

DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ, JR.;
JAMES BROWN;
RAYMOND CASTRO;
JOHN DOELS, and all others
similarly situated,
(Plaintiffs)

v.

PENNSYLVANIA STATE DEPARTMENT
OF CORRECTIONS;
JOHN E. WETZEL, Secretary
of State Department of
Corrections;
PAUL NOEL, Chief Medical
Director of Pennsylvania
State Department of
Corrections Bureau of Health
Care Services;
RICH WENHOLD, Infection Control
Coordinator of Pennsylvania State
Department of Corrections Bureau
Care Services;
JOSEPH SILVA, Director of
Pennsylvania State Department of
Corrections Bureau of Health
Care Services;
CORRECT CARE SOLUTIONS;
DR. JAY COWAN, Medical Director
of Correct Care Solutions;
SUSAN BERGEY, SCI Pine Grove
Corrections Health Care Administrator;
ROBERTA PAVLICK, SCI Pine Grove
Corrections Health Care Assistant;
DAWN LEGARS, SCI Pine Grove
Corrections Registered Nurse;
BRITTANY COWFER, SCI Pine Grove
Corrections Physician Assistant, and
WEXFORD HEALTH SOURCES INC.,
(Defendants)

Civil Action No. #:
18-200 True

Honorable Judge:
Kelly

FILED

JUL 16 2018

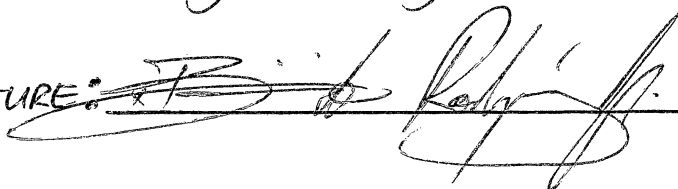
CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

REQUEST TO PROCEED IN FORMA PAUPERIS

Please take notice, that upon Declaration In
Support Of Request To Proceed In Forma pauperis of

Plaintiff Buenvenido Rodríguez, Jr., sworn to on the 12th day of July, 2018. This Court may issue a Prisoner Authorization Order permit Plaintiff Rodríguez to pursue this action as a poor/ indigent/ insolvent person, upon the grounds that said plaintiff has insufficient income and property to enable him to pay the costs, fees, and expenses to pursue said action, and for such other and further relief as this Court may deem just and proper.

Signed this 12th day of July 2018.

SIGNATURE:  _____

DATE: 7/12/2018

FROM: Bienvenido Rodriguez, Jr., I.D.# LQ-7479
TO: District Clerk of Court

Plaintiff Rodriguez is indigent and insolvent at this time and he is respectfully requesting that this Honorable Court produce extra copies to serve remaining Defendants.

Plaintiff Rodriguez is exhausted his \$10.00 limit under the Pa. DOC Legal Indigent Policy and will not be entitled to Legal Indigent services until August 2018. This \$10.00 Monthly Legal Indigent ~~Policy~~ Policy is only for Photo Copy services and U.S. Postage Legal services.

Plaintiff Rodriguez also requests for a certified filed copy of the within documents enclosed.

Thank you 

DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ, JR.;
 JAMES BROWN;
 RAYMOND CASTRO;
 JOHN DOES(S), and all others
 similarly situated,
 (Plaintiffs)
 V.

• Civil Action No.# :
 ° _____
 °

• Honorable Judge :
 ° _____
 °

PENNSYLVANIA STATE DEPARTMENT
 OF CORRECTIONS;
 JOHN E. WETZEL, Secretary Of
 Pennsylvania State Department Of
 Corrections;
 PAUL NOEL, Chief Medical Director
 Of Pennsylvania State Department
 Of Corrections Bureau Of Health
 Care Services;
 RICH WENHOLD, Infection Control
 Coordinator Of Pennsylvania State
 Department Of Corrections Bureau
 Of Health Care Services;
 JOSEPH SILVA, Director Of
 Pennsylvania State Department Of
 Corrections Bureau Of Health Care
 Services;
 CORRECT CARE SOLUTIONS;
 DR. JAY COWAN, Medical Director
 Of Correct Care Solutions;
 SUSAN BERGEY, SCI Pine Grove
 Corrections Health Care Administrator;
 ROBERTA PAVLICH, SCI Pine Grove
 Corrections Health Care Assistant;
 DAWN LE GARS, SCI Pine Grove
 Corrections Registered Nurse;
 BRITTANY COWFER, SCI Pine Grove
 Corrections Physician Assistant, and
 WEXFORD HEALTH SOURCES INC.,
 (Defendants)

DECLARATION IN SUPPORT OF REQUEST TO
PROCEED IN FORMA PAUPERIS

I, Bienvenido Rodriguez, Jr., I.D.# LQ-7479, am the
 plaintiff in the above entitled case. In support of my
 request to proceed in forma pauperis without being required

to prepay fees or costs or give security thereof, I state that because of my poverty I am unable to pay the costs for said proceeding or to give security therefore, that I believe I am entitled to redress.

I declare that the responses which I have made are true.

1.) If you are presently employed, state the amount of your salary wage per month, and give the job description of your prison employment. N/A

2.) If you are not presently employed, state the date of last employment and amount of the salary per month that you received and how long the employment last. May 15, 2018 was the last employment at SCI Pine Grove and Plaintiff Rodriguez's amount of salary per month was \$67.00 to \$77.00 a month with 50% deduction for court cost and fines and restitution leaving him with \$30.00 to \$35.00 a month after 50% deduction, for a period of 2 1/2 years

3.) Have you ever received, within the past twelve months any money from any of the following sources?

(a) Business, profession, or form of self-employment?
 YES NO If yes, explain: N/A

(b) Rent payments, interest, or dividends?
 YES NO If yes, explain: N/A

(c) Pensions, annuities, or life insurance payments?
 YES NO If yes, explain: N/A

(d) Gifts or inheritances?
 YES NO If yes, explain: I have received \$25.00 from Lilian Vazquez Rodriguez friend as gift, \$25.00 from Wanda Velazquez friend, as gift, and \$20.00 from Milagros Rodriguez sister as gift.

(e) Any form of public assistance?
 YES NO If yes, explain: N/A

(f) Any other sources?
 YES NO If yes, explain: N/A

4.) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property, including ordinary household furnishings and clothing?

YES NO If the answer is yes, state the value owned, and where it is located. N/A

5.) Do you own any cash or do you have money in a checking or savings account, including any funds in a prison account?

YES NO If the answer is yes, state the total value owned, and in what financial institution. N/A

6.) List the person(s) who are dependant upon you for support, starting your relationship to those person(s), and indicated how much you contribute towards their support at the present time. N/A

7.) If you live in a rented apartment or other rented building, state how much you pay each month for rent. Do not include rent contributed by others. N/A

8.) State any special financial circumstances which the court should consider in this application. Plaintiff Rodriguez is being charged 50% for criminal court costs, fines and restitution. He is indigent and insolvent at this time. When SCI Albion determines to provide him with prison employment the prison will deduct the full amount of his payment as insolvent/institutional debt for legal copies and legal postage. Plaintiff Rodriguez needs to survive in prison to purchase hygienic necessities such as Soap, Deodorant, Toothpaste, Shampoo etc. once he will be finally able to have the means, and for this reason he is respectfully requesting that this court consider in not deducting any funds until he is able financially to pay the filing fees.

I, Brevenido Rodriguez, Jr., I.D.# LQ-7479, understand that any false statement or answer to any question in this declaration will subject me to the penalties of perjury, any my case being dismissed.

Signed on this 12th day of July, 2018

SIGNATURE: [Signature]
SOCIAL SECURITY NUMBER: 5986
DATE OF BIRTH: February 10, 1977

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN

DISTRICT OF PENNSYLVANIA

BIENVENIDO RODRIGUEZ, JR.;
JAMES BROWN;
RAYMOND CASTRO;
JOHN DOES), and all others
similarly situated,
(Plaintiffs)

v.

PENNSYLVANIA STATE DEPARTMENT
OF CORRECTIONS;
JOHN E. WETZEL, Secretary of
Pennsylvania State Department of
Corrections;
PAUL NOEL, Chief Medical Director
of Pennsylvania State Department
of Corrections Bureau of Health
Care Services;
RICH WENHOLD, Infection Control
Coordinator of Pennsylvania
State Department of Corrections
Bureau of Health Care Services;
JOSEPH SILVA, Director of
Pennsylvania State Department of
Corrections Bureau of Health
Care Services;
CORRECT CARE SOLUTIONS;
DR. JAY COWEN, Medical Director
of Correct Care Solutions;
SUSAN BERGEY, SCI Pine Grove
Corrections Health Care Administrator;
ROBERTA PAVLICK, SCI Pine Grove
Corrections Health Care Assistant;
DAWN LEGARS, SCI Pine Grove
Corrections Registered Nurse;
BRITTANY COWFER, SCI Pine Grove
Corrections Physician Assistant,
and WEXFORD HEALTH SOURCES, INC.,
(Defendants)

ORDER

AND NOW, this ___ day of _____, 20___,
upon consideration of Plaintiff Bienvenido Rodriguez, Jr.'s
Motion For A Preliminary Injunction and any responses
thereto, the Court hereby finds that:

(1)

1.) Defendant's denial and failure to provide adequate medical care and treatment of DAAB medication to Plaintiff Brevenido Rodriguez, Jr. and members of the Class violates the Eighth Amendment to the United States Constitution and Article I, §13 of the Pennsylvania Constitution;

2.) Plaintiff Rodriguez and members of the Class will be irreparably harmed if this Court does not order that Plaintiff Rodriguez and members of the Class are not provided adequate medical care and treated with DAAB medication of Chronic Hepatitis C infected prisoners;

3.) The harm of denying the Preliminary Injunction Motion will cause Plaintiff Rodriguez and members of the Class outweighs greatly any harm that Defendants will suffer if the motion is granted;

4.) Granting Plaintiff Rodriguez and members of the Classes preliminary injunction that he seeks is in the public's interests health, and

5.) This relief is narrowly tailored, minimally intrusive and not the cause of undue expense or burden to the prison system and corporation.

It is hereby ORDERED that, pending further order of the Court, Defendants are ordered to:

(a) Provide immediate adequate medical care and to treat Plaintiff Rodriguez, members of the Class and all those similarly situated with DAAB medications to fully cure Chronic Hepatitis C infected prisoners,

DATED: _____ SIGNATURE: _____
(HONORABLE JUDGE)

BY THE COURT

(b) and that Plaintiff Rodriguez's body be recorded in any Pa. DOC infirmary or outside private hospital so the community public may witness the pain and suffering that Plaintiff Rodriguez may endure as evidence as a result of his Chronic Hepatitis C infection, while in his death-bed.

BIENVENIDO RODRIGUEZ, JR.;
JAMES BROWN;
RAYMOND CASTRO;
JOHN DOES(S), and all others
similarly situated,
(Plaintiffs)

v.

PENNSYLVANIA STATE DEPARTMENT
OF CORRECTIONS;
JOHN E. WETZEL, Secretary of
Pennsylvania Department of
Corrections;
PAUL NOEL, Chief Medical
Director of Pennsylvania State
Department of Corrections Bureau
of Health Care Services;
RICH WENHOLD, Infection Control
Coordinator of Pennsylvania State
Department of Corrections Bureau
of Health Care Services;
JOSEPH SILVA, Director of
Pennsylvania State Department of
Corrections Bureau of Health
Care Services;
CORRECT CARE SOLUTIONS;
DR. JAY COWAN, Medical Director
of Correct Care Solutions;
SUSAN BERGEY, SCI Pine Grove
Corrections Health Care Administrator;
ROBERTA PAVLICH, SCI Pine Grove
Corrections Health Care Assistant;
DAWN LEGARS, SCI Pine Grove
Corrections Registered Nurse;
BRITTANY COWFER, SCI Pine Grove
Corrections Physician Assistant, and
WEXFORD HEALTH SOURCES INC.,
(Defendants)

Civil Action No.:

1:18cv200

Honorable Judge:

Kelly

RECEIVED

JUL 18 2018

CLERK, U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

CLASS ACTION CIVIL COMPLAINT

INTRODUCTION

1.) The Pennsylvania State Department of Corrections (Pa. DOC), by policy and practice systematically denies necessary medical care and treatment for prisoners diagnosed with ...

Chronic Hepatitis C viral infections, thereby placing them at substantial and unnecessary risk for severe illness and ultimately a painful slow death. Since 2014, with the approval by the Federal Drug Administration (FDA) of "breakthrough" Direct Acting Anti-viral Drugs (DAAD), a full cure is available for persons with Hepatitis C, with no adverse side-effects. Major medical associations, Medicare, the Veterans Administration, and private health insurance companies provide DAAD to all persons with Chronic Hepatitis C. Yet, the Pa. DOC rations these drugs in an arbitrary manner, and refuses to provide DAAD treatment to over 98% of Pennsylvania state prisoners. See *Chimenti v. Pennsylvania State Department of Corrections*, 2:15-cv-03333-JP filed February 3, 2017 and *Mumia Abu Jamal v. Wetzel*, 3:16-cv-2000, 2017 U.S. Dist. LEXIS 368 (M.D. Pa. January 3, 2017). The denial of these drugs is based solely on their costs, and without any medical justification.

2.) Plaintiffs Bienvenido Rodriguez, Jr., James Brown, Raymond Castro, and John Doeks, and or all others similarly situated, are incarcerated in the Pennsylvania State Department of Corrections with serious health complications stemming from their Hepatitis C viral infections. The Defendants have refused to provide necessary medical treatment and care to Plaintiffs and all others similarly situated in the Pa. DOC with Hepatitis C infections that is mandated by prevailing community medical standards and the Constitutions and laws of the United States and Pennsylvania. Plaintiffs bring this action on behalf of themselves and a class of similarly-situated plaintiffs, pursuant to 42 U.S.C. § 1983 and state laws against the Pa. DOC, prison officials, and medical providers for depriving them of their rights guaranteed by the Eighth Amendment of the United States Constitution, Article I, § 13 of the Pennsylvania Constitution, and Pennsylvania Law.

3.)

JURISDICTION AND VENUE

3.) Plaintiffs brings this action pursuant to 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202 and the Eighth Amendment of the United States Constitution, and 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction under 28 U.S.C. 1367 (a) to adjudicate the Pennsylvania state law and constitutional claims.

4.) Venue is appropriate in this district pursuant to 28 U.S.C. § 1391 (b)(2) since substantial events at issue in

this litigation occurred in the Western District of Pennsylvania.

PARTIES

5.) Plaintiff Bienvenido Rodríguez, Jr., is an adult male prisoner incarcerated at the Pennsylvania State Correctional Institution at Albion (SCI Albion), 10745 Route 18, Albion, Pa. 16475-0002. Plaintiff Rodríguez is litigating pro-se in this case on behalf of himself and on behalf of a Group/Class who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for denying medical care and treatment. Plaintiff Rodríguez is a (41) year old Latino/Hispanic prisoner and a legal citizen of the United States of America of Puerto Rican descent. Plaintiff Rodríguez sues for injunctive; declaratory; punitive; compensatory, and a jury trial is also demanded as relief on behalf of himself and on behalf of a class of plaintiffs who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and policies for treating Hepatitis C infections.

6.) Plaintiff James Brown, is an adult male prisoner incarcerated at the Pennsylvania State Correctional Institution at Albion (SCI Albion), 10745 Route 18, Albion, Pa. 16475-0002. Plaintiff Brown is litigating pro-se in this case on behalf of himself and on behalf of a Group/Class who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for denying medical care and treatment. Plaintiff is a (62) year old African American prisoner and a legal citizen of the United States of America of African descent. Plaintiff Brown sues for injunctive; declaratory; punitive; compensatory, and a jury trial is also demanded as relief on behalf of himself and on behalf of a class of plaintiffs who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for treating Hepatitis C infections.

7.) Plaintiff Raymond Castro, is an adult male prisoner incarcerated at the Pennsylvania State Correctional Institution at Pine Grove (SCI Pine Grove), 189 Fyock Road, Indiana, Pa. 15701. Plaintiff Castro is litigating pro-se in this case on behalf

of himself and on behalf of a Group Class who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for denying medical care and treatment. Plaintiff Castro is a (41) year old Latino/Hispanic prisoner and a legal citizen of the United States of America of Puerto Rican descent. Plaintiff Castro sues for injunctive; declaratory; punitive; compensatory, and a jury trial is demanded as relief on behalf of himself and on behalf of a class of plaintiffs who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for treating Hepatitis C infection.

8.) Plaintiff John Doecs, is an adult male prisoner under the custody of the Pennsylvania State Department Of Corrections. Plaintiff Doecs is litigating pro-se in this case on behalf of himself and on behalf of a Group/Class who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for denying medical care and treatment. Plaintiff Doecs sues for injunctive; declaratory; punitive; compensatory, and a jury trial is demanded as relief on behalf of himself and on behalf of a class of plaintiffs who are currently or will in the future be subject to Defendants discriminatory and unconstitutional Hepatitis C Protocols and Policies for treating Hepatitis C infections.

9.) Defendant Pennsylvania State Department Of Corrections (Pa. DOC) is an agency of the Commonwealth Of Pennsylvania that operates SCI Pine Grove, and SCI Albion among other state Correctional Institutions. The Pa. DOC is responsible for providing adequate medical health services to and creating policies that ensure appropriate medical care and treatment to Plaintiffs and those similarly situated.

10.) Defendant John E. Wetzel is the Secretary of Pennsylvania State Department Of Corrections (Pa. DOC). Defendant Wetzel is responsible for all the oversight, operation, and administration of the Commonwealth's correctional system, including providing appropriate medical care and treatment, and the formulation of policies that ensure the provision of the medical

care and treatment to Plaintiffs and those similarly situated. Defendant Wetzel is sued in his individual and official capacities. At all relevant times, Defendant Wetzel has acted and will continue to act under color of state law.

11.) Defendant Paul Noel is the Chief Medical Director of the Pennsylvania State Department of Corrections Bureau of Health Services of the Pa.DOC, and has the responsibility in overseeing the delivery of medical services in the Pa.DOC, and in particular in providing medical care and treatment for prisoners with Hepatitis C. Defendant Noel serves on the Pa.DOC Hepatitis C Treatment Committee that makes the final medical determination for prisoners with Hepatitis C. Defendant Noel is sued in his individual and official capacities. He has acted and will continue to act under color of state law.

12.) Defendant Rich Wenhold is the Infection Control Coordinator of the Pennsylvania State Department of Corrections Bureau of Health Care Services of the Pa.DOC, and has the responsibility in overseeing and organizing the Hepatitis C Treatment Committee to focus on arrangements of prisoners to be medically treated for their Hepatitis C virus. Defendant Wenhold serves on the Pa.DOC Hepatitis C Treatment Committee. Defendant Wenhold is sued in his individual and official capacities. He has acted and will continue to act under color of state law.

13.) Defendant Joseph Silva is the Director of the Pennsylvania State Department of Corrections Bureau of Health Care Services of the Pa.DOC, and has the duty and obligation to direct the Hepatitis C Treatment Committee to execute official treatment of prisoners with Hepatitis C virus. Defendant Silva serves on the Pa.DOC Hepatitis C Treatment Committee. Defendant Silva is sued in his individual and official capacities. Defendant Silva has acted and will continue to act under color of state law.

14.) Defendant Correct Care Solutions ("CCS") is the current health care provider for all Pa.DOC facilities. The principal office for CCS is located in Nashville, Tennessee, with a local office located in Pennsylvania. Defendant Correct Care Solutions began providing health care services to the Pa.DOC on September 1, 2014. At all relevant times, Defendant Correct Care Solutions has acted and will continue to act

under color of state law.

15.) Defendant Dr. Jay Cowan is the statewide Medical Director for Defendant Correct Care Solutions, the medical provider/vendor for medical services within the Pa. DOC. Defendant Cowan serves on the Pa. DOC Hepatitis C Committee and is responsible for the language designed within the Hepatitis C Protocols of the 2016 13.2.1, Access to Health Care Procedures Manual Section 20 - Hepatitis C Protocol and the 2018 Revised 13.2.1, Access to Health Care Procedures Manual Section 20 - Hepatitis C Protocol of May 16, 2018. Defendant Cowan has acted and will continue to act under color of state law. Defendant Cowan is sued in his individual and official capacities, and acted under color of state law.

16.) Defendant Mrs. Susan Bergey is the SCI Pine Grove Correctional Health Care Administrator. Defendant Bergey at all relevant times has acted and will continue to act under color of state law. Defendant Bergey is sued in her individual and official capacities.

17.) Defendant Ms. Roberta Pavlich is the SCI Pine Grove Correctional Health Care Assistant. Defendant Pavlich at all relevant times has acted and will continue to act under color of state law. Defendant Pavlich is sued in her individual and official capacities.

18.) Defendant Dawn LeGars is the SCI Pine Grove Corrections Registered Nurse. Defendant LeGars at all relevant times has acted and will continue to act under color of state law. Defendant Pavlich is sued in her individual and official capacities.

19.) Defendant Ms. Brittany Cowfer is the SCI Pine Grove Physician Assistant. Defendant Cowfer at all relevant times has acted and will continue to act under color of state law. Defendant Cowfer is sued in her individual and official capacities.

20.) Defendant Wexford Health Sources Inc. was the previous health care provider for all Pa. DOC facilities. The principal office for Wexford Health Sources Inc. is located in Pittsburgh, Pennsylvania. Defendant Wexford Health Sources Inc. has acted and will continue to act under color of state law.

STATEMENT OF FACTSThe Hepatitis C Epidemic

21.) Hepatitis C is a viral infection, primarily spread through contact with infected blood that attacks the liver and causes hepatitis, or liver inflammation, which can significantly impair the liver's ability to assist the body in digesting essential nutrients, filter toxins from the blood, and prevent disease.

22.) Hepatitis C infections are of multiple genotypes and can be of an acute or chronic nature. An acute infection, a short-term illness occurs within the first six (6) months of exposure to the virus and, for most persons, exposed to the virus, leads to chronic Hepatitis C infection.

23.) Chronic Hepatitis C infections are serious, long-term illnesses that can last throughout a person's life. Hepatitis C is the leading cause of Cirrhosis (irreversible scarring of liver tissue) and liver cancer and is the most common cause of live transplant. Chronic Hepatitis C infection can cause serious chronic liver disease, liver fibrosis (scarring of liver tissue), and a slow painful death, as well as extrahepatic conditions such as diabetes, heart disease, fatigue, depression, muscle and nerve damage, nausea, and problems with concentration and memory. For persons with chronic Hepatitis C, each day without treatment increases the likelihood of these conditions.

24.) Hepatitis C is the leading infectious disease killer in the United States, killing nearly 20,000 persons annually of the more than five million persons with Hepatitis C (a slow painful death rate greater than the next sixty infectious disease combined).

25.) Liver transplants are painful as well, which carry a risk of significant complications, are nearly impossible for prisoners to obtain, and result in lower recovery rates than treatment with DAAD and way more expensive.

26.) By not providing necessary medical care, Defendants cause immediate and substantial risks to Plaintiffs and those similarly situated with a slow painful death and other irreparable harm stemming from their Chronic Hepatitis C infections.

27.) One of the ways liver inflammation is measured is on the Metavir scale. On that scale F0 means no fibrosis and F4 means cirrhosis.

28.) Chronic Hepatitis C patients with any liver scarring, i.e. greater than F0 are at a greater risk of rapid disease progression.

29.) At least 20% of Chronic Hepatitis C patients will develop cirrhosis, and between 2% and 7% of them per year will develop liver cancer.

30.) About 19% of those who develop cirrhosis will go on to develop liver cancer.

31.) Approximately 20% of all those with Chronic Hepatitis C will die from complications of the disease.

32.) Chronic Hepatitis C often causes complications outside of the liver as well.

33.) Between 20% - 40% of Chronic Hepatitis C patients have cutaneous (skin) manifestations of the disease. Among them are the relatively rare conditions of lichen planus and necrolytic acral erythema (NAE), and more common ones such as psoriasis, eczema and pruritus (persistent itching).

34.) In or about 2013, new anti-viral drugs became available. These drugs have a 90% - 95% cure rate. These drugs, two of which are called Harvoni and Sovaldi, have become the standard of care in the medical community.

35.) Because of the numerous benefit of early treatment, the American Association for the Study of Liver Diseases (AASLD), recommends strongly that everyone with Chronic Hepatitis C be treated with these anti-viral drugs irrespective of disease stage on the Metavir stage or scale, or prognosis for progression.

36.) The Center for Disease Control (CDC) has issued its own guidelines that state that the guidelines issued by the AASLD are the standard of care for the treatment of Chronic Hepatitis C. Plaintiffs and members of the proposed class, which number more than over 5,500, have suffered and will continue to suffer grave and irreparable harm unless the Court orders Defendants to provide the safe and effective treatment with DAAD as described below.

Standard Of Care For Hepatitis C Infections

37.) For many years, finding and establishing an effective and safe treatment for Chronic Hepatitis C infections was a highly elusive goal. The standard treatment, which included the use of interferon and ribavirin medications, failed to cure large number of patients including Plaintiff Bienvenido Rodriguez, Jr. and was associated with painful and other adverse side-effects, including psychiatric and autoimmune disorders, flu-like symptoms, and gastrointestinal distress.

38.) Over the past three years, the approval by the FDA of new "breakthrough" DAAD, including Sovaldi, Olysio, and Harvoni, has revolutionized the treatment module for Chronic Hepatitis C infections.

39.) The DAAD treatment modules have very high cure rates as mentioned before (over 90% of patients treated for Sovaldi and over 95% for Harvoni) and only require a short period of treatment of 8-12 weeks.

40.) The standard of care in the community for Hepatitis C infections—the use of the DAAD—is now well-established. These new treatment modules have been strongly recommended for treatment for all persons with Chronic Hepatitis C by the AASLD, Infectious Diseases Society of America ("IDSA"), the CDC, Medicare, many medical systems, the Veterans Administration, and most private medical insurers. No other treatments are recommended or in use for persons with Chronic Hepatitis C.

Pennsylvania State Department Of Corrections Policy For Hepatitis C Infections

41.) From 2013, when the FDA first approved the use of DAAD to the current date, Defendants failed to promulgate and implement treatment policies or provide medical treatment for all prisoners with Chronic Hepatitis C infections consistent with medical and community standards, and specifically the Defendants failed to authorize treatment with the effective DAAD for the vast majority of inmates with Chronic Hepatitis C.

42.) The Pa. DOC has formulated a Hepatitis C medical care and treatment process pursuant to the 13.2.1, Access To Health Care Procedures Manual Section 20-Hepatitis C Protocol, issued in November 2016. The

Protocol establishes final policy and practices for Hepatitis C treatment for prisoners, and creates a rationing system for treatment of prisoners with DAAD.

43.) On May 16, 2018 the Pa.DOC has formulated a revised Hepatitis C medical care and treatment process pursuant to the 13.2.1, Access To Health Care Procedures Manual Section 20- Hepatitis C Protocol which echoes the same policies of the November 2016 Hepatitis C Protocol using word play.

44.) This revised formulated and implemented Hepatitis C Protocol still arbitrarily denies necessary appropriate, and constitutionally mandated DAAD treatment to over 98% of prisoners with Chronic Hepatitis C, in direct conflict with community health standards. Plaintiffs and members of plaintiff class are thus still denied drugs that would effectuate a full cure of their disease. See Exhibit A 13.2.1, Access To Health Care Procedures Manual Section 20- Hepatitis C Protocol Revised May 16, 2018.

45.) Chronic Hepatitis C is diagnosed on a fibrosis level scale of F-0 to F-4, with levels F-0 and F-1 including persons with early stage Chronic Hepatitis C, of whom over 70%, if not treated with DAAD, will progress to serious fibrosis and, of that group, 30% will develop cirrhosis of the liver. All persons with Chronic Hepatitis C risk liver cancer, liver failure, diabetes, heart failure, kidney disease, and serious physical pain psychiatric episodes and suffering.

46.) As a consequence, Plaintiffs and all class members with Hepatitis C infections have a substantially increased risk of continued Hepatitis C infection, liver disease, liver cancer, cirrhosis, extra-hepatic diseases, esophageal varices, and death. Defendants' rationing of the DAAD forces Plaintiffs and the plaintiff class to endure chronic inflammatory disease, pain, fatigue, increased risk of cancer, liver failure, heart attacks, and a slow painful death, before any DAAD treatment is provided.

47.) There is no medical justification for a treatment module for Hepatitis C infection that does not provide DAAD to all prisoners with Chronic Hepatitis C, except for those with very short life expectancy or release dates less than three months from the start of DAAD treatment. To the extent that DAAD treatment is not provided because of financial considerations, the

practice is still unconstitutional and otherwise in violation of the United States Constitution, the Pennsylvania Constitution, and Pennsylvania state law as they deny necessary and appropriate medical care to Plaintiff and members of the class.

48.) On August 31, 2016, the Honorable Judge, Robert Mariani of the Federal Court for the Middle District of Pennsylvania held that the Pa. DOC's Hepatitis C Protocols constituted deliberate indifference to the serious medical needs of incarcerated patients with Hepatitis C because it "fails to provide treatment for Hepatitis C through the administration of DAAD medications such as Harvoni, Sovaldi, and Viekira Pak until an inmate... has progressed to the stage of advanced compensated cirrhosis or early decompensated cirrhosis manifested by esophageal varices. As such, the interim Hepatitis C Treatment Protocol presents a conscious disregard of a known risk of advanced cirrhosis and death by esophageal hemorrhage." *Mumia Abu-Jamal v. Wetzel*, 2016 WL 4574646, *9 (M.D. Pa. 2016).

49.) After Judge Mariani's decision of August 31, 2016, in which he found the Pa. DOC's Hepatitis C Protocol unconstitutional under the Eighth Amendment but denied relief on procedural grounds, the Pa. DOC revised its Hepatitis C Protocol on May 16, 2018.

50.) The current Hepatitis C Protocol has been adopted as the Pa. DOC's 13.2.1, Access To Health Care Procedures Manual, and is attached hereto as Exhibit A.

51.) The policy still denies treatment until a patient has developed cirrhosis.

52.) Plaintiff Bienvenido Rodriguez, Jr. has been suffering from lack of energy, constant tiredness, constant bloating of the bowels and constipation. Plaintiff Rodriguez has also been suffering ongoing and longstanding pains on the right side of his rib cage, as if his liver is pushing and rubbing against his rib cage. Plaintiff Rodriguez has been experiencing vomiting every three to four days after each meal, constant irritation of the throat, and visible change of dark pigmentation, type of skin rash and itching on the right side of his ribs.

53.) On January 3, 2017, Judge Mariani found that the revised Hepatitis C Protocol of November 2016 violated the Eighth Amendment and he granted Plaintiff Mumia Abu-Jamal's injunction for treatment with the DAAD medications. *Mumia Abu-Jamal v. Wetzel*, 2017, WL 34700 (M.D. Pa. 2017).

Plaintiff Bienvenido Rodríguez, Jr.'s Grievance
Exhaustion Of Administrative Remedies

54.) On June 26, 2015, Plaintiff Bienvenido Rodríguez, Jr. filed an Inmate's Request To Staff Member addressed to Mrs. Susan M. Bergey, Corrections Health Care Administrator complaining about Hepatitis C related symptoms as described on paragraph 52 of this Civil Complaint. Plaintiff Rodríguez questioned Defendant Bergey as to how is it that the Pa. DOC's Bureau of Health Care Services receive Federal Funding to treat prisoners like Plaintiff Rodríguez who is infected with Hepatitis C, but he can't receive treatment because he was told that the Hepatitis C treatment is too expensive. Plaintiff asked for contact information to receive treatment.

55.) Defendant Roberta Pavlich, Corrections Health Care Assistant responds back to Plaintiff Rodríguez's request on June 29, 2015, stating: "Currently no one is receiving Hep. C treatment in the state. The program is on hold." See Exhibit B Inmate's Request To Staff Member.

56.) On March 18, 2016, Plaintiff Rodríguez filed an Inmate's Request To Staff Member addressed to Defendant Dawn LeGars, SCI Pine Grove Corrections Registered Nurse. Plaintiff Rodríguez requested to know what was his Hepatitis C Genotype level and he also requested for the Harvoni treatment.

57.) Defendant LeGars responds back to Plaintiff Rodríguez's request on March 21, 2016, stating: "Your viral load is undetectable which means the Lab is unable to determine a genotype. It also means that your immune system is working to clear the virus from your body. You currently do not meet criteria to be treated with medications. Your liver enzymes are normal." See Exhibit C Inmate's Request To Staff Member.

58.) Plaintiff Rodriguez is (41) years of age and has had Hepatitis C virus for (22) of his life. By Defendant LeGars stating that Plaintiff Rodriguez's immune system is working to [clear] the virus from his system/ or body, only means that Plaintiff Rodriguez still has chronic Hepatitis C.

59.) Plaintiff Rodriguez was on the medical call-out to see Defendant LeGars on July 27, 2017. Plaintiff Rodriguez complained to Defendant LeGars all of his Hepatitis complications as described on paragraph 52 of this Civil Complaint personally and also requested for Hepatitis C treatment. Defendant LeGars repeated that that no one is receiving treatment at the moment and that the program is on hold at the moment in the state, and that his immune system is working to [clear] the virus from his body.

60.) Plaintiff Rodriguez was on the medical call-out to see Defendant Brittany Cowfer, SCI Pine Grove Corrections Physician Assistant. Defendant Cowfer told Plaintiff Rodriguez personally that the treatment of Harvoni was too expensive at the time and that he did not meet the criteria to be treated because his Hepatitis C is undetectable, unless it becomes a serious life threatening emergency. See Exhibit D Inmate Medical Call-Out Pass. August 3, 2017

61.) Plaintiff Rodriguez filed an Inmate's Request To Staff Member on August 23, 2017, addressed to Defendant LeGars requesting for Hepatitis C Harvoni Treatment information and the Hepatitis C Protocols.

62.) Defendant LeGars responds to Plaintiff Rodriguez's request on August 25, 2017, stating: "You have received treatment in the past that has (cured) your chronic Hep. C." see Exhibit E Inmate's Request To Staff Member.

63.) Defendant LeGars is referring to the Interferon and Ribavirin treatment that Plaintiff Rodriguez underwent in 2009 while incarcerated at SCI Smithfield which was a failure, but at Exhibit C Defendant LeGars states that Plaintiff Rodriguez's immune system is working to (clear) the virus from his body. Somehow, now she claims that Plaintiff Rodriguez has been mysteriously (cured).

64.) It appears that Defendants are tampering and preparing fake evidence in Plaintiff Rodriguez's medical records as has been a practice in the case of Mumia Abu-Jamal in which attorney Neal for Defendants in Mumia Abu-Jamal's case had knowingly tampered with evidence by including an erroneous statement that Mumia Abu-Jamal's low Chronic Hepatitis C viral load level meant he would not sicken for many years, along with other Pa. DOC's faked evidence that shaked Mumia Abu-Jamal's hearing. In Plaintiff Rodriguez's case, it appears that Defendants are repeating the same.

65.) On August 4, 2017, Plaintiff Rodriguez filed an Official Inmate Grievance against Defendant Bergey, Defendant Le Gars, and Defendant Cowfer. See Exhibit E Official Inmate Grievance.

66.) On August 17, 2017, Plaintiff Rodriguez received an Initial Review Response from Defendant Bergey dated August 15, 2017, stating in part: "The Infection Control Nurse did not tell you that no one is receiving treatment in the State. What you were informed of was that your levels were undetectable. For this reason you do not qualify for treatment." See Exhibit G Initial Review Response. Grievance Denied.

67.) In Exhibit B Defendant clearly states on the request "that no one is receiving Hep. C treatment in the state," by Defendant Pavlich. See Exhibit B Inmate's Request To Staff Member.

68.) On August 23, 2017, Plaintiff Rodriguez filed an Inmate Appeal To Facility Manager, Mr. Eric P. Bush, echoing the same concerns. See Exhibit H Inmate Appeal To Facility Manager.

69.) On August 31, 2017, Plaintiff Rodriguez received a Facility Manager's Appeal Response signed and dated by Facility Manager, Eric P. Bush on August 25, 2017, stating in part: "You are receiving appropriate treatment at this time and as stated in your initial response, you will continue to be monitored and if (changes) occur, (treatment) will be adjusted. Your request relief is unwarranted as you are currently receiving the proper (care). See Exhibit I Facility Manager's Appeal Response. Inmate Appeal To Facility Manager Denied.

70.) On September 5, 2017, Plaintiff Rodriguez filed an Inmate Appeal To Final Review arguing that Facility Manager, Eric P. Bush uses in his Facility Manager's Appeal Response the statement: "You are receiving appropriate (treatment)". In medical terms the definition of the word (treatment) according to a medical dictionary it means, (something that deals with a disease, injury, etc., in order to make someone feel better or become healthy again). Facility Manager, Bush also states: "You are currently receiving the proper (care)". In medical terms the definition of the word (care) according to a medical dictionary it means, (things that are done to keep someone healthy, safe, etc.). Plaintiff Rodriguez argued that he has not received the treatment or care by definition as any other patient would receive for Cancer, HIV-AIDS, and other deadly diseases. See Exhibit V Inmate Appeal To Final Review.

71.) Plaintiff Rodriguez received a Final Appeal Decision signed and dated by Ms. Keri Moore for Ms. Dorina L. Varner, Chief Grievance Officer on December 7, 2017, stating in part: "They reviewed the medical records and determined that the medical care provided was reasonable and appropriate. The DOC has updated its (protocol) for treating Hepatitis C. You're not currently a candidate for treatment, as you do not have any detectable virus on testing." See Exhibit K Final Appeal Decision. Inmate Appeal To Final Review Denied.

72.) Defendants are knowingly playing with Plaintiff Rodriguez and members of the classes life and putting them at risk of dying from complications of Hepatitis C. The anti-viral medications are necessary to save Plaintiff Rodriguez and members of the classes life as well as those similarly situated.

73.) In fact, according to official Pa. DOC death records obtained via a Right-to-know request multiple prisoners have died in Pa. DOC custody in 2015 and 2016 from complications of Hepatitis C.

74.) These deaths occurred at a time when the Pa. DOC was providing no treatment for Hepatitis C to anybody, or else denying it to such an extent that people were left to die from a curable illness.

75.) Plaintiff Rodriguez and members of the

class, as well as those similarly situated have no remedy at law.

76.) If Plaintiff Rodríguez and members of the class as well as those similarly situated does not obtain an immediate injunction ordering treatment with the direct acting anti-viral drugs they are increasing each day risk of disease progression.

CLASS ACTION ALLEGATIONS

77.) Plaintiff Rodríguez bring this suit as a Class Action on behalf of himself and all others similarly situated (the "Class") pursuant to Rule 23(a) and 23(b)(2).

78.) Plaintiff Rodríguez seek to represent the following class on claims for declaratory and injunctive relief.

All persons who are currently incarcerated in a Pennsylvania State Department of Corrections facility with a diagnosed condition of Chronic Hepatitis C, and who have at least twelve (12) weeks or more remaining to serve on their sentences, and who have a life expectancy of over one year.

79.) As a result Defendants' deliberate indifference to the serious medical needs of Plaintiff Rodríguez and members of the Class and those similarly situated are or will be subject to cruel and unusual punishment and deprived of their federal and state constitutional and statutory rights. Plaintiff Rodríguez and members of the Class as well as those similarly situated seek declaratory and injunctive relief to remedy Defendants' illegal and unconstitutional actions, policies and practices.

80.) The requirements of Rules 23(a) and 23(b)(2) are satisfied by this Class Action.

81.) The class includes no fewer than 5,600 inmates in the Pennsylvania State Department of Corrections, who are geographically dispersed throughout the Commonwealth of Pennsylvania. The number of prisoners who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

82.) Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class. These, legal and factual questions include, but are not limited to:

a. Whether the treatment regimens utilizing DAAD are proper, necessary and standard course of treatment in the medical community;

b. Whether denial of treatment regimens utilizing DAAD drugs to the Class will cause injury to the Class members, including unnecessary pain and suffering, chronic illness, and death; and

c. Whether Defendants' Hepatitis C current treatment policy, which still denies necessary DAAD treatment for many prisoners with Chronic Hepatitis C infections violates the Eighth Amendment to the U.S. Constitution and Article I § 13 of the Pennsylvania Constitution.

83.) Plaintiff Rodriguez's claims are typical of the Class because Plaintiff Rodriguez and all Class Members were injured the same way by the same wrongful policy and practices of Defendants as described in this Civil Complaint. Plaintiff Rodriguez's claims arise from the same practices and course of conduct that gave rise to these claims of the Class members, and are based on the same legal theories.

84.) Plaintiffs will fairly and adequately protect the interest of the Class. Plaintiffs have no interests that are contrary to or in conflict with those of the Class they seek to represent. Plaintiffs are represented by incompetent and unskilled Jailhouse Lawyers whose interests are to fully attempt and aligned with the interests of the Class.

85.) Relief concerning Plaintiffs' right under the laws herein alleged and with respect to the Class would be proper. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to Class Members as a whole and certification of the Class under Rule 23(b)(2) proper.

CLAIMSCOUNT IDeprivation of Eighth Amendment Right To Medical Care

86.) Plaintiffs incorporate paragraphs 1 through 85 of this Civil Complaint as if fully set forth herein.

87.) Defendants' acts and omissions in failing to provide adequate medical care constitutes a deliberate indifference to the serious medical needs of prisoners infected with Hepatitis C, thereby establishing a violation of the Eighth Amendment to the United States Constitution.

COUNT IIDeprivation of Right Not To Undergo Cruel and Unusual Punishment Under The Pennsylvania Constitution

88.) Plaintiffs incorporate paragraphs 1 through 85 of this Civil Complaint as if fully set forth herein.

89.) Defendants' acts and omissions in failing to provide adequate medical care constitute deliberate indifference to the serious medical needs of prisoners infected with Hepatitis C thereby establishing a violation of Article I, § 13 of the Pennsylvania Constitution and its prohibition against the infliction of cruel punishments.

COUNT IIINegligence - Medical Malpractice

90.) Plaintiff Bienvenido Rodríguez, Jr., incorporates paragraphs 1 through 85 of this Civil Complaint as if fully set herein.

91.) At all relevant times, the individual Defendants and corporate Defendants had a duty to act in accordance with the standard of care required of medical care professionals and to act as a reasonable corporation would under the same or similar circumstances, they breached that duty in failing to provide the standard of care

necessary for individuals infected with Hepatitis C, and Plaintiff Rodriguez's injuries and ongoing deterioration were the direct, legal and proximate result of Defendants negligence.

COUNT IV

Negligence - Medical Malpractice and Vicarious Liability

92.) Plaintiff Rodriguez incorporates paragraphs 1 through 85 of this Civil Complaint as if fully set herein.

93.) Defendant Correct Care Solutions and Wexford Health Sources Inc. are vicariously liable to Plaintiff Rodriguez for the negligent acts, commissions, or omissions of its employees and/or agents, who at all times relevant hereto acted on behalf of Correct Care Solutions and/or Wexford Health Sources Inc. and within the scope of their employment, under the doctrines of respondeat superior and ostensible agency.

RELIEF

WHEREFORE Plaintiffs Bienvenido Rodriguez, Jr., James Brown, Raymond Castro, John Doecs) and those similarly situated respectfully requests the following relief:

94.) For the named Plaintiffs and members of the plaintiff Class, a Declaratory Judgment that Defendants Pennsylvania State Department of Corrections and Paul Noel, (a) formulate and implement a revised Hepatitis C treatment policy that meet the community standards of care for prisoner patients with Chronic Hepatitis C, (b) that members of the Class be treated with medically necessary and the appropriate direct acting anti-viral drugs (DAAD) based on individual medical testing and medical evaluation regarding each individual's Chronic Hepatitis C status, and (c) that members of the Class receive ongoing monitoring and medical care per the standard of care for their individual level of liver fibrosis and cirrhosis, including but not limited to appropriate access to and evaluation by a hepatologist and assessment regarding their need for partial or full liver transplant, and all under injunctive relief;

95.) Compensatory damages for Bienvenido Rodriguez, Jr., James Brown, Raymond Castro, John Doecs), members of

the plaintiff class, and those similarly situated;

96.) If, as a result of Plaintiff Rodriguez dies while in the custody of the Pennsylvania State Department of Corrections from complications of his Hepatitis C infection, in that event that Plaintiff Rodriguez's body be recorded in any Pa. DOC infirmary or outside private hospital or public hospital so the community public may witness Plaintiff Rodriguez enduring the pain and suffering process in his death-bed as a result of his Chronic Hepatitis C infection;

97.) Punitive damages for Plaintiffs Rodriguez, Brown Castro, John Doels, members of the plaintiff class, and all others similarly situated;

98.) Reasonable pro-se and/or attorney's fees; and

99.) Such other relief the Court deems just and equitable.

Respectfully submitted,

Bienvenido Rodriguez, Jr.
I.D.# LQ-7479
SCI Albion
10745 Route 18
Albion, Pa. 16475

SIGNATURE: _____

James Brown
I.D.# CQ-3403
SCI Albion
10745 Route 18
Albion, Pa. 16475

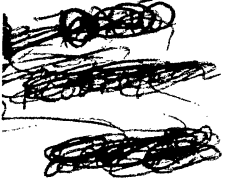
SIGNATURE: _____

Raymond Castro
I.D.# KT-6900
SCI Pine Grove
191 Fyock Road
Indiana, Pa. 15701

SIGNATURE: _____

John Doels)

DATED: July 12, 2018



FROM: JAMES BROWN
ID #: CD-3403
SCI Albion
10745 Route 18
Albion, Pa. 16475

UNITED STATES POSTAL SERVICE®
USPS TRACKING #
9114 9999 4431 3787 5925 50
Label 400 Jan 2013
7690-16-000-7948

PRIORITY MAIL
UNITED STATES POSTAL SERVICE
Visit us at usps.com

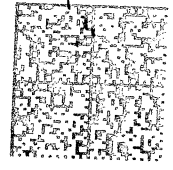
Label 107R, January 2008

To: U.S. District Clerk of Courts,

U.S. P.O. and Courthouse
17 South Park Row
Room ~~A~~-150
Erie, Pa. 16501

Service Copies

Inmate Mail
PA Dept of
Corrections



US POSTAGE PITNEY BOW
ZIP 16401 \$ 007.25
02 4W
0000334556 JUL 13 201

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three PA Prisoners Sue Over Alleged Denial of Hepatitis C Treatment](#)
