

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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RUBEN FOSTER, GEORGE WEST, ANTHONY )  
WILLIAM, TONY MARTIN, LUCAS JAMES, )  
GRADY McGLOTHLIN, RICHARD MALI- )  
COATE, and WILLIE HIGHTOWER, individually )  
and on behalf of all present and future HIV-positive )  
inmates in the Fulton County Jail in Atlanta, )  
Georgia, )

Plaintiffs, )

v. )

FULTON COUNTY, GEORGIA; FULTON )  
COUNTY BOARD OF COMMISSIONERS: )  
MIKE KENN, Chairperson, KAREN WEBSTER, )  
TOM LOWE, BOB FULTON, EMMA I. )  
DARNELL, NANCY BOXILL, members; )  
JACQUELYN BARRETT, Fulton County Sheriff; )  
L.L. BRIGGS, Chief Jailer of Fulton County Jail; )  
GEORGE HERRON, Medical Services Director )  
of Fulton County Sheriff's Department; )  
CORRECTIONAL HEALTHCARE SOLUTIONS, )  
INC.; KEVIN RAMOS, Correctional Healthcare )  
Solutions, Inc., Health Services Administrator; )  
HAROLD MINERVE, Correctional Healthcare )  
Solutions, Inc., Medical Director; ENO IKOKU, )  
Correctional Healthcare Solutions, Inc., physician; )  
STACEY STEED, ROBERT BROWN, W. )  
CLYDE SHEPHERD, ADAM SMITH, C. )  
CHRISTOPHER HAGY, OTIS SMITH, SARAH )  
SLOAN, CHARLES GLENN, MARLA )  
COLEMAN, JOHN MALCOLM, Board of )  
Trustees of the FULTON-DeKALB HOSPITAL )  
AUTHORITY; and EDWARD J. RENFORD, )  
Chief Executive Officer of GRADY HEALTH )  
SYSTEM, in their official capacities, )

Defendants. )

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CIVIL ACTION

No. 99-CV-0900 (MHS)

CLASS ACTION

**FIRST AMENDED COMPLAINT**

## FIRST AMENDED COMPLAINT

### I. INTRODUCTION

1. This action is brought by Fulton County Jail inmates infected with the Human Immunodeficiency Virus (“HIV”) whose lives are threatened by the denial of even the most minimal medical care by the defendants. As a result, plaintiffs suffer excruciating and unnecessary pain, develop resistance to life-saving medication, and are needlessly vulnerable to infection, disease, and premature death.

2. The defendants, Fulton County, Correctional Healthcare Solutions, Inc., the Fulton-DeKalb Hospital Authority, and their officials and employees, act with deliberate indifference to the serious medical needs of HIV-infected inmates in failing to provide these inmates with life-saving HIV medication, adequate and timely treatment for opportunistic infections, access to qualified medical providers, appropriate medical tests and counseling, and palliative care for those who are terminally ill. Through these policies, customs, and practices, defendants deprive HIV-positive inmates of minimally adequate medical treatment. Moreover, because defendants’ mistreatment of inmates leads to the development of drug-resistant strains of HIV, defendants recklessly endanger the lives of not only HIV-infected inmates, but also the general public.

3. Prior to March 1, 1999, the Correctional Healthcare Solutions medical staff at the Fulton County Jail referred HIV-positive inmates to the infectious disease clinic at Grady Hospital. The infectious disease specialists at Grady Hospital provided necessary medical attention and prepared detailed treatment regimens and prescriptions based upon each inmate’s medical condition. The Correctional Healthcare Solutions medical staff at the Jail, however,

continuously failed to carry out the prescribed treatment plans of the Grady specialists, thereby endangering the lives and health of HIV-positive inmates.

4. On March 1, 1999, Grady Hospital ceased providing treatment to HIV-positive inmates confined at the Fulton County Jail. As a result, the medical staff at the Jail, which had already failed miserably to follow the regimens prescribed by the Grady infectious disease clinic, is now solely responsible for examining HIV-positive inmates and planning and carrying out their treatment regimens. The County and CHS staff continue to deprive inmates of minimally adequate treatment. As a result, people charged with even minor offenses, and even those who are innocent, may be condemned to a death sentence as a result of the grossly inadequate medical care at the Jail.

5. Defendants' denial of adequate medical treatment violates plaintiffs' rights under the Eighth and Fourteenth Amendments of the United States Constitution. Plaintiffs seek preliminary and permanent declaratory and injunctive relief on behalf of themselves and all HIV-positive persons who are now or will be in the future incarcerated at the Fulton County Jail.

## II. JURISDICTION

6. This suit is brought under the Eighth and Fourteenth Amendments to the United States Constitution as enforced through 42 U.S.C. § 1983, and under O.C.G.A. § 9-2-20 and various provisions of O.C.G.A. §§ 42-4-4 and 42-5-2. The Court has jurisdiction over plaintiffs' federal constitutional claims pursuant to 28 U.S.C. §§ 1331 and 1343(a) and over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

7. This Court is authorized to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

### III. VENUE

8. The Northern District of Georgia is an appropriate venue for this action because defendants in their official capacities reside in this district. See 28 U.S.C. § 1391(b)(1). The Northern District of Georgia is also an appropriate venue because the events giving rise to plaintiffs' claims have occurred in this district. See 28 U.S.C. § 1391(b)(2).

### IV. PARTIES

9. Plaintiff Ruben Foster is HIV-positive and currently confined at the Fulton County Jail ("the Jail"). In September 1998, when he arrived at the Jail, Foster informed the correctional and medical staff that he was HIV-positive and in compliance with a detailed antiretroviral HIV medication regimen. Despite numerous grievances and medical requests, Foster has not received that regimen, nor consistently received prophylactic medication, nor had access to medical staff capable of monitoring his medical situation, which is complicated by chronic diarrhea, AIDS-related wasting, asthma, and frequent rashes.

10. Plaintiff George West is HIV-positive and currently confined at the Fulton County Jail. West was incarcerated at the Jail from October 1998 until February 1999, and was reincarcerated in March 1999. During his first incarceration, West informed the correctional and medical staff that he was HIV-positive and in compliance with a detailed antiretroviral HIV medication regimen. Despite numerous grievances and medical requests, West did not begin receiving his medication until thirty days after he arrived at the Jail, and even then it was delivered only sporadically. During his current incarceration, West has neither received any of his medication nor had access to medical staff capable of monitoring his medical situation. Dr. Eno

Ikoku, the jail physician responsible for West's medical treatment, told West that he would not receive his HIV medication at the Jail.

11. Plaintiff Anthony William is HIV-positive and currently confined at the Fulton County Jail. In September 1998, when he arrived at the Jail, Williams informed the correctional and medical staff that he was HIV-positive and in compliance with a detailed antiretroviral HIV medication regimen. He never received his original regimen, but instead was prescribed a new regimen by a Jail physician. Despite numerous requests, he did not receive the new regimen until two months after it was prescribed. William currently receives the new regimen on only an inconsistent basis, and on some days, not at all.

12. Plaintiff Tony Martin is HIV-positive and currently confined at the Fulton County Jail. On March 3, 1999, when he arrived at the Jail, Martin spent the night on a dirty floor with approximately seventy other inmates, none of whom had been tested for tuberculosis. The inmates were waiting to be processed through intake. During intake, Martin informed the medical staff that he was in compliance with a detailed antiretroviral HIV medication regimen. He also told the medical staff that he had a low T-cell count and a rash on his body. Several days later, he also informed the chronic care doctor, Dr. Eno Ikoku, that he was complying with an antiretroviral medication regimen. She told him that he would not receive any of these medications while at the Jail. Despite filing numerous medical requests and an administrative grievance, Martin has not received his antiretroviral medication.

13. Plaintiff Lucas James is HIV-positive and currently confined at the Fulton County Jail. In December 1998, when he arrived at the Jail, James informed the correctional and medical staff that he was HIV-positive and had been taking a detailed antiretroviral HIV medication regimen. Despite numerous medical requests, James has not received that regimen nor had

access to medical staff capable of monitoring his medical situation, which is complicated by epilepsy, Hepatitis C, high blood pressure, arthritis, paralysis in his spine, and an active and very painful hernia.

14. Plaintiff Grady McGlothlin is HIV-positive and currently confined at the Fulton County Jail. McGlothlin was scheduled to begin taking antiretroviral HIV medication after Grady Hospital's infectious disease clinic completed its evaluation of him. Despite the medical importance of taking this medication, the scheduled treatment plan was abandoned in March 1999 when the Grady clinic stopped providing HIV care to Fulton County inmates.

15. Plaintiff Richard Malicoate is HIV-positive and currently confined at the Fulton County Jail. Malicoate was admitted to the Jail on February 8, 1999, and informed the medical staff that he was HIV-positive. Nevertheless, medical staff failed to conduct an adequate intake examination and did not provide him with any treatment plan whatsoever. Ten days later when he saw the chronic care physician for the first time, he was again not given a proper examination or any treatment plan.

16. Plaintiff Willie Hightower is HIV-positive and currently confined at the Fulton County Jail. Hightower was admitted to the Jail on December 15, 1998, at which time he informed intake medical staff that he was taking an antiretroviral medication regimen. He has never received this or any other treatment regimen for his HIV infection. For over three weeks, Hightower has experienced constant and excruciating pain due to sores from active HIV-related genital herpes. These open sores constantly ooze pus and blood. Despite numerous requests for medical attention, he has not been seen by a physician since his transfer to the chronic care unit on March 31, 1999.

17. Defendant Fulton County, Georgia (“the County”), is the governmental unit responsible under state law for properly maintaining, operating, and funding the Jail. O.C.G.A. § 42-5-2. As such, the County has a duty to provide medical care to inmates in the care and custody of the Jail.

18. The Fulton County Commission and its members Mike Kenn, Karen Webster, Tom Lowe, Bob Fulton, Emma I. Darnell, and Nancy Boxill, exercise authority under Georgia law over the Jail and are obligated to properly maintain and fund the Jail. O.C.G.A § 42-5-2. The Commission possesses the power to levy taxes, initiate bond issues, and otherwise raise revenues and appropriate funds for the medical treatment of inmates under the control and custody of the Fulton County Sheriff’s Department. Article IX, Georgia Constitution. The Fulton County Commission selected and approved the bid of Correctional Healthcare Solutions, Inc. to provide medical care at the Jail.

19. Defendant Jacquelyn Barrett is the sheriff of Fulton County, Georgia. As sheriff, Barrett is charged by Georgia law with the duty of overseeing the operation of the Jail, which includes protecting the health and safety of inmates. O.C.G.A. § 42-4-4.

20. Defendant L.L. Briggs is the chief jailer of the Jail. As chief jailer, Briggs is the highest ranking official at the Jail. He directly supervises and controls the Jail’s daily operations, including protecting the health and safety of inmates. O.C.G.A. § 42-4-4.

21. Defendant George Herron is the medical services director of the Fulton County Sheriff’s Department. As medical services director, Herron is responsible for supervising the provision of medical services to Jail inmates and maintaining communication between the Jail’s medical providers and the Fulton County Sheriff’s Department.

22. Defendant Correctional Healthcare Solutions, Inc. (“CHS”) is a private company incorporated in Pennsylvania. CHS is under contract with Fulton County to provide all necessary medical care to inmates at the Jail. Pursuant to this “Health Care Services Agreement,” CHS is specifically obligated to “establish a clinic on-site for chronic illnesses and diseases.” The contract requires that “[t]reatment prescribed for HIV+ and AIDS shall be reviewed for adherence to the Centers for Disease Control and Prevention (CDC) standards and court ordered protocol.”

23. Defendant Harold Minerve, M.D., an employee of CHS, is the medical director of the Jail. Defendant Kevin Ramos, H.S.A., is the on-site health services administrator for CHS at the Jail. Both Minerve and Ramos are responsible for creating and implementing the protocol, policies, and procedures for inmate medical care; establishing the chronic care units; and directly supervising and monitoring the medical staff at the Jail. They are responsible for quality management and ensuring that the care provided by CHS staff meets the minimum correctional, medical, and constitutional requirements.

24. Defendant Eno Ikoku, M.D., is employed by CHS as the chronic care physician at the Jail. She is directly responsible for providing on-site routine and emergency care to HIV-positive inmates in the Jail’s chronic care units and referring these inmates to outside providers when necessary. She also supervises the medical staff in these units.

25. Defendant Fulton-DeKalb Hospital Authority (“the Authority”), is a public hospital authority created by resolution of the Boards of Commissioners of Fulton and DeKalb Counties, pursuant to O.C.G.A. §§ 31-7-1 et seq. The Authority’s primary operating facility is Grady Memorial Hospital, which is part of the Grady Health System. Under its contract with Fulton County, the Authority is responsible for the hospitalization and treatment of inmates in the custody of Fulton County.

26. Defendant Fulton-DeKalb Hospital Authority Board of Trustees and its members Stacey Steed, Robert Brown, W. Clyde Shepherd, Adam Smith, C. Christopher Hagy, Otis Smith, Sarah Sloan, Charles Glenn, Marla Coleman, and John Malcolm, are responsible for establishing and implementing the policies of the Authority. O.C.G.A. § 31-7-72.

27. Defendant Edward J. Renford is the chief executive officer of the Grady Health System. He is responsible for the operation of Grady Memorial Hospital, including its infectious disease clinic.

28. Defendants Fulton County, the Fulton County Board of Commissioners, Kenn, Webster, Lowe, Fulton, Darnell, Boxill, Barrett, Briggs, Herron, Ramos, Minerve, Ikoku, the Fulton-DeKalb Hospital Authority, the Authority Board of Trustees, Steed, Brown, Shepherd, Adam Smith, Hagy, Otis Smith, Sloan, Glenn, Coleman, Malcolm, and Renford are the final decisionmakers for the policies and customs challenged in this lawsuit.

29. Defendants are sued in their official capacities. They have all acted under color of law.

## V. CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and all others who are similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The proposed class consists of all HIV-positive persons who are now or will be in the future incarcerated at the Fulton County Jail (“the Jail”).

31. In a typical year, hundreds of HIV-positive inmates are incarcerated at the Jail. At any given time, there are approximately 150 inmates infected with HIV in the Jail. Some inmates stay in the Jail for only a short period of time before going into the prison system or returning to

the community. Due to the large and constantly changing population of HIV-positive inmates, joinder of all present and future HIV-positive inmates incarcerated at the Jail would be highly impracticable.

32. There are questions of law and fact common to the class. These include the nature and constitutionality of the medical treatment provided to HIV-positive inmates at the Jail, and the defendants' responsibility to provide constitutionally adequate care.

33. The conditions, policies, customs, and practices challenged in this action apply with equal force to the named plaintiffs and all members of the class so that the claims of the named plaintiffs are typical of those of the class. As described in further detail in the factual allegations, these unconstitutional policies and customs include defendants' interference with prescribed treatment regimens and inadequate procedures to provide inmates life-saving medication and treatment; failure to provide inmates access to qualified physicians and appropriate specialist services; and failure to respond adequately to sick call and medical requests.

34. The named plaintiffs will fairly and adequately represent the interests of the class. Because they are HIV-positive and in desperate need of the constitutional protections asserted in this lawsuit, they possess the requisite personal interest in its subject matter. They are represented by counsel who are experienced in class action litigation involving jail and prison conditions.

35. Defendants have acted and refused to act on grounds generally applicable to the class. Final declaratory and injunctive relief with respect to the class as a whole is therefore appropriate.

## VI. FACTUAL ALLEGATIONS

A. **HIV infection is a serious and debilitating medical condition that requires coordinated medical treatment and careful monitoring.**

36. The named plaintiffs in this case are six inmates currently at the Fulton County Jail (“the Jail”) who are HIV-positive and whose lives are threatened by the denial of minimal medical care to which they are entitled.

37. Human Immunodeficiency Virus, or “HIV”, is a retrovirus identified as the cause of Autoimmune Deficiency Syndrome, or “AIDS”. Untreated HIV inevitably destroys the body’s immune system. As the immune system becomes seriously impaired, the host is subject to various illnesses and diseases, known as opportunistic infections. Although these infections are normally combated by a healthy immune system, a severely damaged immune system cannot successfully control the infections. These opportunistic infections can be life-threatening and must be adequately treated in order for the patient to survive. AIDS is a clinical diagnosis of a disease that is characterized by infection with HIV, combined with the resulting dysfunction of the immune system and the presence of one or more opportunistic infections or other manifestations taking advantage of the suppressed immune system.

38. Due to the extreme seriousness and complexity of this disease, each of the plaintiffs needs frequent attention and assistance from medical professionals, including regular monitoring, appropriately prescribed and supplied medications and other treatment regimens; consistent and uninterrupted provision of the drugs they were taking prior to their arrival at the Jail or are later properly prescribed; and access to adequate sick call and emergency procedures. The management of HIV infection and the treatment of HIV-related illnesses and AIDS requires, at a minimum, monitoring and medical interventions by competent professionals. Signs and symptoms suggestive of only minor ailments in patients without HIV infection may indicate life-threatening illness for infected patients.

39. Despite their desperate medical needs, plaintiffs have in every respect been denied minimal medical care at the hands of the defendants. The minimum standards for treating HIV infection have been developed and are frequently updated by a panel convened by the United States Department of Health and Human Services. The panel includes participants from the Centers for Disease Control and Prevention (“CDC”), the National Institutes of Health, the Henry J. Kaiser Family Foundation and many other prominent institutions. The current national guidelines include the following fundamental requirements:

- A. **All symptomatic patients and patients with advanced HIV disease must be treated with antiretroviral (“ARV”) therapies.** ARV medications reduce the replication of HIV. They must be offered to all patients with a less than 500 T-cell count. (T-cell counts indicate the health of the body’s immune system.) ARV therapy suppresses the virus for as long as possible, slowing the progression of the disease and thus significantly prolonging the life of an HIV-infected individual.
- B. At least three ARV medications must be taken together for a regimen to be effective. **Dosages must not be missed because resistance develops very quickly, making the regimen useless to the patient.** If resistance develops, at least two new ARV medications must be added to the patient’s regimen. Once the decision is made to start an ARV regimen, the treatment must be uninterrupted.
- C. Due to the importance of compliance and the possibility of resistance to ARV medications, **patients must receive careful monitoring of their condition and its progression, including appropriate medical testing.** Clinical testing includes taking an inmate’s “T-cell” count, which measures the number of T helper cells in a cubic millimeter of blood; and testing an inmate’s viral load, which measures the amount of viral particles present in the individual’s blood plasma. These tests must be performed at least once every three months, and the results must be used in making clinical judgments about the initiation of drug therapy, the initiation of preventative treatments, and any changes in therapy. Viral load testing is essential in deciding to start or change an ARV regimen. It reveals more about disease progression than T-cell counting does.
- D. In addition to ARV medications, **HIV-positive persons must have access to appropriate treatments to prevent predictable and serious complications of their infection.** This includes access to prophylactic medications that prevent opportunistic infections and specialist physicians in areas such as dermatology and ophthalmology.

These standards are well-known and universally accepted by all medical and public health agencies. All medical doctors who are informed about HIV and AIDS agree that these are the minimum standards of care.

**B. Fulton County and Correctional Healthcare Solutions, Inc., fail to provide HIV-positive inmates at the Fulton County Jail with minimally adequate medical treatment and interfere with treatment already prescribed.**

40. Fulton County (“the County”) has chosen to provide medical care, including HIV-related care, to inmates at the Jail by contracting with Correctional Healthcare Solutions, Inc. (“CHS”), a private correctional medical care company. In every aspect of the medical care delivered at the Jail, the Fulton County and CHS defendants have failed disastrously to meet the minimum medical requirements previously outlined. As a result, plaintiffs have experienced and continue to experience extreme and unnecessary pain, suffering, and accelerated progression of their disease towards AIDS and death.

41. When individuals arrive at the Jail, they undergo a formal intake process. During this process, new inmates complete a medical history form which asks them about current health problems and medications. Inmates who know they are HIV-positive indicate this diagnosis on the form and list their medical regimens. Usually these regimens consist of multiple medications, especially for those on ARV therapy, to slow the replication of HIV in their bodies. Many HIV-positive inmates emphasize to the correctional and medical staff during intake that they need their medications immediately. They know that their regimens require strict compliance and they are vulnerable to opportunistic infections and the development of drug-resistant HIV if there is any interruption in their treatment.

42. After they fill out these medical forms, inmates often remain in a crowded holding cell without a mattress, blankets, or any medical attention or treatment for three to four days while it is determined where they will be housed. Newly admitted inmates are housed in these crowded conditions before they are screened for tuberculosis. Tuberculosis tests are thereafter only administered randomly to the inmates. This random testing makes it impossible to prevent HIV-positive inmates from being housed with or near inmates with tuberculosis. HIV-positive individuals who contract tuberculosis are at a greatly increased risk of rapidly deteriorating health resulting in painful and premature death.

43. HIV-positive inmates may not see a physician at the Jail until two weeks after their arrival. Even after they see the Jail physician, however, most do not receive their medications -- including the highly time-sensitive ARV medications -- until at least thirty days after they arrive at the Jail, if at all. Such a long interruption creates resistance to the medication, foreclosing the possibility that those drugs can ever be used again to slow the progression of the disease. The denial of medications also causes an increase in the amount of the virus present in an HIV-positive person's body. This increased viral load creates a greater risk that the patient will contract opportunistic infections, which can cause death in a person with such a weakened immune system.

44. Plaintiffs are routinely denied their ARV medications for several days at a time, even after submitting numerous medical requests urgently asking for the proper doses. Medications are dispensed twice a day by pill nurses at "pill call". The nurses bring a cart containing the inmates' medications to each housing unit, and the inmates stand in line to receive their medications from the nurses. When inmates arrive at pill call, some are told by the pill nurse that the Jail does not have the prescribed medication, or that it has only some of the medication, or even that it has the wrong medication. The nurse frequently tells inmates that their

ARV medication has been lost, that the supply of a particular drug on their regimen has run out because the pharmacy failed to reorder the medication in time, or that a certain medication is simply no longer available.

45. In order to be effective, ARV medications must be taken at the appropriate hours and with the appropriate meals. However, the medical staff at the Jail rarely administers medications properly, even when the medications are available. For example, medications that must be administered in twelve-hour intervals are often administered in six-hour intervals and not in conjunction with the necessary food. The pill dispensing schedule at the Jail varies by several hours from one day to the next. Variations of this magnitude reduce the effectiveness of ARV therapies, promoting the development of infections and drug resistance. Pill dispensation does not occur at all on some days and, as a result, inmates miss their dosages entirely.

46. The nurses at the Jail are not educated about HIV and make mistakes in dispensing medication. Nurses sometimes indicate on an inmate's pill chart that the inmate received medication when in fact no medication was provided.

47. When inmates complain that they are not receiving the proper medication, the nurses or correctional staff have often threatened them with disciplinary sanctions.

48. Many inmates do not receive prophylactic medication. Prophylactic medications protect people with low T-cell counts from developing life-threatening opportunistic infections. For example, Bactrim prophylaxis has been proven to prevent the onset of pneumocystis carinii pneumonia ("PCP"), the most common opportunistic infection and a common cause of death in people with HIV and AIDS. Bactrim also reduces the likelihood of bacterial pneumonia and central nervous system toxoplasmosis, a parasitic infection which forms an abscess in the brain. Nevertheless, Bactrim, in addition to other prophylactic medications, is routinely and often

repeatedly denied to inmates. In one instance, an inmate was prescribed liquid Bactrim by the Grady infectious disease clinic. He did not receive it, although he repeatedly asked the Jail staff about this medication and filed a medical request asking that it be provided. In four months, the only response he received came from the pill nurses, who told him that the Bactrim sent by the infectious disease clinic had been lost.

49. Inmates who are too sick or tired to stand in the pill call line do not receive any medications at all. Jail staff does not take medication to the cells of these particularly vulnerable inmates.

50. Many inmates do not receive their medications at all on days when they are transported out of the Jail for court hearings.

51. Inmates do not receive adequate treatment for HIV-related medical complications. For example, many inmates suffer persistent and painful viral skin infections that ooze blood and pus on their clothing and linens. When they submit medical requests about these complications, they often wait several days or weeks for any response. When inmates are finally seen by medical staff at the Jail, they often receive no medication or medication that is too weak to cure their infection. When the Grady infectious disease clinic prescribed and supplied proper medication for these HIV-related complications, as with the ARV and prophylactic medications, inmates often did not receive it.

52. The Jail frequently fails to perform follow-up laboratory testing to assess and monitor potentially serious and lethal side effects of HIV-positive inmates' medication.

53. The Jail fails to provide necessary nutrition and dietary supplements for many HIV-positive inmates. Most HIV-positive persons require a certain amount of food in order to absorb the large quantity of HIV medications prescribed. Additionally, they often require a

medical diet of extra protein and calories in order to prevent wasting syndrome, a serious and common HIV-related condition, characterized by extreme weight loss due to protein depletion and often accompanied by severe diarrhea. Some inmates have been denied a medical diet or dietary supplement, even when it has been prescribed by the Grady infectious disease clinic, and even when they have lost a significant amount of weight and have complained of weakness and severe diarrhea. Similarly, the Jail continued to give milk products to an HIV-positive inmate who is lactose-intolerant, making it impossible for him to eat enough to maintain his weight or take his medications without becoming ill.

54. The sick call procedure operated by correctional and medical staff at the Jail is plagued with inadequacies. Inmates must obtain and fill out medical sick call requests if they need medical attention or have not received necessary medications. However, inmates are often told that the forms are simply not available. Once the inmates submit the sick call requests to a nurse or place the requests in the mail slot, they must typically wait three or four days, and sometimes as long as two or three weeks, to be seen by a triage nurse. If the triage nurse decides that inmates need to see a Jail physician or physician's assistant, they must often wait one or more additional weeks for that appointment to take place. For HIV-positive inmates, who require uninterrupted provision of medication, experience painful viral infections and terrible side effects from their medications, and whose health can deteriorate very rapidly, these delays are medically intolerable and cause unnecessary suffering.

55. Inmates sometimes submit sick call requests and do not receive any response at all. When the inmates ask the medical staff what happened to their requests, staff members frequently respond that they never received it. As a result of this disorganization, inmates who need urgent medical attention must submit numerous, duplicative medical requests and wait

several days before they receive any attention at all.

56. If and when inmates see Dr. Eno Ikoku, the chronic care unit physician, the care they receive is often inadequate and inappropriate. She frequently tells inmates that they do not need treatment, without further examination or explanation. If inmates try to ask her questions, she orders them to leave her presence or threatens to move them out of the chronic care unit into general population. Dr. Ikoku has told some inmates that they will never receive their HIV medication. She makes few, if any, clinical notes about inmates' visits in their medical files.

57. HIV-positive inmates housed in general population (i.e. not in the chronic care units) also do not have access to qualified medical doctors or adequate treatment of infections or side effects from their medications. For example, one HIV-positive inmate in general population was suffering from terrible headaches, a severe rash, and chronic diarrhea, but was not seen by a nurse for two weeks. According to her notes, the nurse did not perform a physical evaluation on the inmate, and the inmate was never seen by a doctor or tested for the pathogens that may have been causing the excruciating diarrhea and other symptoms.

58. The medical records maintained by the staff at the Jail are incomplete, incoherent, undated, and sometimes unsigned. Without adequate medical records, it is impossible to monitor an inmate's condition or to provide necessary follow-up care.

59. The Jail's medical staff rarely administers tests that measure inmates' viral loads, instead relying only on tests that count T-cells. Although T-cell counts are important for evaluating the health of the body's immune system, they alone do not give an accurate prognosis of disease progression, development of drug resistance, and vulnerability to infection. Viral load testing, which measures the amount of virus in the bloodstream, is essential to evaluating health status and to determining how to carry out ARV regimens.

60. When clinical tests are administered, the Jail's medical staff fails to inform inmates of their test results or discuss with them the progression of their disease. For example, an HIV-positive inmate who tested positive for Hepatitis B was not informed of this serious medical condition until almost a month after the results were received by the Jail. While he was in the Jail, he never received any treatment for or counseling about this disease.

61. When an HIV-positive inmate is very ill, the correctional and medical staff often refuse to touch or come near the person, forcing other inmates to care for the inmate instead. For example, Leroy Henderson, an HIV-positive inmate who died in January 1999 one day after the Jail transported him to Grady Hospital, was in the Jail for several months prior to his death. During the weeks before his death, inmates had to bring Henderson his food because the correctional staff would not deliver it to his cell. Shortly before his death, Henderson was so emaciated and weak that he had to be carried to the shower by other inmates. Inmates had to carry Henderson to seek medical attention because correctional staff refused to touch him.

62. Inmates who are terminally ill and require hospitalization do not receive palliative care to alleviate unnecessary suffering. Inmates are not transported to the hospital until they are so sick that they are on the very brink of death. One of them, Leroy Henderson, was not brought to Grady Hospital until the day before he died, although his health had obviously deteriorated horribly at the Jail. Similarly, Ricky Turner, an HIV-positive inmate who was partially paralyzed from a stroke, died at the Fulton County Jail in January 1999. Before he died, Turner was suffering from dementia, could barely swallow or digest food, had diarrhea and incontinence, and had lesions in his throat and mouth. He did not receive proper treatment for these excruciating symptoms at the Jail. He was finally taken to the hospital when he could no longer physically get himself out of his bed. After spending two weeks in the hospital, Turner returned to the Jail.

After his return, Turner spent only one day in the Jail's chronic care unit before he was transferred to the Jail's infirmary because he was so weak. Turner died several days after he was removed from the chronic care unit. Despite his physical limitations, Turner was beaten by guards only weeks before his death.

63. Inmates do not have access to any discharge planning or case management services before they leave the Jail. Discharge planning with medical and social service providers in the community is necessary to ensure continuity of care and, in particular, continuous access to ARV medication upon release. Without this planning, inmates cannot maintain compliance with their ARV regimens. This failure results in rapid progression of the disease and increased drug resistance, which in turn threatens the health and safety of the surrounding community.

64. Inmates may choose to be tested for HIV at the Jail if they do not know their status at intake. If these inmates learn that they are HIV-positive, however, they do not receive an appointment with an infectious disease specialist and do not receive proper follow-up testing, treatment, or counseling.

65. Although aware of deficiencies in the delivery of medical care to plaintiffs, the Fulton County defendants have failed to set up adequate administrative structures, training programs, and inmate grievance systems; to monitor, supervise, and enforce their contract with CHS; and to adopt other policies to ensure that HIV-infected inmates receive necessary medical treatment.

**C. The Fulton-DeKalb Hospital Authority has stopped treating HIV-positive inmates, knowingly abandoning them to a system completely incapable of delivering life-preserving medical treatment.**

66. The provision of medical care to HIV-positive inmates has recently deteriorated

even further. On February 10, 1999, despite their contract with Fulton County, the defendant Board of Trustees of the Fulton-DeKalb Hospital Authority unanimously approved a policy of eliminating outpatient care to inmates, including those at the Fulton County Jail, beginning on March 1, 1999.

67. Until March 1, 1999, decisions about the treatment of some HIV-positive inmates at the Jail were made by physicians at Grady Hospital's infectious disease clinic. The Grady infectious disease physicians, adhering to the established standard of care for treatment and control of HIV infection, performed tests, confirmed previous medication histories, and provided counseling to the inmates. Based on these thorough medical evaluations, the infectious disease clinic prepared appropriate treatment regimens for each inmate. The Grady infectious disease clinic sent the inmates back to the Jail with a supply of medications, a treatment schedule, and frequently a prescription for a medical diet.

68. Prior to March 1, 1999, inmates with Grady appointments complained to the infectious disease doctors there that the Jail often failed to provide ARV medications on schedule, if at all, and that they were not given their prescribed diets, prophylactic medications, or treatments for opportunistic infections. Knowing that the procedures for delivering medication and other necessary treatment at the Jail were completely broken down, many Grady Hospital infectious disease physicians concluded that they had no choice but to cease prescribing ARV medication to inmates altogether. These doctors feared that the drugs, provided only sporadically at best at the Jail, would cause more harm than good to the patients who did not receive them properly.

69. Dr. Jeffrey L. Lennox, an infectious disease specialist and the medical director of Grady Hospital's infectious disease clinic, attempted for over a year to alert all responsible parties to the medical crisis at Fulton County Jail for HIV-positive inmates. No one responded to Dr.

Lennox's warning. In a letter dated January 9, 1998, Dr. Lennox wrote to the Chairman of the Fulton County Commission to express his concern about the inadequate medical treatment of HIV-positive inmates at the Jail. Dr. Lennox explained:

The reason I am writing to you is to inform you of a serious problem that exists within the Fulton County Jail. Prisoners who are brought to our clinic receive appropriate medical evaluation and prescription therapy. However, they report that they frequently do not receive their medication when they return to jail. I have spoken to Dr. William Render, the chief physician in the jail. Dr. Render recognizes the seriousness of the problem, but reports that he is unable to modify the policies that control the access to medications by patients within the jail.

This problem is very serious in that patients will die sooner if they do not receive medication as prescribed. I have been informed that at least 2 prisoners are preparing lawsuits against Fulton County Jail. These prisoners are being assisted in their suits by outside legal agencies. I therefore ask that you address the failure to provide adequate medical care to HIV infected patients.

The Fulton County Commission did not respond.

70. In another letter dated January 9, 1998, Dr. Lennox, described the Jail's failure to deliver ARV medication to Gail Anderson, the Senior Vice President for Medical Affairs of the Grady Health System. Dr. Lennox wrote:

Many of the medications that HIV infected patients receive must be given 2 to 5 times per day. If these medications are not given the patients will develop progressive illness. If the medications are given on an interval less frequent than the prescribed interval the patients will develop resistance to those medications, resulting in complete loss of efficacy of all drugs in that class.

In this letter, Dr. Lennox told the Senior Vice President that he had attempted to address the medication dispensing problem with the Dr. William Render, the chief physician at the Jail, but had "achieved no success." Dr. Render was employed by Correctional Healthcare Solutions, Inc.

71. Despite Dr. Lennox's efforts, neither CHS, nor the Jail itself, nor the Grady administrators, nor the County Commission took any corrective action. Instead, CHS and the

County have allowed the grossly inadequate medical care to continue. On February 10, 1999, Grady decided to abandon the situation entirely.

72. Although correctional and medical staff at the Jail routinely ignored the treatment plans prescribed by Grady's infectious disease doctors, the inmates who went to Grady at least received some evaluation and monitoring of their illness by qualified physicians. There are now no competent physicians to treat and prescribe medications for HIV-positive inmates at the Jail, much less an adequate system of distributing such medications and monitoring inmates' health at the Jail. HIV-positive inmates received grossly deficient medical care even when Fulton County was able to refer them to Grady Hospital's infectious disease clinic for evaluation and treatment. Now that the Fulton-DeKalb Hospital Authority has eliminated the Grady infectious disease clinic's involvement, inmates are exposed to an even greater risk of unnecessary pain and suffering, opportunistic infection, and premature death.

73. Fulton County's response to this public health crisis, which affects people outside the Jail as well as in it, has so far been marked by chaos and indecision. It has no clearly-defined, comprehensive, and coordinated plan to provide adequate care to HIV-positive inmates. Jail officials have yet to even request inmates' medical files from the infectious disease clinic, a failure which precludes the possibility of any continuity of care. Neither the County nor its contractor, CHS, is treating this crisis with the urgency that it demands.

**D. Defendants have acted and continue to act with deliberate indifference to plaintiffs' serious medical needs.**

74. The policies and customs challenged in this lawsuit were developed and implemented with deliberate indifference to the substantial risk of serious harm faced by HIV-positive inmates at the Fulton County Jail. All defendants know about this risk, which is

longstanding, pervasive, well-documented, and apparent to any knowledgeable observer. They have been further placed on notice by correspondence and reports between the various defendants and their employees; numerous documented examples of drastic deterioration in inmate health resulting from delayed and/or denied medical care; and numerous complaints, oral and written, formal and informal, by inmates affected by these constitutional deficiencies. Defendants' policies and customs have caused and, unless changed, will continue to cause needless human suffering, increased resistance to life-saving medication, and an increased risk of inmate death.

75. Plaintiffs have exhausted all administrative remedies available to them. Numerous inmate grievances have failed to result in any improvement in the treatment of HIV-positive inmates at the Fulton County Jail. For example, in October 1998, plaintiff Foster along with fifteen other HIV-positive inmates in the Jail's chronic care unit (including the now-deceased Ricky Turner), submitted a comprehensive administrative complaint describing the desperately inadequate medical care they were receiving. They received no reply to the numerous issues they raised in the complaint. Defendants do not offer administrative remedies sufficient to correct the immediate and severe medical crisis and the suffering and death it is causing to plaintiffs and others.

## VII. CAUSES OF ACTION

76. Plaintiffs support the following claims by reference to the previous paragraphs of this ***Complaint***

### Count I

77. The medical treatment of all HIV-positive inmates at Fulton County Jail and defendants' policies and practices in administering this treatment constitute deliberate indifference to inmates' serious medical needs and violate plaintiffs' rights to due process under the Fourteenth Amendment to the United States Constitution.

### **Count II**

78. The medical treatment of convicted HIV-positive inmates at Fulton County Jail and defendants' policies and practices in administering this treatment constitute deliberate indifference to inmates' serious medical needs and amount to cruel and unusual punishment in violation of plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution.

### **Count III**

79. Defendant Sheriff Barrett's refusal to provide medical aid to plaintiffs violates their rights under O.C.G.A. § 42-4-4 (a) (2).

### **Count IV**

80. The refusal of defendants Fulton County and Fulton County Commission to "maintain the inmate, furnishing him food, clothing and any needed medical and hospital attention" violates plaintiffs' rights under O.C.G.A. § 42-5-2.

### **Count V**

81. The decision of the Fulton-DeKalb Hospital Authority and its Board of Trustees to stop providing medical treatment to plaintiffs constitutes a breach of the Authority's contract with Fulton County and violates plaintiffs' rights as intended third-party beneficiaries of this contract, pursuant to O.C.G.A. § 9-2-20. Fulton County has likewise breached plaintiffs' third-party beneficiary rights by failing to enforce this contract, pursuant to O.C.G.A. § 9-2-20.

## Count VI

82. By failing to provide plaintiffs with the services listed in its contract with Fulton County, CHS has breached plaintiffs' rights as intended third-party beneficiaries to this contract, pursuant to O.C.G.A. § 9-2-20. Fulton County has likewise breached plaintiffs' third-party beneficiary rights by failing to enforce this contract, pursuant to O.C.G.A. § 9-2-20.

## PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action.
2. Order that this case may be maintained as a class action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.
3. Declare unconstitutional and unlawful the medical treatment of HIV-positive inmates at the Fulton County Jail.
4. Enter preliminary and permanent injunctions ordering defendants, their successors, agents, employees, and all persons acting in concert with them to immediately provide inmates with access to competent medical specialists, prescribed medications and diet on schedule as required for proper care, appropriate testing, routine and emergency care, adequate treatment of opportunistic infections, and discharge planning.
5. Enter preliminary and permanent injunctions ordering immediate specific performance of the contract between Fulton County and the Fulton-DeKalb Hospital Authority, requiring that the infectious disease clinic at Grady Hospital provide needed medical care to plaintiffs.
6. Enter preliminary and permanent injunctions ordering immediate specific performance of the contract between Fulton County and Correctional Healthcare Solutions, Inc. ("CHS"), requiring that CHS prescribe and provide adequate treatment for HIV and AIDS in accordance with the universally accepted Centers for Disease Control and Prevention standards.
7. Award plaintiffs the costs of this lawsuit and reasonable attorneys' fees.
8. Order such additional relief as the Court may deem just and proper.

Respectfully submitted, this 15th day of April, 1999.

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