

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**GABRIEL ARMENDARIZ,
ERIC DION COLEMAN, JACOB GOMEZ,
TONY LOVATO, MATTHEW J. LUCERO,
EDWARD R. MANZANARES, JOE MARTINEZ,
CHRISTOPHER MAVIS, PHILIP TALACHY,
FELIPE J. TRUJILLO, and JOSEPH VIGIL,
on their own behalf and on behalf of
a class of similarly situated persons,**

Plaintiffs,

Case No.

v.

**SANTA FE COUNTY BOARD OF COMMISSIONERS,
and MARK GALLEGOS, in his individual and official capacity,**

Defendants.

**CLASS ACTION COMPLAINT
FOR DAMAGES UNDER 42 U.S.C. §1983**

Plaintiffs Gabriel Armendariz, Eric, Dion Coleman, Jacob Gomez, Tony Lovato, Matthew J. Lucero, Edward R. Manzanares, Joe Martinez, Christopher Mavis, Philip Talachy, Felipe J. Trujillo, and Joseph Vigil, by and through their attorneys, Rothstein Donatelli, LLP, John C. Bienvenu, Bienvenu Law Office, and Kristina Martinez, Coberly & Martinez, LLLP, bring this Class Action Complaint under 42 U.S.C. § 1983 (“Complaint”) against Defendants Santa Fe County Board of Commissioners (“Santa Fe County”), and Mark Gallegos (“Gallegos”), former Warden of the Santa Fe County Adult Correctional Center aka the Santa Fe County Adult Detention Facility (“ADF”). Plaintiffs allege against Defendants upon knowledge as to themselves and all matters of public record, and upon information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff Gabriel Armendariz (“Mr. Armendariz”) is a resident of Tesuque, New Mexico. Mr. Armendariz brings this action on his own behalf and on behalf of a class of similarly situated persons.

2. Plaintiff Eric Dion Coleman (“Mr. Coleman”) is a resident of Albuquerque, New Mexico. Mr. Coleman brings this action on his own behalf and on behalf of a class of similarly situated persons.

3. Plaintiff Jacob R. Gomez (“Mr. Gomez”) is a resident of Santa Fe, New Mexico. Mr. Gomez brings this action on his own behalf and on behalf of a class of similarly situated persons.

4. Plaintiff Tony Lovato (“Mr. Lovato”) is a resident of Santa Fe, New Mexico. Mr. Lovato brings this action on his own behalf and on behalf of a class of similarly situated persons.

5. Plaintiff Matthew J. Lucero (“Mr. Lucero”) is a resident of Santa Fe, New Mexico. Mr. Lucero brings this action on his own behalf and on behalf of a class of similarly situated persons.

6. Plaintiff Edward R. Manzanares (“Mr. Manzanares”) is a resident of Espanola, New Mexico. Mr. Manzanares brings this action on his own behalf and on behalf of a class of similarly situated persons.

7. Plaintiff Joe Martinez (“Mr. Martinez”) is a resident of Velarde, New Mexico. Mr. Martinez brings this action on his own behalf and on behalf of a class of similarly situated persons.

8. Plaintiff Christopher Mavis (“Mr. Mavis”) is a resident of Santa Fe, New Mexico. Mr. Mavis brings this action on his own behalf and on behalf of a class of similarly situated

persons.

9. Plaintiff Philip D. Talachy (“Mr. Talachy”) is a resident of Santa Fe, New Mexico. Mr. Talachy brings this action on his own behalf and on behalf of a class of similarly situated persons.

10. Plaintiff Felipe J. Trujillo (“Mr. Trujillo”) is a resident of Santa Fe, New Mexico. Mr. Trujillo brings this action on his own behalf and on behalf of a class of similarly situated persons.

11. Plaintiff Joseph Vigil (“Mr. Vigil”) is a resident of Espanola, New Mexico. Mr. Vigil brings this action on his own behalf and on behalf of a class of similarly situated persons.

12. Defendant Santa Fe County Board of Commissioners (“Santa Fe County”) is a political subdivision of the State of New Mexico. At all times material hereto, Santa Fe County owned, operated, and maintained the Santa Fe County Adult Correctional Facility aka the Santa Fe Adult Detention Facility (hereinafter, “ADF”), located in Santa Fe, New Mexico, and was the employer and supervisor of the individually named Defendant. Santa Fe County had a statutory obligation to provide for the confinement of inmates incarcerated under the county’s jurisdiction and to appropriate funds and otherwise provide the necessary funding to maintain and operate a facility for the safe incarceration of inmates under the jurisdiction of the county.

13. During all times relevant to this Complaint, Defendant Mark Gallegos (“Defendant Gallegos”) was a resident of Santa Fe, New Mexico, employed by Santa Fe County as the Warden of ADF. At all times material hereto, Defendant Gallegos was a full-time salaried law enforcement officer and was employed by Defendant Santa Fe County. At all times material hereto, Defendant Gallegos was acting privately under color of law, and was acting within the scope of his duties. He is sued both personally and in his official capacity.

14. Defendants Santa Fe County and Gallegos were responsible for the screening, hiring, training, monitoring, supervision and disciplining of subordinate employees of ADF, including employee law enforcement officers, and were the authorities empowering ADF employees to incarcerate prisoners under the jurisdiction of Santa Fe County. Defendants Santa Fe County and Gallegos were directly responsible for the supervision of subordinate officers of ADF and contractors, including Industrial Commercial Coatings, LLC (hereinafter “ICC”).

15. Defendants Santa Fe County and Gallegos, through their officials, agents, servants, and employees, were involved in and responsible for all the acts hereinafter alleged. At all times material hereto, Defendants Santa Fe County and Gallegos, individually and/or acting through their agents, officers and employees, acted in concert with one another and pursuant to a common plan and objective, and each of the Defendants is responsible for the acts and omissions of the other Defendants, and their agents, officers and employees, as co-conspirators, under the doctrine of *respondet superior*, and under other doctrines of vicarious liability.

JURISDICTION AND VENUE

16. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

17. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1334.

18. Venue is proper in New Mexico under 28 U.S.C. §1391(b) as all claims giving rise to the claims set forth herein occurred within this district.

STATEMENT OF FACTS

19. The ADF is a correctional facility located in Santa Fe, New Mexico. It comprises four separate housing units – Alpha, Bravo, Charlie, and Delta – arranged in a decentralized, “podular” layout.

20. The Bravo unit houses only female inmates. The Alpha, Charlie, and Delta units house only male inmates.

21. On information and belief, each of the four housing units in ADF is comprised of six cell blocks, or “pods.” Some pods, or cell blocks, contain segregated cells for single inmates, while others house two cellmates, and still others contain dormitory-style bunks.

22. Each housing unit is two stories tall, and has showers and lavatory facilities on both levels. Each housing unit has 12 showers for inmate use.

23. There is also one shower in the medical unit and two showers in the booking area, for a total of 51 showers in the facility.

24. On information and belief, as of late 2013, the shower and lavatory areas of ADF had not been renovated in many years. Rather, the showers, which were made of cinder block and cement, had been repeatedly painted over for at least a decade, without being properly sanded between paint applications. As a result, thick layers of paint, mold, and grime accumulated on the shower walls.

25. In or around June 2013, Santa Fe County procured a mold assessment of the floors, ceilings and walls of the showers in ADF wherein visible mold growth was documented, and microbiological growth, slime mold, bacteria, yeast and other mold were verified.

26. With the mold assessment, Santa Fe County received recommended remediation measures, to include appropriate protection for workers removing the mold, isolating the work area from living areas with critical barriers, use of HEPA filters, significant ventilation, and vacating human beings from areas adjacent to those being remediated.

27. In November 2013, Santa Fe County and ICC entered into a contract to renovate the showers and lavatory areas in ADF in order to meet the requirements of NMAC for

accreditation.

28. Santa Fe County's and ICC's hapless and reckless performance of that contract failed to follow accepted safety procedures, including the extensive safety protocols set forth by the manufacturer of the highly toxic, isocyanate-containing chemical sealant used in the renovation.

29. As a consequence of its recklessness and negligence, Santa Fe County exposed each and every inmate at ADF to interminable and extraordinarily hazardous conditions, all day, every day, for months at a time.

30. Inmates at ADF received a prolonged exposure to massive amounts of fine gray dust – comprised of tiny amounts of cement, paint, metal, mold, slime, bacteria and other microbiological growth, and an isocyanate-containing polyurea sealant – which covered every surface in the ADF housing units, coming into contact with the inmates' food and bedding, damaging their eyes and respiratory systems, and causing them serious gastrointestinal upset.

31. More hazardous still, inmates were kept in their cells and exposed at length to toxic isocyanate fumes, which were not properly ventilated during and after the application of the sealant.

32. Indeed, both the particle dust and the isocyanate fumes entered the vents of the inmates' cells, where they were continuously recirculated via the heating and cooling system.

33. Taken together, these conditions created an epidemic of severe ailments among the inmate population of ADF.

The Contract Between Santa Fe County and ICC

34. On or about November 26, 2013, ICC entered into a contract with Santa Fe County to renovate all of the showers facilities by removing the layered paint, slime, mold,

bacteria, and other growth from the shower surfaces and then apply a polyurea sealant to all of the showers and surrounding lavatory areas in the ADF.

35. The contract called for ICC to provide and install “a high-tensile, high elongation, fast set, spray applied polyurea sealer with an anti-bacterial additive that is compliant with FDA 21 CFR 175 300(c)(d) on approximately twenty-eight thousand eight hundred and eighty (28,880) square feet in the shower areas at ADF.”

36. The renovation was to be a two-phase process. First, ICC was to “[p]repare all areas to be sprayed including demolition and removal of subfloor to expose the concrete floor.” This was to be accomplished by clearing the shower areas “of existing paint, glue or mildew using water abrasive blasting equipment with self-containment, such as a Geoblaster, to ensure that dust and mildew particles due [sic] not inhibit the living conditions of the residents.” ICC was to “ensure the proper measures for containing the showers before spraying, i.e. providing plastic covers, and taping off area.”

37. As to the second phase of the process, the sealant was to “be applied with the manufacturer’s recommended surface preparation” and was to “be installed in a gray color with a minimum thickness of 120 mils.” The sealant was to “turn up the walls for an approximate 3” cove base” and was to “be installed with a final fog application for a non-slip surface.” ICC was to “add a bondo application at all edges of showers to create a 45 degree profile,” and “ensure the polyurea application will be sloped to allow for proper drainage.” The polyurea application was to be sprayed on the “floor and three sides” of the showers.

38. ICC was to “possess the appropriate licensure issued by the State Construction Industries Division (CID) to cover the type of work” set forth in the contract, and was to “[p]rovide current certification for application/installation of polyurea.”

39. It was ICC's "responsibility to research permitting and regulatory requirements and obtain any and all permits, certifications or other regulatory approvals/requirements prior to installation of equipment." ICC was to submit copies of all such permits to Santa Fe County prior to beginning performance on the contract.

40. The contract provided that ICC was to spray the following surface areas of the ADF with polyurea sealant:

Bravo and Charlie Units

1. Twenty-four (24) showers in Bravo and Charlie Units on approximately nine thousand two hundred (9,200) shower areas (floor, ceiling, three walls and pony walls).
2. One thousand four hundred forty (1,440) square feet beyond the shower to encompass the entire lavatory area flooring with an eight (8) inch curb.
3. Include the walls and ceilings of the lavatory area, approximately three thousand seven hundred (3,700) square feet.

Alpha and Delta Units; One (1) shower in Medical Unit; and[] two (2) showers in booking area

1. Twenty-four (24) showers in Alpha and Delta Units; one (1) shower in Medical Unit; and[] two (2) showers in booking area on approximately nine thousand four hundred (9,400) shower areas (floor, ceiling, three walls and pony walls).
2. Approximately one thousand four hundred forty (1,440) square feet beyond the shower to encompass the entire lavatory area flooring.
3. Approximately three thousand seven hundred (3,700) square feet the walls of the area.

41. The contract set forth a product recommendation as to the polyurea sealant to be applied: "Specialty Products, Inc. Ultra Bond HT-FC or equivalent."

42. Under the terms of the contract, ICC was to "[p]rovide all clean-up for its

operations and control of construction debris.” Such debris was to be “removed from the work areas and disposed of at an approved waste disposal site before the end of each work day. The ADF trash containers shall not be used for disposal of construction debris.”

The Polyurea Sealant Applied to the Showers and Lavatory Areas in ADF

43. Upon information and belief, the polyurea spray sealant applied to the ADF showers and lavatories was ULTRA-BOND-HT-FC™, as provided for in the contract between Santa Fe County and ICC.

44. The product information sheet describes ULTRA-BOND-HT-FC™ as “a high tensile, high elongation, high build, fast set elastomer” with the “unique advantage of adhering to many polymeric substrates, both new and aged, typically without the use of primers or extensive surface preparation.”

45. According to the general application instructions, ULTRA-BOND-HT-FC™ should be applied only to clean, **dry, sound surfaces free of loose particles or other foreign matter.**”

46. According to the “General Safety, Toxicity & Health Data” section of the instructions, “contact with skin or inhalation of vapors may cause an allergic reaction”; safety glasses, goggles, face shields and chemical gloves are recommended; and a “respirator approved for isocyanates” should be used when in close contact with the sealant. The instructions refer users to the material safety data sheet for the product for more information.

47. The material safety data sheet for ULTRA-BOND-HT-FC™ provides information on how to handle or work with the product in a safe manner. One section, titled “Hazards Identification,” states that the product “is considered hazardous by the OSHA Hazard Communication Standard (29 CFR 1910.1200).”

48. Under “Emergency Overview,” the material safety data sheet provides,

Danger! CAUSES EYE AND SKIN BURNS. HARMFUL IF SWALLOWED. CAUSES RESPIRATORY TRACT IRRITATION.

Toxic if swallowed. Corrosive to eyes and skin. Causes burns. **Irritating to respiratory system. Do not breathe vapor or mist.** Do not ingest. Do not get in eyes or on skin or clothing. **Use only with adequate ventilation.** Keep container tightly closed and sealed until ready for use. Wash thoroughly after handling.

49. The safety data sheet states that, in the event that ULTRA-BOND-HT-FC™ comes into contact with the eyes or skin, medical attention should be sought immediately:

“Chemical burns must be treated promptly by a physician.”

50. It urges that, in the event the product is inhaled, the victim “[g]et medical attention immediately.

Move exposed person to fresh air. If it is suspected that fumes are still present, the rescuer should wear an appropriate mask or self-contained breathing apparatus. . . . If not breathing, if breathing is irregular or if respiratory arrest occurs, provide artificial respiration or oxygen by trained personnel. It may be dangerous to the person providing aid to give mouth-to-mouth resuscitation.

51. In addition, the material safety data sheet provides that individuals working with ULTRA-BOND-HT-FC™ must wear “appropriate personal protective equipment,” including safety eyewear and “chemical-resistant, impervious gloves”; must use only with adequate ventilation, and must “[w]ear appropriate respirator when ventilation is inadequate.”

52. ULTRA-BOND-HT-FC™ is identified as a “toxic material” under the Occupation Safety and Health Administration.

53. ULTRA-BOND-HT-FC™ is identified as having “immediate and serious toxic effects” by Canadian authorities.

Known Adverse Health Consequences Resulting From Exposure to Isocyanates

54. On information and belief, ULTRA-BOND-HT-FC™ and equivalent products

contain chemical compounds called isocyanates.

55. Isocyanates are extremely reactive chemicals that speed up the drying or curing time of many products, including polyurethane foams, varnishes, and sealants.

56. On information and belief, isocyanates are powerful irritants to the mucous membranes of the eyes, nose and throat, gastrointestinal and respiratory tracts. They are also known to sensitize the immune system.

57. Individuals who make skin contact to isocyanates may develop sensitivity, resulting in asthma attacks with subsequent exposures; skin exposure may also result in rash, itching, hives and swelling of the extremities. Isocyanates are not relatively water soluble, and thus cannot be easily washed off skin or clothing.

58. However, individuals are most commonly exposed to isocyanates through inhalation of the vapor or aerosol of isocyanate-containing products.

59. Excessive, short-term exposure to isocyanates can result in edema (swelling), painful respiration, increased respiratory secretions, which can in turn lead to decreased pulmonary function, and significant eye irritation, among other physical discomforts and problems.

60. Inflammation in the lungs has been reported in workers who have been exposed to isocyanates, and symptoms can continue for months or years after exposure has ceased.

61. Long-term exposure to isocyanates can have other severe adverse health effects, including sensitization of the respiratory system and occupational asthma, an illness characterized by intermittent breathing difficulty including chest tightness, wheezing, coughing, and shortness of breath; irritation of the skin and mucous membranes (eyes, nose, and throat); hypersensitivity pneumonitis; and bronchitis with bronchospasm.

62. Once the respiratory system is sensitized, even low-level exposure to isocyanates can trigger a life-threatening immune system response.

63. Respiratory disease among workers exposed to isocyanates has been recognized since the 1950s.

64. Isocyanates include compounds classified as potential human carcinogens, demonstrated to cause cancer in animals.

65. At least two deaths have been attributed to isocyanate exposure.

The First Phase of the Renovation

66. On information and belief, ICC's renovation of the showers and lavatory areas of ADF commenced in March 2014. Upon further information and belief, ICC's continued to conduct renovation work of the showers through the summer months until at least July 2014.

67. As provided for in the contract, the demolition of the shower walls and floors was to be accomplished "using water abrasive blasting equipment with self-containment, such as a Geoblaster, to ensure that dust and mildew particles due [sic] not inhibit the living conditions of the residents."

68. On information and belief, however, ICC did not use a Geoblaster or "equipment with self-containment" in the demolition. Rather, ICC employed conventional commercial cement grinders with sanding discs or pads applied over the wheels.

69. Notwithstanding the nature and scale of a project involving the use of industrial grinding equipment, Defendants made no attempt to protect the inmate population from the hazardous conditions created by the shower-area demolition.

70. The grinding equipment used by ICC turned layers of paint, cement, mold, slime, bacteria and other growth, and detritus from the grinding attachments into a foul, powdery gray

dust that permeated the air throughout the housing units.

71. Thick dust covered every surface in the renovated units and went into every crack and vent.

72. The dust was so impenetrable that inhabitants of the ADF “could not see their hand[s] five feet in front” of them.

73. Inmates continually inhaled the dust, like “swallowing chalk all the time.”

74. Photographs of the pods support one occupant’s likening of the conditions to living in the Kansas “Dust Bowl” of the 1930s, all day, every day, five to six days a week.

75. Inmates largely remained in their cells while ICC employees used grinders to demolish the shower areas of their pods. On the rare occasions inmates were taken from their cells during the grinding, they were returned before appropriate remediation and clean-up had concluded and their living environment remained covered in the demolition dust.

76. Inmates in segregation had even less respite from the massive amounts of dust in the facility than their fellow inmates did, as they were locked down in their cells for 22 hours each day.

77. Pods in the ADF housing units are separated by hallways. To compound the dust problem, ICC adopted a practice of leaving the doors on either side of the hallways open, so that dust billowed from one pod into another.

78. While inmate workers – not ICC employees – were tasked with placing a strip of tape across the bottom of each cell door in preparation for the demolition, their efforts proved no defense against the thick piles of toxic dust that came in under the doors “like a snowfall.”

79. Dust entered inmates’ cells through the wall and ceiling vents.

80. Inmates sought to block the dust by piling towels and washcloths in the vents and

exposed areas around their cell doors, to no avail.

81. The dust came in through the food ports, and caked the inmates' meals, which were delivered on uncovered trays.

82. Fine particles of cement and paint dust collected on the inmates' bedding.

83. A thick layer of dust covered the common areas of each pod, including the tables, floors, and railings; dust covered the commissary and could be found inside the inmates' property boxes.

84. When inmates opened up their cell doors, several feet of gray, powdery dust could be seen piled up high inside their cells.

85. Inmates were not provided appropriate protection equipment.

86. Inmates submitted complaints and medical requests associated with the grinding of the shower surfaces and the various ailments suffered by inmates as a result of their living environment being contaminated with demolition dust.

87. Employees of the ADF recognized ICC was inappropriately grinding the shower surfaces and notified their superiors, including Warden Mark Gallegos, of the same.

88. When confronted by agents of the ADF about grinding shower surfaces inappropriately in the presence of inmates, ICC employees asserted they were not responsible for inmate safety during the renovation process. Employees of ADF reported this response to their superiors, including Warden Mark Gallegos.

Unprotected Inmates Placed on Clean Up Duty

89. Despite the provision in the contract requiring ICC to "provide all clean-up" of construction debris at the end of each day, ICC employees simply attended to their own equipment, and sometimes vacuumed up the showers they were working in.

90. ICC employees otherwise abandoned their worksites at the end of the day, only to resume where they left off the following morning.

91. Neither ICC nor Defendants took steps to protect the inmates and their living environment from the grinding work before it was performed, nor did they make any effort to clean up the excessive amount of toxic dust generated by the demolition after the performance of their duties at the end of the day.

92. At the direction of ADF staff, inmates were tasked with assisting in the initial demolition phase by removing shower fixtures so ICC employees could grind the surfaces.

93. ICC employees were typically working in the pod at the same time as these inmates, performing the grinding work in one shower area while the inmates moved on to fixture removal in the next area.

94. Despite their prolonged exposure to massive amounts of dust and, later, isocyanate-containing sealant, these inmates were denied in their requests for face masks to protect their lungs or gloves for their hands. Eventually, they were given plastic sunglasses to wear, but not goggles that suctioned to the face.

95. The same inmate workers were tasked with reapplying the doors and fixtures at the end of each day.

96. Other groups of inmate porters were tasked with cleaning up the dust generated by the first phase of the renovation.

97. Their efforts proved futile, because of the massive amount of dust involved, the small number of inmate porters assigned to the task, and the poor equipment they were given for the task.

98. For instance, inmate porters were tasked with removing dust film from pod walls

with mops that only served to move the dust around.

99. On information and belief, inmate porters tasked with cleaning up during the renovation were not provided with adequate protective gear.

100. By way of contrast, ICC employees performing the first phase of the renovation wore protective equipment including gas masks and/or personal respirators, and corrections officers who periodically went into the showers to observe the progress of the renovation frequently wore surgical masks.

The Second Phase of the Renovation

101. When the second phase of the renovation began, and ICC commenced application of an isocyanate-containing polyurea sealant to the shower areas, the conditions only became more dangerous to the inmate population at ADF.

102. Now outfitted in fully bodysuits with hoods and respirators to keep the product from damaging their lungs, ICC employees began to spray the showers with ULTRA-BOND-HT-FC™ or a similar product, as provided for in the contract.

103. The sealing of the showers was also performed in multiple sessions.

104. The air was thick with the fog of the sealant, and again the inmates “could not see three feet in front” of their cells.

105. The sealant had a toxic smell reminiscent of the chemicals used in automotive repair shops.

106. The fumes from the sealant caused the inmates to feel intoxicated, “similar to huffing paint.”

107. Many inmates felt their lips quickly became numb, and/or felt a chronic tingling sensation in their limbs.

108. The chemical permeated the air and came into contact with inmates' skin and eyes, immediately irritating them.

109. Some inmates refused to take showers because of the overpowering chemical smell in the shower area.

110. Indeed, the smell of the sealant lingered for several days.

111. ICC and ADF employees took no affirmative steps to protect inmates from the second phase of the shower renovation.

112. On information and belief, most, if not all, inmates in ADF were left in their cells during the second, sealant-applying phase of the renovation.

113. Once again, inmate porters were forced to clean up the "overspray" of the sealant, which was goopy, thick, and redolent of a chemical smell, without protection.

114. Inmates' exposure to the toxic dust and isocyanate fumes generated by the renovation did not end when their own showers were renovated.

115. Because pods are connected to each other by hallways, and ICC employees kept doors open between pods as they moved from one to another, the powdery dust and isocyanate fumes remained in the air in the completed pod and hallways.

Defendants Ignore Plaintiffs' Pleas for Protection

116. Plaintiffs and other inmates submitted complaints, grievances, and/or medical requests noting the harm caused to inmates by the shower renovation project.

117. Inmates' concerns were largely ignored. Often inmates were instructed to concoct their own saline solution for their eyes and nose rather than affirmative steps to keep them safe from the harm of the renovation project.

118. In the summer of 2014, while the renovation project remained ongoing,

Defendants investigated the harm being done to inmates. Upon information and belief, Defendants did not act to mitigate the harm or otherwise ensure the remaining renovation was completed in a safe manner for inmates.

Reliance on Recirculated Air Ensures That Inmates Are Continually Subjected to Hazardous Dust and Isocyanate Vapors

119. On information and belief, ADF is a mechanically ventilated building with a common circulation system.

120. Each cell and common space has vents in the wall secured by metal grates. Vents in the ceiling, when turned on manually, serve as ceiling fans that open up to air out pods, at least ostensibly.

121. When ICC grinded down and then spray-varnished the shower areas of the facility, the dust and isocyanate vapors entered the vents in the renovated spaces.

122. Consequently, both the massive amounts of dust generated by the grinding process and the toxic fumes created by the isocyanate-containing sealant were circulated into inmates' cells throughout the facility.

123. This left the inmates with no respite from the dangerous conditions created by the renovation.

124. Activation of the HVAC system caused the recirculated dust and isocyanate fumes to be pushed out into cells, triggering a dust-and-fume event throughout the facility.

125. On information and belief, the cumulative effect on inmates' health has proven incalculable.

ICC's Error Results in Inmates' Being Doubly Exposed to Toxic Conditions

126. To compound the damage to the inmates' health and safety, ICC employees

incorrectly applied the polyurea sealant in some, and possibly all, of the housing units of ADF.

127. Specifically, ICC sprayed the sealant on wet concrete, despite the fact that the application instructions called for the sealant to be applied “only to clean, dry, sound surfaces free of loose particles or other foreign matter.”

128. ICC’s error made the sealant application “buckle” and peel off the shower walls.

129. ICC employees then used their grinding equipment to take the peeling sealant off the shower walls, creating massive amounts of new dust – now containing particles of the isocyanate sealant – in the housing units.

130. ICC employees then applied the sealant yet again, this time on dry concrete, subjecting the inmate population to yet another round of isocyanate vapors, as well as another round of massive dust.

Illnesses and Injuries Suffered By the Inmate Population of ADF

131. At the time of performance, inmates incarcerated during the renovation experienced a variety of painful, serious symptoms, directly attributable to the conditions created by the renovation.

132. Respiratory symptoms reported by the inmate population during and for months following the renovation included, but were not limited to: difficulty breathing or shortness of breath; pain when breathing; tightness of the lungs/chest; chest pain; chronic nosebleeds; congestion; runny noses; coughing up “gray, gritty” phlegm; persistent dry cough; chronic sore or “burning” throat; and wheezing.

133. Inmates reported suffering skin issues including irritated sinuses, slow-healing sores in their nasal passages, body rashes, and hives.

134. They experienced symptoms of the eyes including gritty eyes, leading to sticky,

white discharge; blurred or cloudy vision; itchy, burning, watery eyes; film over the eyes; and growths in the eyes.

135. Inmates suffered from stomach aches, nausea, vomiting, and persistent, severe diarrhea.

136. They experienced chronic, severe headaches.

137. Inmates reported other flu-like symptoms, including chills, dizziness, weakness, lightheadedness, body aches and lethargy.

138. Multiple inmates experienced edema of an appendage (hands, legs, and/or ankles).

139. Moreover, multiple inmates experienced a feeling of “getting high” from the chemical fumes caused by the spray-on sealant.

140. At least one inmate began suffering panic attacks, “feeling like I can’t breathe.”

141. Dozens of inmates sought medical attention from the ADF medical staff for their symptoms. A review of physicians’ notes indicates that the medical staff at ADF made mention of “dust in air from shower repair” in attempting to treat inmates’ respiratory symptoms with medications including Claritin and Flonase nasal spray.

142. On information and belief, staff “tried to talk [] inmates out of documenting [their] symptoms and said [they were] just from a little dust.” Additionally, staff told these inmates that they “would be better off gargling salt water and snorting salt water for [their] symptoms,” than if they were prescribed medications they could not afford.

143. Indeed, on information and belief, many inmates were precluded from receiving any treatment for the above-described severe symptoms, on account of the prohibitive cost of over-the-counter medication in the ADF canteen – including \$7.00 for the anti-inflammatory

drug Naproxen – in addition to the \$10.00 fee for a physician’s appointment.

144. Dozens of inmates at ADF continued experiencing many of the above-listed symptoms even after the renovation was completed.

Illnesses Suffered By Non-Inmate Occupants of ADF

145. Inmates were not the only people at ADF affected by the dangerous conditions created by Santa Fe County and ICC.

146. On information and belief, despite being equipped with gas masks during the first phase of the renovation and full bodysuits with respirators during the second phase, ICC employees were stricken with a variety of ailments, including but not limited to chronic diarrhea, uncontrolled nosebleeds, and burning throats and eyes.

147. Despite having less exposure to the hazardous conditions created by the renovation than the inmates themselves, ADF employees also suffered severe health crises as a result of those conditions.

148. One ADF staffer, whose position required him to work in the Alpha housing unit, immediately developed symptoms from exposure to the work, including: diarrhea for weeks following his initial exposure; itchy, burning eyes; nausea; vomiting; daily nosebleeds “for three months while the shower work was [performed]”; body rashes; and asthma-type symptoms, including chest tightness and shortness of breath.

149. The staffer was eventually referred to a pulmonary specialist, who found that the staffer was experiencing a reaction to the dust and intoxicants in ADF and diagnosed him with possible occupational asthma.

150. The staffer continues to suffer persistent, ongoing symptoms directly attributable to the conditions of the renovation, including a dry throat, dry cough, recurring nosebleeds, and

asthma-type symptoms. He finds that his symptoms improve somewhat when he is away from ADF for an extended period, but return with full force when he is back breathing the recirculated air in the facility.

151. The staffer continues to rely on an inhaler as a result of his diagnosis.

152. At the time of the events in issue, a second ADF staffer held a position that required him to move throughout the facility to carry out his duties. The second staffer experienced symptoms including severe irritation of his eyes, ears, and throat, as well as symptoms consistent with severe sinus allergies.

153. The second staffer continues to see his personal physician for a persistent pressure in his chest, persistent upper-respiratory irritation, and reoccurring headaches.

154. At the time of the events in issue, a third staffer, whose position required him to work in the Delta housing unit, immediately developed symptoms including: “acid” diarrhea; a raw, sore throat; nosebleeds; scabs inside the nose; and burning eyes.

155. The third staffer consulted his personal physician, who reviewed the material data safety sheets for ULTRA-BOND-HT-FC™ and concluded that it was “only a matter of time until” those exposed to the sealant without protection would show the effects of the exposure.

156. A toxicologist concurred, informing the third staffer that “there was no way to tell” how the renovation conditions would affect him in the future.

157. The third staffer continues to suffer from throat pain and asthma-type symptoms.

158. As of July 2015, the third staffer found that the worst of his respiratory symptoms returned when the heater in ADF was activated for the Winter and when the air conditioner was activated for the Summer, thereby causing the pollutants to recirculate throughout the facility.

Defendant Gallegos' Negligent Maintenance of ADF and Failure to Address or Remedy Health Hazards Presented By the Renovation

159. Defendant Gallegos was well aware of and involved in the renovation of the shower areas of ADF.

160. In April or May 2014, one employee, who was forced to take medical leave after becoming ill during the ongoing renovation, went to Defendant Gallegos and told him that the effects of the renovation on the inmates and staff were “not good,” and that ADF needed to do something to remedy the situation.

161. Defendant Gallegos denied that the renovation presented any health hazards.

162. On information and belief, Defendant Gallegos told the employee to “shut up,” and also dismissed the concerns of other employees, including one doctor on staff.

163. On information and belief, ADF staffers were punished for bringing their own respirators to work.

164. On information and belief, during a Multidisciplinary Team Meeting conducted while the renovation was ongoing, another employee confronted Defendant Gallegos with the concerns expressed, and symptoms experienced, by inmates and employees.

165. On information and belief, Defendant Gallegos insisted that the inhabitants of ADF were 100% safe, and that he was 100% sure that there were no health or safety hazards presented by the renovation.

166. On information and belief, well over 300, and possibly up to 500, inmates were injured to varying degrees as a result of their incarceration in ADF during the renovations performed by ICC.

167. Defendant Gallegos had a duty to properly screen, hire, train, monitor, supervise

and/or discipline subordinate employees, agents and contractors as part of his duties.

168. Defendant Gallegos breached his duties by failing to properly screen, hire, train, monitor, supervise and/or discipline subordinate agents and contractors assisting in the shower renovation project. Defendant Gallegos further failed to adopt or enforce appropriate policies, procedures, and protocols and otherwise failed to take appropriate and reasonable supervisory actions to prevent the harms caused to captive inmates within the ADF by the shower renovation project.

FACTS RELATED TO CLAIMS OF THE NAMED PLAINTIFFS

Gabriel Armendariz

169. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

170. Plaintiff Gabriel Armendariz was an inmate housed in the Alpha-400 pod during the period that the showers in the Alpha unit were being renovated, in or about late March through early April 2014. At the time of the renovation, Mr. Armendariz was 32 years old.

171. Once the shower renovation began in the Alpha unit, each phase of it lasted several days.

172. Mr. Armendariz and other inmates were not given any protective gear to protect them from the paint, mold, bacteria, and waste “grinded off [the] shower walls floor and roof area.” The dust covered the tables and cells, and even covered inmates’ food.

173. Mr. Armendariz was severely sickened by the conditions of the renovation. He developed allergic symptoms and hives.

174. He had nosebleeds and significant headaches.

175. Mr. Armendariz developed difficulty breathing and significant cough while “swallowing a lot of mucus.”

176. He also developed nausea and began vomiting

177. Mr. Armendariz submitted at least three medical requests to for treatment related to the above symptoms. For instance, on April 17, 2014, he submitted a request for medical attention noting he was “getting bloody noses and stomach cramps, vomiting, diarea and having trouble breathing...[and] trouble eating.”

178. Notes from medical personnel at the ADF indicated his symptoms were related to exposure to the shower renovation, particularly the “dusty environment” caused by the same.

179. Mr. Martinez suffered the above-listed symptoms even after the renovation was completed.

Eric Dion Coleman

180. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

181. Plaintiff Eric Dion Coleman was an inmate housed in the Alpha-300 pod during the period that the showers in the Alpha unit were being renovated, in or about late March through mid-April 2014. At the time of the renovation, Mr. Coleman was 32 years old.

182. Once the shower renovation began in the Alpha unit, each phase of it lasted several days.

183. On one day, Mr. Coleman and other inmates were taken to the recreation yard during the renovation process. However, other days they were kept locked down in their cells as it was too cold to remain outside.

184. A dust cloud remained in the air throughout the day, and in the evening the cloud would settle and leave a fine dust film on all surfaces throughout the pod.

185. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

186. Mr. Coleman was severely sickened by the conditions of the renovation. He developed frequent nosebleeds and irritation to his skin and eyes.

187. He developed a cough, wheezing and other trouble breathing.

188. Mr. Coleman had nausea and vomited.

189. He had severe headaches.

190. Mr. Coleman requested medical attention for his symptoms and was told by SFCADF personnel to use a “saline solution” for his eyes, nose and throat problems associated with the renovation.

191. During this period, Mr. Coleman was also an inmate porters assigned to clean the common areas of the pod. Mr. Coleman was not provided any protective gear to assist in his cleaning duties although the non-inmate workers and correctional officers had face masks as protection.

Jacob R. Gomez

192. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

193. Plaintiff Jacob R. Gomez was an inmate housed in the Alpha-400 pod during the period that the showers in the Alpha unit were being renovated, in or about late March through early April 2014. At the time of the renovation, Mr. Gomez was 36 and 37 years old.

194. Once the shower renovation began in the Alpha unit, each phase of it lasted several days.

195. During the renovation process within the Alpha pod, Mr. Gomez and other inmates were kept locked in their cells while the renovation process went on around them.

196. Dust permeated the living environment within the pod. A dust cloud remained in the air throughout the day, and in the evening the cloud would settle and leave a fine dust film on

all surfaces throughout the pod.

197. Staff at the facility had masks to combat the dust, but inmates were not provided protective equipment.

198. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

199. Mr. Gomez was severely sickened by the conditions of the renovation. He developed nosebleeds and pain in his chest.

200. He developed a cough and wheezing.

201. Mr. Gomez had severe headaches.

202. He had a film in his eyes.

203. Mr. Gomez was discouraged from seeking medical attention for his symptoms by the SFCADF. In particular, the fees charged to inmates by policy of the SFCADF prevented Mr. Gomez from obtaining medical attention while he was incarcerated at the SFCADF.

Tony Lovato

204. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

205. Plaintiff Tony Lovato was an inmate housed in the Alpha unit of ADF during March and April 2014 when the showers in that unit were renovated. At the time of the renovation, Mr. Lovato was 25 years old.

206. Once the shower renovation began in the Alpha unit, each phase lasted several days.

207. Dust from the grinding process permeated the living environment in the pod. A dust cloud remained in the air throughout the day and the same would settle and leave a film on all surfaces throughout the pod during the evening and night.

208. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

209. Mr. Lovato was severely sickened by the conditions of the renovation. He developed “really bad headaches” and “bad stomach problems.”

210. He had nosebleeds.

211. Mr. Lovato became fatigued, developed a cough, and his asthma was aggravated.

212. He developed dizziness and nausea. At times he vomited.

213. Mr. Lovata requested medical attention for his symptoms caused by the renovations.

214. On April 16, 2014, Mr. Lovato submitted a medical attention request for his “really bad headaches”, “bad stomach problems” and asthmatic symptoms.

215. On April 17, 2014, Mr. Lovato submitted a medical attention request for his continuing headaches and stomach aches “do [*sic*] to all the dust and particals floating in the air.”

216. Notes from medical personnel at the ADF indicated his symptoms were related to “dust in air from shower repair.”

217. Mr. Lovato suffered the above-listed symptoms even after the renovation was completed.

Matthew J. Lucero

218. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

219. Plaintiff Matthew J. Lucero was an inmate housed in the Alpha-100 pod of ADF during the spring of 2014 when the showers in the Alpha unit were renovated. At the time of the renovation, Mr. Lucero was 29 and 30 years old.

220. Once the shower renovation began in the Alpha unit, each phase lasted several

days.

221. Mr. Lucero and other inmates were kept locked in their cells throughout the day during the time the shower renovation was conducted in the Alpha pod.

222. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod. The dust was so thick that it covered inmates' meals.

223. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

224. Mr. Lucero and the other inmates were not provided any protective equipment during the renovation process and no procedures were undertaken for inmate safety during the process.

225. Mr. Lucero was severely sickened by the conditions of the renovation. He developed severe headaches.

226. He suffered dizziness, nausea and vomited.

227. Mr. Lucero's eyes burned and his vision became blurry.

228. He began to cough, suffered shortness of breath and general fatigue.

229. After being exposed to the renovation process, on or about April 29, 2014, Mr. Lucero requested medical attention for problems associated with the renovation, including his headaches, dizziness and vision issues. Mr. Lucero's request noted he suffered from a head ache "for over 3 weeks since they worked on the showers" and he continued to feel dizzy and have problems with his vision.

230. The April 29, 2014, request further noted his believe that "I don't think its right that I have to pay for a doctor visit because it not my fault they kept me locked in my cell the

whole time they worked.”

231. Mr. Lucero was instructed to take naproxen for his symptoms, but was not otherwise provided medical care and treatment.

Edward R. Manzanares

232. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

233. Plaintiff Edward R. Manzanares was an inmate housed in the Alpha unit of ADF and the Delta unit during the spring of 2014 when the showers in the Alpha and Delta units were renovated. At the time of the renovation, Mr. Manzanares was 26 years old.

234. Mr. Manzanares was first housed in the segregation pod within the Alpha unit during the renovation of the Alpha unit in March of 2014. He was later moved to the Delta unit and was housed there when renovations were conducted in the Delta unit.

235. Once the shower renovation began in each unit, each phase lasted several days.

236. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod.

237. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

238. While housed in the segregation unit, Mr. Manzanares and other inmates were locked in their cells at least 23 hours a day while the renovation process continued around them.

239. While housed in the Delta unit, Mr. Manzanares and other inmates were taken to the recreation yard during the day and returned to their pods thereafter. The dust and chemical smells permeated the living environment on their return.

240. Mr. Manzanares was severely sickened by the conditions of the renovation and suffered headaches.

241. He had trouble breathing and developed a cough with significant phlegm congestion in his chest.

242. Mr. Manzanares suffered from dizziness

243. After being exposed to the construction dust from the demolition of the shower walls, Mr. Manzanares was treated for a fungal infection.

Joe Martinez

244. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

245. Plaintiff Joe Martinez was an inmate housed in the Alpha-500 pod during the period that the showers in the Alpha unit were being renovated, in or about late March through early April 2014. At the time of the renovation, Mr. Martinez was 32 years old.

246. Before renovation began in Alpha, on March 16, 2014, Mr. Martinez went to the medical unit with a severe sore throat, and pustules forming on his mouth and tongue.

247. Staff in the medical unit were all wearing surgical masks, on account of the renovation which had already begun in another pod.

248. A swab confirmed that Mr. Martinez tested positive for strep throat. A nurse who treated Mr. Martinez opined that the odors and dust generated by the renovation and spreading through the facility had exacerbated Mr. Martinez' condition.

249. Once the shower renovation began in the Alpha unit, several days later, each phase of it lasted several days.

250. On some days, the inmates of Alpha-500 were taken into the recreation yard during the grinding of the showers. On other days, when ADF employees determined it was too cold for the inmates to be outside, they were kept locked in their cells from 8:30 a.m. until about 4:00 p.m., while the grinding went on around them.

251. Dust was “everywhere” in the pod, and an ICC employee told Mr. Martinez that the contractors were “going through a lot of [grinder] wheels.”

252. ICC employees brought in large boxed fans to blow dust away from the shower areas, which had the effect of blowing even more dust into the cells.

253. A dust cloud remained in the air throughout the day, and in the evening the cloud would settle and leave a fine dust film on all surfaces throughout the pod.

254. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

255. Mr. Martinez was severely sickened by the conditions of the renovation. He developed frequent nosebleeds and runny noses and pain and irritation inside his nostrils.

256. He coughed up gritty phlegm.

257. Mr. Martinez’ vision was constantly blurred and he experienced frequent sinus headaches.

258. He developed severe diarrhea and flu-like symptoms, including weakness and fatigue.

259. Mr. Martinez submitted two medical requests to the “Medical Drop Box” at ADF, but did not receive a response.

260. During this period, Mr. Martinez was also one of three inmate porters assigned to clean the common areas of Alpha-500, in both the morning and evening. Mr. Martinez was tasked with cleaning the dayroom, while the other two porters were tasked with cleaning the showers and the windows, respectively.

261. As part of his duties, Mr. Martinez had to wipe down all surfaces and mop the dayroom floor.

262. Mr. Martinez was not given any protective gear of any sort – neither mask nor gloves – to perform his duties.

263. Sometime later, in approximately June 2014, Mr. Martinez was seen in the medical unit for a dental exam and encountered a medical doctor in the area. When Mr. Martinez asked why he had not been called to the medical unit following his requests, the doctor replied that “you guys are all whiners.”

264. Mr. Martinez suffered the above-listed symptoms even after the renovation was completed.

Christopher Mavis

265. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

266. Plaintiff Christopher Mavis was an inmate housed in the Charlie unit of ADF in the Spring of 2014. At the time of the renovation, Mr. Mavis was 33 years old.

267. From approximately March 20, 2014 until April 4, 2014, Mr. Mavis was a member of an inmate work crew that assisted with the renovation of the shower and lavatory areas in the Charlie unit. On information and belief, the renovation of the Charlie unit was not fully completed during this time period, after an ICC employee was electrocuted in an accident and had his finger severed, halting work on pod Charlie-600.

268. Unlike the inmate porters assigned to clean up at the end of each workday, Mr. Mavis and his crew worked in long shifts, preparing the shower areas for renovation by removing doors, shower heads, knobs, and light fixtures, and then reinstalling the fixtures when the ICC employees had completed the renovation work.

269. Mr. Mavis and the rest of the inmate crew began by dismantling all of the fixtures on the first floor of the Charlie unit; they also put plastic tarps over fixtures in the common areas,

and applied duct tape to the bottom of resident inmate's cell doors, in a futile attempt to keep the dust out.

270. Mr. Mavis and his crew proceeded to perform the same tasks in the shower areas on the second floor, while ICC employees demolished the shower and lavatory floors and grinded down the shower walls on the first floor below.

271. As a consequence, Mr. Mavis was directly exposed, for hours at a time, to the onslaught of particle dust from the renovation and isocyanate fumes from the chemical sealant.

272. When the ICC employees finished their work, Mr. Mavis and the other inmates assigned to the project returned to reinstall the doors and fixtures in the dust-ridden, newly varnished showers.

273. Mr. Mavis and the other inmates in his work crew were not given safety masks, goggles, or any other sort of protective equipment for almost the entirety of their work in the Charlie unit.

274. The sole exception to this treatment was that, in the final days of the project, Mr. Marvis was given a pair of "cheap sunglasses" – not safety goggles – to wear, after he repeatedly asked for something to protect his eyes from the dust and particulate around him.

275. By contrast, ICC employees renovating the Charlie unit were outfitted in hazmat-type suits with hoods, full protective face masks, and respirators.

276. The enormous amount of gritty particle dust and the fumes from the chemical sealant were "almost unbearable" for Mr. Mavis, whose eyes would burn throughout his work day.

277. Mr. Mavis also began to suffer chronic nosebleeds and headaches.

278. He had a dry mouth and frequently coughed up gritty phlegm.

279. When Mr. Mavis told his symptoms to his supervisors, they responded that if he had a problem with it, there were other inmates who would be happy to do the job and he would be ineligible for other employment.

280. When Mr. Mavis and the rest of the inmate work crew requested respirators, they were told that ADF had none to provide them with.

Philip Talachy

281. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

282. Plaintiff Philip Talachy was an inmate housed in the Charlie unit of ADF in the Spring of 2014. At the time of the renovation, Mr. Talachy was 24 years old.

283. Mr. Talachy was housed in the Charlie-600 pod within the Charlie unit when shower renovations were conducted in that pod. While the renovation process continued around them, Mr. Talachy and other inmates were locked in their cells where there was inadequate ventilation.

284. Once the shower renovation began in the unit, each phase lasted several days.

285. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod. The dust was visibly thick in the air within the pod.

286. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

287. Mr. Talachy was severely sickened by the conditions of the renovation and developed severe headaches.

288. Mr. Talachy would become dizzy and vomit when the showers were being worked on.

289. Mr. Talachy's symptoms lasted for several months after the renovation within the Charlie unit was completed.

290. The ventilation of the pod was insufficient for the circumstances, and Mr. Trujillo and other inmates were not provided masks or other protective equipment to combat the dust and fumes.

291. ICC employees wore respirators and chemical masks while conducting the renovation work.

Felipe J. Trujillo

292. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

293. Plaintiff Felipe J. Trujillo was an inmate housed in the Alpha unit of ADF in the Spring of 2014. At the time of the renovation, Mr. Trujillo was 33 years old.

294. Mr. Trujillo was housed in the Alpha-500 pod within the Alpha unit when shower renovations were conducted in that pod. While the renovation process continued around them, Mr. Trujillo and other inmates were locked in their cells.

295. Once the shower renovation began in the unit, each phase lasted several days.

296. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod.

297. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

298. Mr. Trujillo was severely sickened by the conditions of the renovation and developed severe headaches.

299. Mr. Trujillo became short of breath, significantly congested and fatigued.

300. He had trouble sleeping and digestive issues, including diarrhea.

301. The ventilation of the pod was insufficient for the circumstances, and Mr. Trujillo and other inmates were not provided masks or other protective equipment to combat the dust and fumes.

Joseph Vigil

302. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

303. Plaintiff Joseph Vigil was an inmate housed in the Alpha unit of ADF in the Spring of 2014. At the time of the renovation, Mr. Vigil was 36 years old.

304. Mr. Vigil was housed in the Alpha-500 pod within the Alpha unit when shower renovations were conducted in that pod.

305. Once the shower renovation began in the unit, each phase lasted several days.

306. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod.

307. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

308. Mr. Vigil was severely sickened by the conditions of the renovation and developed severe headaches.

309. Mr. Vigil developed significant chest congestion and coughed up mucus and phlegm.

310. His eyes burned.

311. After being exposed during the renovation process, Mr. Vigil sought medical attention for the symptoms resulting from exposure to the renovation process. For instance, on or about April 16, 2014, he submitted a request for medical attention because he was coughing up “brown” and “green” mucus.

James M. Wheeler

312. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

313. Plaintiff James M. Wheeler was an inmate housed in the Alpha unit of ADF in the Spring of 2014. At the time of the renovation, Mr. Wheeler was 27 years old.

314. Mr. Wheeler was housed in the Alpha-400 pod within the Alpha unit when shower renovations were conducted in that pod.

315. Once the shower renovation began in the unit, each phase lasted several days.

316. During the renovation process, a cloud of construction demolition dust permeated the pod living environment and settled on surfaces within the pod.

317. When the sealant was sprayed, a strong odor of chemicals remained for a long time.

318. Mr. Wheeler was severely sickened by the conditions of the renovation and developed severe headaches and significant congestion.

319. Mr. Wheeler had burning and pain in his chest.

320. He had frequent nosebleeds and stomach pains.

321. After being exposed during the renovation process, Mr. Wheeler sought medical attention for the symptoms resulting from exposure to the renovation process. On or about April 17, 2014, he submitted a request for medical attention indicating he was having headaches, chest pain, an upset stomach, and constant nasal drip. On or about April 21, 2014, he submitted another medical request again indicating his nose was constantly running, he had headaches and an upset stomach.

322. On April 24, 2014, Mr. Wheeler was given Flonase to combat his symptoms.

323. Mr. S. Romero was discouraged from seeking further medical attention by the

policies and practices of the facility. For instance, the ADF charged inmates to obtain medical care. Thus, in the summer of 2014, Mr. Wheeler had to refuse medical attention because he did not have any money to pay for it.

CLASS ACTION ALLEGATIONS

324. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

325. This civil action is brought by Plaintiffs on their own behalf and on behalf of a class of similarly situated persons, pursuant to Fed. R. Civ. P. 23. The class for which Plaintiffs seek certification is defined as follows: all persons who were inmates incarcerated at the Santa Fe County Adult Detention Facility (“ADF”) during the renovation of its shower and lavatory areas in the Spring and Summer of 2014. Excluded from the class are employees, contractors, and/or other visitors to ADF during the relevant time period.

326. Plaintiffs reserve the right to amend this definition, including the right to add subclasses, as litigation proceeds.

327. Plaintiffs are members of the class they seek to represent. Plaintiffs have standing to bring this action because they were injured by the two-phase renovation that occurred at ADF in the Spring and Summer of 2014, as set forth in greater detail above.

328. The members of the class are so numerous that joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, from records maintained by Defendants and their agents, Plaintiffs believe that there are more than 300 members of the proposed class. Furthermore, as the damages suffered by individual class members may be relatively small in relation the expense and risk of litigation, it is not practicable for members of the class to individually seek redress for the wrongs done to them.

329. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel competent and experienced in class litigation. Moreover, the interests of Plaintiffs are coincident with, and not antagonistic to, those of the other members of the class.

330. There is a well-defined community of interest amongst members of the class. The claims of the named Plaintiffs are typical of the claims of the members of the class, as the factual bases of Defendants' misconduct are common to all class members. Moreover, Plaintiffs' claims are based on the same legal theories as those of the class members.

331. There are common questions of law and fact herein. Plaintiffs present a common legal theory based on the same acts, omissions and overall policy of Defendants causing a shared deprivation of Plaintiffs' and class members' rights. The common issues of fact are a significant aspect of this case and include the nature of conditions generally at the ADF throughout the shower renovation project and the effect such conditions are likely to have on a person confined therein. These also raise common questions of law concerning whether or not the conditions at the ADF during the shower renovation amount to a violation of constitutional standards and whether Defendants were deliberately indifferent to the same.

332. The proposed class is sufficiently cohesive to warrant adjudication by representation. Common questions of law and fact herein predominate over questions affecting any individual class member, and class action treatment provides a superior method for the fair and efficient adjudication of the controversy.

333. At all times relevant to the acts alleged herein, and as to every cause of action asserted, Defendants acted recklessly, oppressively, maliciously, and in knowing and conscious disregard of Plaintiffs' rights and the rights of class members, as outlined herein.

FIRST CAUSE OF ACTION
(42 U.S.C. §1983 – Deprivation of Civil Rights)

334. The preceding paragraphs are incorporated as if fully stated herein.

335. Plaintiffs and inmate class members have a right to be free from cruel and unusual punishment under the 8th Amendment of the Constitution of the United States and to be free from unreasonably hazardous confinement conditions under the 5th and 14th Amendments of the Constitution of the United States.

336. Plaintiffs and inmate class members were detained and subjected to incarceration under color of law and pursuant to the policies and procedures of the Defendants.

337. Defendants deprived Plaintiffs and inmate class members of their right to be free from cruel and unusual punishment and unreasonably hazardous confinement conditions when they caused Plaintiffs and Class Members to be subjected to a hazardous living environment during the shower renovation project as set forth above.

338. Defendants' actions were intentional, willful, wanton, reckless and with malice, as they knew, or should have known, that the conditions of the ADF were hazardous to inmates' health during the shower renovation project and/or were deliberately indifferent to the hazards created by the same.

339. The acts and omissions of Defendants as set forth above were undertaken under color of state law and operated to deprive the Plaintiffs and individual class members of their federal rights.

340. The Defendants acted in concert with another in effecting the deprivation of constitutional rights complained of herein.

341. The Defendants acted in concert and pursuant to a common plan and objective,

and each Defendant is responsible for the acts and omissions of the other Defendants as co-conspirators.

342. The actions and inactions of the Defendants were direct and proximate causes of the injuries and damages to the Plaintiffs and Class Members as set forth herein.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 – Supervisory Liability)

343. The preceding paragraphs are incorporated as if fully stated herein.

344. As Warden of ADF, Defendant Gallegos was the official policy-maker and final decision-maker for Santa Fe County in the operations and management of the ADF. Defendant Gallegos had a duty to properly screen, hire, train, monitor, supervise and/or discipline subordinate employees, agents, and contractors as part of his duties.

345. Defendant Gallegos breached his duties by failing to properly screen, hire, train, monitor, supervise and/or discipline subordinate Santa Fe County employees, agents and contractors, including but not limited to ICC. Defendant Gallegos further breached his duties by failing to adopt or enforce appropriate policies, procedures and protocols and by otherwise failing to take appropriate and reasonable supervisory actions to prevent the harm caused to the Plaintiffs and inmate class members. Defendant Gallegos's acts and omissions caused harm to the Plaintiffs and inmate class members as set forth herein.

346. Santa Fe County was the governmental entity that had immediate supervisory responsibility over the actions of the employees, agents and contractors of ADF, including Defendant Gallegos and ICC. Santa Fe County had a duty to properly screen, hire, train, monitor and/or supervise employees, agents and contractors of ADF to ensure that they did not act unlawfully. Supervision includes the obligation to adopt and inculcate reasonable and proper

policies and procedures concerning employee training, adequate monitoring and regulation of employee activity, and other such policies and procedures as are reasonably necessary to prevent the harms complained of herein. Santa Fe County breached its duties by failing to properly screen, hire, train, monitor and/or supervise Defendant Gallegos, ICC and other employees, agents and contractors of ADF, thereby causing harm to the Plaintiffs and inmate class members as set forth herein.

347. Santa Fe County and Defendant Gallegos historically developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons at ADF, which caused the violation of the Plaintiffs' and inmate class members' rights.

348. At all times material hereto, it was the policy or custom of Defendant Santa Fe County and Defendant Gallegos to provide employees, agents and contractors of the same with inadequate and improper policies, training and supervision; to inadequately and improperly investigate complaints of misconduct; to tolerate, condone and ratify misconduct; to inadequately screen potential employees and contractors, and to inadequately discipline and/or terminate employees and contractors as needed.

349. The above-described policies and customs of Defendants demonstrated deliberate indifference to the constitutional rights of persons housed at ADF, permitted or condoned the violation of the Plaintiffs' and inmate class members' rights, and were the proximate cause of the injuries and damages suffered by the Plaintiffs and inmate class members as set forth herein.

350. On information and belief, Santa Fe County, acting through its officials, employees, agents and contractors, including Defendant Gallegos, had a persistent and widespread practice of depriving persons housed at ADF of their constitutional rights, as described above, that it was sufficiently common and well-established as to constitute municipal

policy. On information and belief, such a pattern of unconstitutional conduct was shown by the acts and omissions of other subordinate officials, employees, agents and contractors. These customs or policies permitted or condoned actions that have occurred for so long and with such frequency that the course of conduct demonstrates the governing body's knowledge and acceptance of the disputed conduct.

351. Santa Fe County and Defendant Gallegos had actual or constructive knowledge of the allegations set forth herein and had a duty to take remedial action to correct deficiencies in ADF policies, procedures and customs. Despite such knowledge and duties, said Defendants failed to act.

352. The actions and inactions of the Defendants were direct and proximate causes of the injuries and damages to the Plaintiffs and inmate class members as set forth herein.

353. Defendant Gallegos's acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages against Defendant Gallegos in his personal capacity, for the purpose of punishment and to deter others from the commission of like offenses.

DAMAGES

354. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

355. As a direct and proximate result of the wrongful and unlawful actions of Defendants, described above, Plaintiffs and the members of the class were injured and have suffered damages, including but not limited to severe physical injuries and illnesses; suffering; discomfort; emotional distress; anxiety; degradation; loss of enjoyment of life; deprivation of constitutional rights; and other incidental, consequential, and special damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of the members of the class represented herein, respectfully pray for and demand judgment against the Defendants as follows:

- a. For a determination that this action is a proper class action, appointing the named Plaintiffs herein as Class Representatives under Fed. R. Civ. P. 23, and appointing Plaintiffs' Counsel herein as Counsel for the Class pursuant to the same;
- b. For judgment against Defendants for compensatory damages, special damages, consequential damages and incidental damages under any or all of the causes of action, in an amount to be determined at the trial of this cause;
- c. For reasonable attorneys' fees and costs incurred herein, pursuant to the common fund doctrine and 42 U.S.C. § 1988;
- d. For pre-judgment and post-judgment interest in amounts to be determined according to law;
- e. For an award of punitive and exemplary damages in an amount to be determined at the trial of this cause; and
- f. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Santa Fe County Board of Commissioners Sued Over Prison Mold Problems](#)
