes.  
25 Q. And they would have filled out the

2 information that I've just listed by  
3 category; age, race, height, etcetera?  
4 A. Yes.  
5 Q. And the aliases --  
6 MR. FALK: Go off the record for a  
7 second.  
8 (AT THIS TIME THERE WAS A BRIEF  
9 DISCUSSION HELD OUTSIDE OF THE RECORD, AFTER  
10 WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)  
11 Q. And it will have any aliases and then  
12 it will have the actual charges?  
13 A. Yes.  
14 Q. And then what I listed here is what  
15 will be listed for each offender; the cause  
16 number, the actual sentence where they were  
17 convicted from, the county, state and the  
18 date -- actual date of conviction; is that  
19 correct?  
20 A. Yes.  
21 Q. And it is my understanding from  
22 looking at the law and also our prior  
23 deposition that there is other information  
24 that the offender will provide that is on a  
25 secure site such as his or her Social  
Security number?

1 A. Yes.  
2 Q. What else is on this secure site that  
3 is not listed on the public registry, general  
4 type information?  
5 A. The types of information would be and  
6 there may be some overlapping in what I'm  
7 going to say to what you see here, but I'm  
8 trying to visualize it in my mind from what  
9 I can remember from it, descriptive  
10 information, certainly a picture, name, date  
11 of birth, Social Security number, FBI number,  
12 state identification number. Then we have  
13 other descriptors about the individual  
14 certainly the height, weight, sex, race,  
15 those types of things.  
16 Some other information may be in  
17 certain situations about a probation officer  
18 or parole agent, those types of issues. We  
19 have information on aliases outside of name,  
20 there could be an alias for a Social  
21 Security number, an alias for a date of  
22 birth, alias for an address.  
23 Q. And this is information that you and  
24 law enforcement have access to?  
25 A. Yes.

1 Q. And what is the name of that  
2 confidential site, does it --  
3 A. It doesn't necessarily have a name.  
4 We call it the administrative database.  
5 Q. Now as I read Indiana law and we  
6 talked about this in earlier depositions,  
7 some people have to only register for ten  
8 years; is that correct?  
9 A. Yes.  
10 Q. And that ten years as I understand it  
11 is from the later date of when they were  
12 released from prison, placed on parole,  
13 placed on probation or placed in community  
14 corrections or community transition programs;  
15 is that correct?  
16 A. I believe so.  
17 Q. So you obviously have access to that  
18 information as well when they are placed on  
19 parole or probation or community corrections  
20 or community transition, if they are?  
21 A. Yes.  
22 Q. Because you formulate the ten years?  
23 A. Yes.  
24 Q. And by you of course I mean you  
25 personally, your office and the DOC?

1 Q. And is that information inputted at  
2 the facility itself? Who physically has the  
3 sentencing document if the person goes  
4 through the DOC?  
5 A. Could be in a variety of places.  
6 Could be in our intake facilities, could be  
7 in our facilities that actually hold the  
8 offenders for long term. It could be in a  
9 scan documentation system within our office  
10 or it could be frankly within one of our  
11 files.  
12 Q. And then you will find out if the  
13 person is on probation and see if that's  
14 relevant for the ten year computation?  
15 A. Yes.  
16 Q. And it is my understanding that the  
17 term of probation cannot be longer than the  
18 maximum term of the potential sentence for  
19 the crime. Are you aware of that?  
20 A. That's -- I wouldn't know.  
21 Q. As far as parole is concerned, parole  
22 is something that's handled by the DOC; is  
23 that correct?  
24 A. Yes, it is through the Indiana Parole  
25 Board.

1 A. Yes.  
2 Q. Now as far as probation is concerned,  
3 as I understand it probation is part of the  
4 actual sentence that the person receives from  
5 the sentencing court; is that correct?  
6 A. That is my understanding.  
7 Q. And so you will have or the DOC will  
8 have in the database the actual sentence that  
9 this person has been sentenced to 20 years  
10 with four years probation for instance?  
11 A. We could have. We certainly have the  
12 number of years that were -- they are  
13 committed to the Department of Corrections  
14 and if there is detail listed in the  
15 sentencing documentation then we would have  
16 those period of probation as well.  
17 Q. In order to the formulate the ten  
18 year requirement where it's ten years from  
19 the date placed on probation if that's one  
20 of the categories, then you need to know if  
21 they are on probation; is that correct?  
22 A. If it's applicable, yes.  
23 Q. And you know that because you have  
24 the sentencing document?  
25 A. Yes.

1 Q. Which is a division of the Department  
2 of Correction; is that correct?  
3 A. To be honest with you, I don't know  
4 the specific make-up of that.  
5 Q. But you are aware if someone is on  
6 parole you get the same information in your  
7 database?  
8 A. Yes.  
9 Q. And you're aware of how long their  
10 parole is?  
11 A. Yes.  
12 Q. And the same I guess with probation,  
13 if you have the sentencing documents if they  
14 are put on probation you're aware of how  
15 long they are put on probation?  
16 A. Yes.  
17 Q. Now I asked in Exhibit 1 -- I asked  
18 in Exhibit 1 for you to give me some  
19 information as to numbers?  
20 A. Uh-huh.  
21 Q. Do you have that information?  
22 A. I've looked at the registry and I've  
23 tried to come up with some approximates.  
24 Q. Perfect. Let's just go through that  
25 quickly. How many people today are listed on

1 the sex and violent offender registry?

2 A. Listed on the registry would be  
3 somewhere in the neighborhood of 23 to 24,000  
4 individuals.

5 Q. And these are people who are either  
6 sex or violent offenders or both?

7 A. Yes.

8 Q. And how many of these people were  
9 incarcerated at any point within the DOC?

10 A. That number I do not know. The  
11 numbers that I actually ran were based on  
12 active registrants, not necessarily those  
13 individuals that is just simply listed on the  
14 registry.

15 Q. The 23 or 24 consist of people whose  
16 tenures may have expired, their names are  
17 still there but they're no longer being  
18 required to be registered?

19 A. Yes.

20 Q. How many active registrants are  
21 there?

22 A. Based again on the approximate  
23 numbers I was able to put together roughly  
24 10,500.

25 Q. And of these how many were in the

1 Q. And actually as far as parole is  
2 concerned to the extent they are on parole,  
3 I guess you have the information through the  
4 parole board itself; is that correct?

5 A. If it is Indiana parole, yes.

6 Q. So if they are on Indiana parole then  
7 you will get that information directly from  
8 the parole board. If they are on probation  
9 and never been in DOC you will get that from  
10 the local law enforcement?

11 A. We will get information through the  
12 sentencing order that indicates the beginning  
13 of that probationary period.

14 Q. And that sentencing will indicate how  
15 long probation is for since it is my  
16 understanding that probation is established  
17 at the time of sentencing?

18 A. It should.

19 Q. Okay. So back to our numbers. So we  
20 have 10,500 active registrants, half of them  
21 went through the DOC and of these how many  
22 are listed solely for being a sex offender?

23 A. Roughly 9,700.

24 Q. So the remaining -- the remaining 800  
25 are either violent offenders or violent

1 DOC?

2 A. Roughly about half.

3 Q. So half of them come from -- came  
4 from other jurisdictions or were -- or were  
5 never sent to the DOC after being convicted  
6 of their offense?

7 A. Yes.

8 Q. Now when someone is not incarcerated  
9 within the DOC you indicated that it is the  
10 responsibility of the local law enforcement  
11 to input basic information for that person?

12 A. Yes.

13 Q. How do you find out the information  
14 you need to compute the ten years? How do  
15 you find out about parole and probation?

16 A. Information should come to us from  
17 local law enforcement and then we research  
18 whatever documentation that we need to make  
19 that determination.

20 Q. So you will receive from local law  
21 enforcement or you should receive from local  
22 law enforcement information as to whether  
23 they're on parole, how long and whether they  
24 are on probation and for how long?

25 A. Yes.

1 offenders and sex offenders; is that correct?

2 A. Yes.

3 Q. Do you know how many are solely  
4 violent offenders at the current time?

5 A. I do not.

6 Q. Is there a reason you do not know  
7 that -- let me say that in a different way.  
8 In order to get these numbers you obviously  
9 had to search your database, is there a  
10 reason you can't search your database by type  
11 of offense to see how many people have been  
12 convicted of that offense?

13 A. I probably could based on the  
14 information that was there.

15 Q. No, that's fine. So of the 10,500  
16 active registrants how many are listed  
17 because of sex offenses --

18 MR. FALK: Strike that.

19 Q. Of the 9,700 active registrants who  
20 are there solely because of sex offenses, how  
21 many committed their offenses before July 1st  
22 of 1994?

23 A. I couldn't determine an exact number.

24 Q. Approximately?

25 A. I would say approximately 2000 of

1 those individuals and those would be  
 2 individuals that were convicted of their  
 3 offense prior to that date.  
 4 Q. You don't know when the offense was  
 5 committed?  
 6 A. I do not.  
 7 Q. Now I also asked you a particular  
 8 question on here where I asked the number or  
 9 approximate number of persons listed on the  
 10 registry who are currently required to  
 11 register because of a sex offense or sexual  
 12 misconduct with a minor as a C or D felony  
 13 or misdemeanor whose last conviction occurred  
 14 prior to July 1st of 2001. Were you able to  
 15 tell me that number?  
 16 A. No.  
 17 Q. Because?  
 18 A. We don't keep felony level in the  
 19 database.  
 20 Q. Okay. Were there any other numbers  
 21 that you looked at in response to my --  
 22 A. No.  
 23 Q. Now you are obviously aware of the  
 24 case of Wallace versus State; is that  
 25 correct?

1 Mr. Wallace was in; is that correct?  
 2 A. That is correct.  
 3 Q. Absent a court order?  
 4 MR. ARTHUR: Can I have that question  
 5 again?  
 6 (The Court Reporter read back the  
 7 last preceding question, as set forth herein  
 8 above.)  
 9 MR. ARTHUR: Does your question  
 10 assume that they haven't asked to be taken  
 11 off the registry? I mean obviously if  
 12 somebody says take me off the registry,  
 13 they're going to look at it. Do you mean  
 14 kind of -- are you talking about a Responsa  
 15 for lack of a better description?  
 16 MR. FALK: Yeah. Let's rephrase it.  
 17 Q. At this point the DOC is not doing  
 18 anything without being approached by a sex  
 19 offender to take their names off the registry  
 20 in response to Wallace; is that correct?  
 21 A. That is correct.  
 22 Q. And if a sex offender just happens to  
 23 call you or contact you or write to you and  
 24 say, hey, I don't think I should be on the  
 25 registry anymore because of Wallace, are you

1 A. Yes.  
 2 Q. And what are you aware of about that  
 3 case?  
 4 A. It deals with registration and  
 5 registry issues. Came down on April 30th,  
 6 2009. I guess specifically?  
 7 Q. Uh-huh.  
 8 A. That it deals with registration  
 9 efforts and Richard Wallace specifically and  
 10 the case referenced as applied to Richard  
 11 Wallace.  
 12 Q. I'm showing you what's been marked as  
 13 Exhibit 3 and this is something that's posted  
 14 on the DOC's sex and violent offender  
 15 registry on the website; is that correct?  
 16 A. Yes.  
 17 Q. And it is my understanding that the  
 18 reference where it says Indiana Supreme Court  
 19 cases is what the DOC's response is to the  
 20 Wallace case with regard to registrants other  
 21 than Mr. Wallace; is that correct?  
 22 A. Yes.  
 23 Q. So the DOC is not going through the  
 24 registry and trying to remove names of  
 25 persons who may be in the same position that

1 removing those people?  
 2 A. We are not.  
 3 Q. And reviewing what Exhibit 3 says you  
 4 are waiting until ordered by a court to do  
 5 that; is that correct?  
 6 A. That is correct.  
 7 Q. And so the only thing a person can do  
 8 at this point who thinks they should not be  
 9 on the registry is to file something in  
 10 court to require the DOC to remove their  
 11 name; is that correct?  
 12 A. That is correct.  
 13 Q. And do you know what they have to  
 14 file in court or where they file? Do you  
 15 know how that is handled?  
 16 A. I do not.  
 17 Q. In our prior deposition in another  
 18 case you indicated at this point there is no  
 19 procedure regarding allowing registrants to  
 20 appeal or challenge factual errors on their  
 21 registry history; is that correct?  
 22 A. Yes.  
 23 Q. And that is still correct?  
 24 A. Yes.  
 25 Q. And registrants are not informed at

1 this point if they disagree with their  
 2 listing they can contact you and have you  
 3 correct that?  
 4 A. That is correct.  
 5 Q. And I think we established as far as  
 6 the Wallace case is concerned, they have to  
 7 go in front of the court and file a lawsuit  
 8 or do something to get a court order to  
 9 force their name to be taken off the  
 10 registry; is that correct?  
 11 A. Yes.  
 12 MR. FALK: I have nothing further.  
 13 MR. ARTHUR: No questions. We like  
 14 signature. Email and condensed.  
 15  
 16 AND FURTHER THE DEPONENT SAITH NOT.  
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1 either party, or otherwise interested in the  
 2 event of this action, and am not in the  
 3 employ of the attorneys for either party.  
 4 IN WITNESS WHEREOF, I have hereunto  
 5 set my hand and affixed my notarial seal  
 6 this 11th day of December, 2009.  
 7  
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 10  
 11 Kim Cotton Olson, RPR, CSR, Notary Public  
 12 My Commission Expires:  
 13 September 17, 2017  
 14 County of Residence: Hamilton  
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1 STATE OF INDIANA  
 2 SS:  
 3 COUNTY OF HAMILTON  
 4 I, Kim Cotton Olson, RPR, CSR, a  
 5 Notary Public in and for the County of  
 6 Hamilton, State of Indiana at large, do  
 7 hereby certify that BRENT MYERS, the deponent  
 8 herein, was by me first duly affirmed to  
 9 tell the truth, the whole truth, and nothing  
 10 but the truth in the aforementioned matter;  
 11 That the foregoing deposition was  
 12 taken on behalf of the Plaintiffs pursuant to  
 13 the Indiana Rules of Trial Procedure;  
 14 That said deposition was taken down  
 15 in stenograph notes and afterwards reduced to  
 16 typewriting under my direction, and that the  
 17 typewritten transcript is a true record of  
 18 the testimony given by the said deponent; and  
 19 that the signature of said deponent to his  
 20 or her deposition was requested;  
 21 That the parties were represented by  
 22 their counsel as aforementioned.  
 23 I do further certify that I am a  
 24 disinterested person in this cause of action;  
 25 that I am not a relative or attorney of

1 CAPTION  
 2 The Deposition of BRENT MYERS,  
 3 taken in the matter, on the date, and at the  
 4 time and place set out on the title page  
 5 hereof.  
 6 It was requested that the deposition  
 7 be taken by the reporter and that same be  
 8 reduced to typewritten form.  
 9 It was agreed by and between counsel  
 10 and the parties that the Deponent will read  
 11 and sign the transcript of said deposition.  
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**CERTIFICATE**

1  
2 **BRENT MYERS**, states that the  
3 foregoing transcript of his/her deposition,  
4 taken in the matter, on the date, and at the  
5 time and place set out on the title page  
6 hereof, constitutes a true and accurate  
7 transcript of said deposition.

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**BRENT MYERS**