

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

GEORGIA STATE CONFERENCE OF )  
THE NATIONAL ASSOCIATION FOR )  
THE ADVANCEMENT OF COLORED )  
PEOPLE, as an organization; and WESLEY )  
BROWN, FRANKLIN SIMMONS, and )  
DONALD FUTCH, on behalf of themselves )  
and others similarly situated, )

Civil Action No. \_\_\_\_\_

Plaintiffs, )

v. )

GEORGIA DEPARTMENT OF )  
CORRECTIONS, TIMOTHY C. WARD, )  
in his official capacity as Commissioner of )  
the Georgia Department of Corrections, )  
CORECIVIC, INC., and STEVE UPTON, )  
in his official capacity as Warden of Coffee )  
Correctional Facility, )

Defendants. )

**CLASS ACTION COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

The Georgia State Conference of the National Association for the Advancement of Colored People, Wesley Brown, Franklin Simmons, and Donald Futch file this Complaint for declaratory and injunctive relief against Defendants the Georgia Department of Corrections, Timothy C. Ward, in his official capacity as

Commissioner of the Georgia Department of Corrections, CoreCivic, Inc., the owner and operator of Coffee Correctional Facility, and Steve Upton, in his official capacity as Warden of Coffee Correctional Facility.

## **INTRODUCTION**

### **1.**

Plaintiffs bring this action to protect the residents of Coffee Correctional Facility from contracting COVID-19 and to protect them from suffering adverse health consequences as result of water leaks and mold located throughout the facility.

## **PARTIES**

### **2.**

Plaintiff Georgia State Conference of the National Association for the Advancement of Colored People, Inc. (“Georgia NAACP”) is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, including African Americans in particular. It is headquartered in Atlanta, Georgia and currently has approximately 10,000 members, at least some of whom are currently in the custody of the Georgia Department of Corrections, including individuals

incarcerated at Coffee Correctional Facility. At least one member of the Georgia NAACP faces a realistic danger of contracting COVID-19, because of Defendants' failure to follow the U.S. Centers for Disease Control and Prevention's ("CDC") guidelines and administer COVID-19 tests to incarcerated individuals who have symptoms of COVID-19 or who have had close contact with someone with a confirmed case of COVID-19. The Georgia NAACP brings this action on behalf of both the members of the Georgia NAACP who are incarcerated at the Coffee Correctional Facility, and on behalf of a class consisting of all other inmates of the prison whose constitutional rights are being violated and whose lives and health are endangered by the failure of the Defendants to conform to the CDC's health and safety guidelines and recommendations for the prevention of the spread of the COVID-19 virus within the prison.

**3.**

Plaintiff Wesley Brown is 39 years old. He is incarcerated at Coffee Correctional Facility and assigned to Building 4, Dorm P. Brown brings this action on his own behalf and on behalf of a class consisting of all other inmates of the prison whose constitutional rights are being violated and whose lives and health are endangered by the failure of the Defendants to conform to the CDC's health and

safety guidelines and recommendations for the prevention of the spread of the COVID-19 virus within the prison.

**4.**

Plaintiff Donald Futch is 56 years old. He is incarcerated at Coffee Correctional Facility and assigned to Building 4, Dorm P. Futch brings this action on his own behalf and on behalf of a class consisting of all other inmates of the prison whose constitutional rights are being violated and whose lives and health are endangered by the failure of the Defendants to conform to the CDC's health and safety guidelines and recommendations for the prevention of the spread of the COVID-19 virus within the prison.

**5.**

Plaintiff Franklin Simmons is 67 years old. He is incarcerated at Coffee Correctional Facility and assigned to Building 8, Dorm QQ. Simmons brings this action on his own behalf and on behalf of a class consisting of all other inmates of the prison whose constitutional rights are being violated and whose lives and health are endangered by the failure of the Defendants to conform to the CDC's health and safety guidelines and recommendations for the prevention of the spread of the COVID-19 virus within the prison.

**6.**

Mr. Brown, Mr. Futch, and Mr. Simmons (collectively, “Class Plaintiffs”) face a substantial risk of serious harm and/or death without this Court’s intervention.

**7.**

Defendant Georgia Department of Corrections (“GDC”) is the Department of the State of Georgia responsible for “administer[ing] the state’s correctional institutions and the rehabilitative programs conducted therein.” O.C.G.A. § 42-2-5(a). Under Georgia law, “[a]ll county correctional institutions established by the counties as provided in [O.C.G.A. § 42-5-53(a)] shall be subject to supervision and control by the [GDC].” O.C.G.A. § 42-5-53(b). GDC’s headquarters is located at 7 Martin Luther King Jr., Dr. SE, Suite 543, Atlanta, Georgia 30334.

**8.**

Defendant Timothy C. Ward is the Commissioner of the GDC and is being sued in his official capacity. As Commissioner, Ward implements GDC’s rules and regulations concerning the treatment of incarcerated individuals at the facilities GDC supervises and controls, including Coffee Correctional Facility. Ward is a resident of the State of Georgia.

**9.**

Defendant CoreCivic, Inc. owns and operates Coffee Correctional Facility,

established pursuant to O.C.G.A. § 42-5-53(a). CoreCivic is incorporated under the laws of the State of Maryland, and its principal place of business is located at 5501 Virginia Way, Brentwood, Tennessee 37027.

**10.**

Defendant Steve Upton is the Warden of Coffee Correctional Facility and is being sued in his official capacity. As Warden, Upton is responsible for managing Coffee Correctional Facility and for implementing GDC policies and directives. Upton is a resident of the State of Georgia.

**JURISDICTION AND VENUE**

**11.**

This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367(a). This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, the Eighth and Fourteenth Amendments to the United States Constitution, and the laws of the State of Georgia.

**12.**

This Court has personal jurisdiction over Defendants because each Defendant is domiciled in or does business in the State of Georgia.

**13.**

Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(1)

and LR 3.1(b)(1)(B) because GDC and Ward reside in the Atlanta Division of the Northern District of Georgia, and for venue purposes, all Defendants reside in the State of Georgia. Pursuant to 28 U.S.C. § 1391(c)(2), CoreCivic resides in the Southern District of Georgia for venue purposes because its operation of Coffee Correctional Facility subjects it to that Court's personal jurisdiction. Upton also resides in the Southern District of Georgia.

**COVID-19 POSES A SUBSTANTIAL THREAT TO INCARCERATED  
PEOPLE OF COLOR**

**14.**

COVID-19 is a novel coronavirus that has caused more than 2,000,000 deaths and 93,000,000 confirmed cases across the world.<sup>1</sup>

**15.**

COVID-19 “is spread primarily by large respiratory droplets that, once expelled by infected people in coughs and sneezes, fall quickly to the floor.”<sup>2</sup>

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<sup>1</sup> *Covid map: Coronavirus Cases, Deaths, Vaccinations by Country*, BBC News, <https://www.bbc.com/news/world-51235105> (last visited Jan. 19, 2021).

<sup>2</sup> Apoorva Mandavilli, *239 Experts With One Big Claim: The Coronavirus Is Airborne*, N.Y. Times (July 4, 2020), <https://www.nytimes.com/2020/07/04/health/239-experts-with-one-big-claim-the-coronavirus-is-airborne.html>.

“Smaller droplets and particles . . . can remain suspended for many minutes to hours and travel far from the source on air currents.”<sup>3</sup>

**16.**

According to the CDC, “COVID-19 spreads mainly among people who are in close contact (within about 6 feet) for a prolonged period. . . . Since people can spread the virus before they know they are sick, it is important to stay at least 6 feet away from others when possible, even if you—or they—do not have any symptoms. Social distancing is especially important for people who are at higher risk for severe illness from COVID-19.”<sup>4</sup>

**17.**

People who are at higher risk of developing severe complications or dying from COVID-19 include those with underlying health conditions like moderate to severe asthma, heart disease, diabetes, obesity, sickle cell trait, sickle cell anemia, and chronic kidney disease.

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<sup>3</sup> *Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission*, Centers for Disease Control and Prevention (Oct. 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>.

<sup>4</sup> *Social Distancing*, Centers for Disease Control and Prevention (Nov. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.



**18.**

African Americans are more likely than white Americans to have many of these conditions.<sup>5</sup> Black people in the United States have died from COVID-19 at twice the rate of white people.<sup>6</sup>

**19.**

People housed in correctional facilities are particularly vulnerable to COVID-19. Such facilities often have overcrowded living conditions and fail to provide adequate opportunities for social distancing.<sup>7</sup>

**20.**

Many people incarcerated at Coffee Correctional Facility report that it is impossible to follow the CDC's recommendations for social distancing inside the facility.

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<sup>5</sup> Dylan Scott and Christina Animashaun, *Covid-19's Stunningly Unequal Death Toll in America, in One Chart*, Vox, <https://www.vox.com/coronavirus-covid19/2020/10/2/21496884/us-covid-19-deaths-by-race-black-white-americans>; Alizera H. Jahromi and Anahid Hamidianjahromi, *Why African Americans Are a Potential Target for COVID-19 Infection in the United States*, J. Med. Internet Res. (June 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7294999/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Covid-19's Impact on People in Prison*, Equal Justice Initiative (Jan. 7, 2021), <https://eji.org/news/covid-19s-impact-on-people-in-prison>.

**21.**

In general, incarcerated individuals have been more than five times as likely as non-incarcerated individuals to contract COVID-19.<sup>8</sup>

**22.**

The number of positive tests among incarcerated people is likely much higher than reported “because jails and prisons are conducting limited testing on incarcerated people. Many facilities won’t test incarcerated people who die after showing symptoms of Covid-19.”<sup>9</sup> Adjusting for demographic factors, the mortality rate for incarcerated individuals is more than three times higher than the mortality rate for the general U.S. population.<sup>10</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Emily Widra, *New Research: Adjusted for Age and Sex, the COVID-19 Death Rate in Prisons Is 3 Times Higher Than in the General Population*, Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/07/08/coviddeaths/>.

**CONDITIONS AT COFFEE CORRECTIONAL FACILITY INCLUDING  
BLACK MOLD PLACE RESIDENTS AT HEIGHTENED RISK**

**23.**

Coffee Correctional Facility is a medium-security correctional facility for adult men convicted of felony offenses with a purported capacity of 2,992 people.<sup>11</sup>

**24.**

Coffee Correctional currently houses 2,628 individuals.<sup>12</sup>

**25.**

Coffee Correctional has eight main housing units and one segregation unit. The eight main units consist of three closed dorms, each containing three pods; three open dorms, each containing six pods; and two closed dorm units, each with seven pods.<sup>13</sup>

**26.**

Inside each pod, people sleep approximately eighteen inches apart from each other.

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<sup>11</sup> *Coffee Correctional Facility*, State of Georgia, Department of Corrections, [http://www.dcor.state.ga.us/GDC/FacilityMap/html/S\\_50000067.html](http://www.dcor.state.ga.us/GDC/FacilityMap/html/S_50000067.html) (last visited Jan. 19, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> *Coffee Correctional Facility*, State of Georgia, Department of Corrections, <http://www.dcor.state.ga.us/Facilities/coffee-correctional-facility-0> (last visited Jan. 15, 2020).

**27.**

Neither GDC nor Coffee Correctional Facility has mandated social distancing inside each pod specifically or throughout the facility generally.

**28.**

During meal and recreation times, people housed in the facility often maintain close contact, with no mandated social distancing.

**29.**

Coffee Correctional Facility has persistent rainwater leaks that often leave standing water in the facility.

**30.**

Individuals incarcerated there often walk through ankle-deep water, and standing water can often be found throughout the facility.

**31.**

The continual presence of water inside Coffee Correctional has caused black mold and mildew to grow throughout the facility, including inside the HVAC system, and in visible places like ceilings and walls.

**32.**

One person incarcerated at Coffee Correctional reports that the roofs at the facility have leaked for more than five years. In some areas, he says, water runs down

walls, in windows, onto bunks, and onto tables. Moisture in the air is thick on rainy days, which causes breathing problems for many people. Another individual reports that some people sleep in garbage bags to make sure they stay dry.

**33.**

The presence of black mold inside the facility has likely contributed to the development of respiratory illnesses among the residents, which render them more susceptible to COVID-19 and its complications.

**DEFENDANTS' RESPONSES TO COVID-19 HAVE BEEN  
CONSTITUTIONALLY DEFICIENT**

**34.**

During the pendency of the pandemic, COVID-19 tests have become much more widely available than they were at the onset of the pandemic in March.

**35.**

At the beginning of the pandemic, the State of Georgia rationed its limited number of COVID-19 tests by restricting them to workers in certain sectors and symptomatic individuals.<sup>14</sup>

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<sup>14</sup> Nick Wooten, *It's 'A little Bit Too Hard' to Get COVID-19 Test in Georgia, So State Is Revising Criteria*, Columbus Ledger-Inquirer (Apr. 13, 2020), <https://www.ledger-enquirer.com/news/coronavirus/article241985751.html>.

**36.**

But by May, Georgia Governor Brian Kemp announced that the State had reached a “record high in testing,” and he encouraged all Georgians who wanted to receive a COVID-19 test to obtain one, even if the person displayed no symptoms of the virus.<sup>15</sup> The Governor reported that the State had “60 testing sites with more supply than demand.”<sup>16</sup> In October, the State of Georgia reported that more than 3,000,000 COVID-19 tests had been performed in the state.<sup>17</sup>

**37.**

But people incarcerated in Georgia’s correctional facilities are unable to receive COVID-19 tests upon request.

**38.**

Despite the widespread availability of COVID-19 tests, GDC has not mandated that its correctional facilities, including Coffee Correctional, administer COVID-19 tests to incarcerated individuals who request tests.

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<sup>15</sup> Richard Elliot, *Gov. Kemp Says There Are Enough Coronavirus Tests and Urges All Georgians to Take One*, WSB-TV, <https://www.wsbtv.com/news/georgia/gov-kemp-says-there-are-enough-coronavirus-tests-urges-all-georgians-take-one/SQEQGD2T2VEZ5OXNZFVWWFTMQA/> (May 7, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> *Georgia’s Gov. Kemp Touts Progress Against COVID-19*, Associated Press, <https://www.news4jax.com/news/local/2020/10/07/georgias-gov-kemp-touts-progress-against-covid-19/> (Oct. 7, 2020).

**39.**

Nor has GDC followed the CDC's advice and mandated that its facilities provide testing to all incarcerated individuals who report or display symptoms of the virus or who have close contact with other people with confirmed COVID-19 cases.<sup>18</sup>

**40.**

Coffee Correctional has generally administered COVID-19 tests only to incarcerated individuals who not only displayed symptoms of the virus but whose symptoms were so severe that the individuals required medical attention.

**41.**

Coffee Correctional has generally refused to offer COVID-19 tests to people who do not require medical attention but nonetheless display COVID-19 symptoms or have encountered someone with a confirmed COVID-19 case.

**42.**

At least two people who reside at Coffee Correctional say they were denied COVID-19 tests after reporting that they were suffering various COVID -19

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<sup>18</sup> *Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html#when-test> (Dec. 3, 2020).

symptoms including severe headaches, loss of appetite, and diminished senses of taste and smell.

**43.**

GDC has indicated, in response to an Open Records Act request from the Georgia NAACP, that it has no records of the total number of incarcerated individuals and GDC staff members whom it has tested for COVID-19.

**44.**

GDC and Coffee Correctional have long known that their failure to administer COVID-19 tests to any inmate who had COVID-19 symptoms or exposure to someone with COVID-19 would render wholly ineffective any steps that GDC and Coffee Correctional might otherwise take to mitigate the virus's transmission.

**45.**

Yet as COVID-19 tests have become widely available in Georgia, GDC and Coffee Correctional have failed to administer COVID-19 tests on a reasonable basis.

**46.**

As an example, earlier in the pandemic Coffee Correctional quarantined certain medically vulnerable inmates in a single pod where social distancing was generally infeasible.



**47.**

But GDC and Coffee Correctional officials failed to administer COVID-19 tests to these vulnerable people before beginning the quarantine.

**48.**

They thus forced many of Coffee Correctional's most susceptible inmates to live in close quarters without ensuring that the virus hadn't already reached the population.

**49.**

Unsurprisingly, many of the medically vulnerable people in this quarantined pod contracted COVID-19.

**50.**

According to multiple people housed in the pod, one elderly inmate repeatedly called for help over a span of two weeks—while receiving none—before he died.

**51.**

Another person in the pod who contracted COVID-19 and suffered severe complications says that he cries every day hoping and praying that he doesn't catch the virus again.

**52.**

After Coffee Correctional officials became aware of the increasing number of COVID-19 cases in this quarantined pod, they administered a round of COVID-19 tests to the people who lived in the pod.

**53.**

Upon information and belief, this is the only time that Coffee Correctional officials have tested an entire pod upon becoming aware that multiple residents tested positive for COVID-19.

**54.**

This single round of contact tracing yielded more than 100 positive tests.

**55.**

GDC and Coffee Correctional officials have thus long been on notice of the substantial risk of rapid COVID-19 transmission inside Coffee Correctional and other GDC facilities that fail to mandate and ensure adequate social distancing.

**56.**

Despite having this subjective knowledge of the risk of COVID-19 transmission, GDC has not mandated and Coffee Correctional has not implemented universal COVID-19 testing—or even mandatory testing of people who have symptoms or close contact with others who have confirmed cases.

**57.**

Thus, Coffee Correctional's efforts at quarantining merely amount to a pod-by-pod cordoning of COVID-19 outbreaks.

**58.**

Coffee Correctional has failed to take many other necessary steps to protect the health and safety of the individuals in its custody.

**59.**

It has failed to remedy the conditions of its facility, including the widespread presence of black mold, that could contribute to the severity of COVID-19 cases.

**60.**

It has failed to ensure that incarcerated individuals socially distance whenever possible.

**61.**

It has failed to provide adequate soap and hand sanitizer.

**62.**

It has failed to provide a regular and consistent supply of face masks.

**63.**

Even when it has quarantined offenders in pods, it has failed to ensure that the quarantined pods remain separated during meals and recreation time.

**64.**

GDC has reported that as of January 14, 2021, 235 people incarcerated at Coffee Correctional had confirmed COVID-19 cases.<sup>19</sup> Only one other GDC facility reported more than 100 confirmed cases among inmates as of the same date.<sup>20</sup>

**65.**

But, because of GDC and Coffee Correctional's minimal testing policy, there is no way of knowing how many people incarcerated in Coffee Correctional Facility have actually contracted COVID-19.

**66.**

The Class Plaintiffs and at least one member of the Georgia NAACP have filed grievances about GDC's and Coffee Correctional's failure to maintain safe conditions and thus their failure to protect inmates.

**67.**

Coffee Correctional, by way of Warden Upton, denied the grievances.

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<sup>19</sup> *COVID Dashboard*, State of Georgia, Department of Corrections, [http://www.dcor.state.ga.us/content/CVD\\_Dashboard](http://www.dcor.state.ga.us/content/CVD_Dashboard) (last visited Jan. 19, 2021).

<sup>20</sup> *Id.*

**68.**

The Class Plaintiffs and at least one member of the Georgia NAACP have fully exhausted the appeals process for the denied grievances.

**CLASS ACTION ALLEGATIONS**

**69.**

Class Plaintiffs bring this action under Federal Rule of Civil Procedure 23 on behalf of themselves and a class of similarly situated incarcerated people.

**70.**

Class Plaintiffs make the following class action allegations concerning the class:

**71.**

Class Plaintiffs seek to certify a class defined as follows: “All persons who are now or will in the future be incarcerated at Coffee Correctional Facility.” Class Plaintiffs will represent the class.

**72.**

Plaintiffs satisfy the requirements of Rule 23(a) for the following reasons:

- (a) The class is so numerous that joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of the 2,628 members currently incarcerated at Coffee Correctional Facility.

(b) Questions of law and fact are common to the class. Common questions of fact include whether the class members' living conditions increase their risk of COVID-19 infections. Common questions of law include whether Defendants' failures to protect Coffee Correctional's residents produced a substantial risk of serious harm and whether Defendants' response to the risk of harm is constitutionally adequate.

(c) Class Plaintiffs' claims are typical of the class because they are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.

(d) Plaintiffs and their counsel will adequately protect the interests of the class. Class Plaintiffs possess no interests adverse to those of other class members. Plaintiffs are represented by counsel from Bondurant, Mixson & Elmore LLP, which has substantial experience litigation class actions and litigating constitutional claims. Plaintiffs' counsel has devoted substantial time and resources to investigating this case, including multiple telephone interviews with Coffee Correctional residents and substantial document collection and review.

**73.**

Class Plaintiffs satisfy the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would dispose of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

**74.**

Class Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. Defendants have engaged in a common course of conduct applicable to all class members, and Class Plaintiffs seek an order directing Defendants to change their conduct as it relates to all class members.

**COUNT ONE**

**Declaratory and Injunctive Relief for Deliberate Indifference to the Risk of Harm Posed By COVID-19 (42 U.S.C. § 1983)**

**75.**

Plaintiffs hereby incorporate by reference the allegations of paragraphs 1 through 74 above as if set forth fully herein.

**76.**

The Eighth Amendment’s prohibition on cruel and unusual punishment proscribes correctional officials’ “[d]eliberate indifference to a prisoner’s serious medical needs.” *Goebert v. Lee Cty.*, 510 F.3d 1312, 1326 (11th Cir. 2007).

**77.**

A correctional official or jailer violates the Eighth and Fourteenth Amendments when the “jailer ‘is deliberately indifferent to a substantial risk of serious harm to an inmate who suffers injury.’” *Swain v. Junior*, 961 F.3d 1276, 1285 (11th Cir. 2020) (quoting *Lane v. Philbin*, 835 F.3d 1302, 1307 (11<sup>th</sup> Cir. 2016)).

**78.**

Class Plaintiffs and Georgia NAACP members incarcerated in the custody of the Georgia Department of Corrections, including Coffee Correctional Facility , objectively face a substantial risk of serious harm to their health and safety from



contracting COVID-19 and suffering complications therefrom, including death, permanent physical injury, and severe illness.

**79.**

Defendants have subjective knowledge of the substantial risk of serious harm that COVID-19 poses.

**80.**

Defendants have disregarded the substantial risk that COVID-19 poses by conduct that is “more than mere negligence,” and amounts to “subjective recklessness as used in the criminal law.” *See Swain*, 961 F.3d at 1285-86. Thus, Defendants have failed to respond reasonably to the substantial risk facing the incarcerated individuals in their custody.

**81.**

Defendants are subjecting Class Plaintiffs and Georgia NAACP members to conditions of confinement that increase their risk of contracting COVID-19. Defendants have failed to provide adequate protections or mitigation measures. Defendants’ failure to adequately safeguard health and safety in the midst of the COVID-19 pandemic amounts to deliberate indifference.

**82.**

As a result of Defendants’ unconstitutional actions, Class Plaintiffs and

Georgia NAACP members are suffering irreparable injury.

**83.**

Therefore, Defendants, as supervisors, direct participants, and policymakers for the Georgia Department of Corrections and Coffee Correctional Facility, have violated the rights of Class Plaintiffs and Georgia NAACP members under the Eighth and Fourteenth Amendments to the United States Constitution.

**COUNT TWO**

**Declaratory and Injunctive Relief for Deliberate Indifference to the Risk of Harm Posed By Black Mold (42 U.S.C. § 1983)**

**84.**

Plaintiff hereby incorporates by reference the allegations of paragraphs 1 through 83 above as if set forth fully herein.

**85.**

A jailer violates the Eighth and Fourteenth Amendments when the “jailer ‘is deliberately indifferent to a substantial risk of serious harm to an inmate who suffers injury.’” *Swain*, 961 F.3d at 1285 (quoting *Lane*, 835 F.3d at 1307).

**86.**

Class Plaintiffs and Georgia NAACP members incarcerated in the custody of the Georgia Department of Corrections, including Coffee Correctional Facility , objectively face a substantial risk of serious harm to their health and safety from

exposure to black mold, including headaches, trouble breathing, irritated eyes, sinus problems, blurred vision, and fatigue. The presence of black mold makes incarcerated individuals in Coffee Correctional Facility more susceptible to respiratory illnesses, like COVID-19.

**87.**

Defendants have subjective knowledge of the substantial risk of serious harm that black mold poses.

**88.**

Defendants have disregarded the substantial risk that black mold poses by conduct that is “more than mere negligence,” and amounts to “subjective recklessness as used in the criminal law.” *See Swain*, 961 F.3d at 1285-86. Thus, Defendants have failed to respond reasonably to the substantial risk facing the incarcerated individuals in their custody.

**89.**

Defendants’ failure to adequately safeguard health and safety amidst black mold, prevalent throughout Coffee Correctional Facility, amounts to deliberate indifference.

**90.**

As a result of Defendants’ unconstitutional actions, Class Plaintiffs and

Georgia NAACP members are suffering irreparable injury.

**91.**

Therefore, Defendants, as supervisors, direct participants, and policymakers for Coffee Correctional Facility, have violated the rights of Class Plaintiffs and Georgia NAACP members under the Eighth and Fourteenth Amendments to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court:

- (1) Certify this case as a class action under Rule 23 of the Federal Rules of Civil Procedure and appoint the undersigned as class counsel;
- (2) Enter a declaratory judgment that Defendants violated the rights of the people incarcerated at Coffee Correctional Facility by failing to adequately safeguard their health and safety amidst a global pandemic;
- (3) Enter a temporary restraining order, preliminary injunction, and permanent injunction requiring Defendants, at Coffee Correctional Facility, for the pendency of the COVID-19 pandemic, to:
  - a. Implement the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;

- b. Administer COVID-19 tests to all incarcerated people and staff who report or display symptoms of the virus and all incarcerated individuals who have close contact with other people in the facility with confirmed COVID-19 tests;
- c. Maintain adequate spacing of six feet or more between residents of the facility so that social distancing can be accomplished;
- d. Provide each incarcerated person, free of charge: (1) continuous supply of liquid hand soap and paper towels sufficient to allow frequent hand washing and drying each day; (2) continuous supply of disinfectant hand wipes or disinfectant products effective against COVID-19; (3) continuous supply of hand sanitizer containing at least 60% alcohol; and (4) continuous supply of masks and other personal protective equipment sufficient to meaningfully reduce the risk of COVID-19 transmission;
- e. Require that all staff wear personal protective equipment, including CDC-recommended surgical masks, when interacting with any incarcerated person or when touching surfaces in cells or common areas;

- f. Require that all staff wash their hands, apply hand sanitizer containing at least 60% alcohol, or change their gloves both before and after interacting with any person or touching surfaces in cells or common areas;
  - g. Ensure that individuals with likely or confirmed COVID-19 cases receive adequate medical care and are properly quarantined in a non-punitive setting;
- (4) Enter a temporary restraining order, preliminary injunction, and permanent injunction requiring Defendants, at Coffee Correctional Facility to:
- a. Hire an independent expert to examine the mold and mildew present in the facility and develop a remediation plan;
  - b. Remediate all mold that poses a risk to the health of incarcerated individuals within ninety (90) days of the Court's Order;
  - c. Repair all conditions in the physical plant that lead to mold growth;
  - d. Provide each incarcerated person, free of charge:
    - i. A medical assessment to determine whether the person's health has been adversely affected by the presence of mold;
    - ii. Medical treatment sufficient to treat injuries caused by exposure to mold according to reasonable medical standards;

- (5) Enter an order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- (6) Order such other and further relief as this Court deems just, proper, and equitable.

Respectfully submitted, this 21st day of January, 2021.

/s/ Michael B. Jones  
Michael B. Jones  
Georgia Bar No. 721264  
Emmet J. Bondurant  
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*Attorneys for Plaintiffs*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Georgia NAACP Alleges Coffee Correctional Facility Residents' Health Endangered by Lackluster COVID-19 Response, Mold, Mildew](#)

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