

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DICISION

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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

ALAN KRESS, BILLY FORD, ERIC )  
STAGGS, TIMOTHY-PATRICK TREACY, )  
RANDY CARR, on their own behalf and on )  
behalf of a class of those similarly situated, )

Plaintiffs, )

vs. )

1 : 08 -cv- 0431 -DFH -WTL

CCA OF TENNESSEE, LLC d/b/a )  
CORRECTIONS CORPORATION OF )  
AMERICA, and MARION COUNTY SHERIFF )  
FRANK ANDERSON, )

Defendants. )

**COMPLAINT FOR DECLARATORY AND INUNCTIVE RELIEF**

**I. INTRODUCTION**

1. This is a class action complaint for declaratory and injunctive relief challenging as unconstitutional and illegal the following: 1) the medical treatment and non-treatment of inmates at the Jail #2 facility managed by Defendant CCA of Tennessee, LLC d/b/a Corrections Corporation of America (hereinafter "CCA"; 2) the unsafe and inhumane conditions of the Jail #2 facility; and 3) CCA's refusal to process numerous internal inmate grievances at Jail #2 or provide written responses to those grievances. Sheriff Frank Anderson is named as a Defendant in this matter for failing to oversee CCA's compliance with the contract for privatized jail services and failing to ensure those services were provided in accordance with federal and state law.

**II. JURISDICTION, VENUE AND CAUSE OF ACTION**

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.
4. Declaratory relief is authorized by 28 U.S.C. §§2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure.
5. This action is brought, pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the laws and constitution of the United States of America.
6. This court has jurisdiction of the supplemental state law claims pursuant to 28 U.S.C. §1367.

## **II. PARTIES**

7. Plaintiff Alan Kress is an inmate confined in the Jail #2 facility, awaiting trial.
8. Plaintiff Billy Ford is an inmate confined in the Jail #2 facility, awaiting trial.
10. Plaintiff Timothy-Patrick Treacy is an inmate confined in the Jail #2 facility, awaiting trial.
11. Plaintiff Randy Carr is an inmate confined in the Jail #2 facility, awaiting trial.
12. Plaintiff Eric Staggs is an inmate confined in the Jail #2 facility, awaiting trial.
13. Defendant CCA is a limited liability company which has its home office in Nashville, Tennessee.
14. Defendant Sheriff Frank Anderson is the elected Sheriff of Marion County.

## **III. CLASS ACTION ALLEGATIONS**

15. This action is brought by the Plaintiffs on their own behalf and on behalf of a class of those similarly-situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.
16. The class is defined as:  

any and all persons currently confined, or who will be in the future confined, in the Jail #2 facility.
17. All requirements of Rule 23(a) are met in this cause in that:

a. The class is so numerous that joinder of all members is impractical. Jail #2 has approximately 992 beds and is normally near capacity.

b. There are questions of law or fact common to the class: whether the medical treatment and non-treatment of inmates, the conditions of the Jail #2 facility, and CCA's refusal to process inmate complaints violate the United States Constitution and federal and state law. In addition, Sheriff Anderson's failure to monitor the contract and ensure CCA complies with the law in providing jail services is likewise a question of law and/or fact common to the class.

c. The claims of the representative Plaintiffs are typical of those of the class.

d. The representative parties will fairly and adequately protect the interests of the class.

18. Further, the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met in this cause in that the Defendants have acted, and refused to act, on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

#### **IV. FACTS**

##### **A. GENERAL BACKGROUND**

19. Plaintiffs are all inmates at the Jail #2 facility.

20. Defendant CCA manages prison and jail facilities in various states, including Indiana. In particular to this case, CCA contracts with the Marion County Sheriff to operate Jail #2, which is located at 730 E. Washington Street, Indianapolis, Indiana 46202.

21. Defendant Frank Anderson, elected Sheriff of Marion County, is responsible, pursuant to IC 36-2-13-5 and other Indiana statutes and regulations, for maintaining jail facilities throughout Marion County, including overseeing the privatized Jail #2 facility run by CCA at the Jail #2 facility.

22. Defendant Sheriff Anderson appoints a “contract monitor” who is responsible for inspecting the facility and its operations, as well as ensuring CCA provides jail services in accordance with the terms of the contract and the law.

**B. FAILURE TO PROVIDE PROPER MEDICAL CARE  
AND TREATMENT TO INMATES**

23. CCA is responsible providing medical care and treatment to the inmates in the Jail #2 facility.

24. Sheriff Anderson is responsible for ensuring that CCA provides the inmates of Jail #2 with proper and adequate medical care and treatment.

25. CCA failed to provide proper and adequate medical care and treatment to the Plaintiffs and the class they represent.

26. Examples of improper and inadequate medical treatment include, but are not limited to, CCA failing to provide inmates with medication, providing medication late or doubling up on medication by providing back-to-back doses, providing inmates with the wrong medication, providing inmates with expired and/or other inmate’s medication, and failing to report medication errors involving inmates as required by Indiana law.

27. Plaintiffs and the class they represent have suffered health problems as a result of not getting their medication. Some inmates have fainted, some have had seizures, while others have even died.

28. Plaintiffs and the class they represent filed complaints/grievances with the Jail #2 regarding the improper and inadequate medical treatment they received.

29. Defendant CCA and Defendant Sheriff Anderson have been on notice for some time regarding the improper and inadequate medical treatment provided to inmates at the Jail #2 facility.

30. That, in fact, a lawsuit filed by eight nurses, former employees of CCA, is pending before this court as Cause No. 1:08-CV-254-SFB-JMS. In the Complaint, the Nurses detail the same failure of CCA to provide inmates with adequate medical care and treatment that is detailed in this Complaint. Several other lawsuits are pending against CCA alleging the failure to provide proper medical care at the Jail #2 facility. In addition, this Court in 2003 addressed the failure to provide proper medical care in the Marion County jail system, holding Sheriff Anderson in contempt.<sup>1</sup>

31. Despite the awareness of problems at the facility, including their knowledge of pending lawsuits and complaints, neither CCA nor the Sheriff Anderson has taken steps to correct the problems.

### **C. UNSAFE AND INHUMANE CONDITION OF JAIL #2**

32. CCA is responsible for providing a safe and humane facility for the housing of inmates at the Jail #2 facility.

33. Sheriff Anderson is responsible for ensuring that CCA provides a safe and humane facility for the housing of inmates at the Jail #2 facility.

34. CCA has exposed Plaintiffs and the class they represent to unsafe conditions at the Jail #2 facility. These include dangers including razors left in an open wastebasket from which inmates regularly retrieve blades in order to fashion weapons, security cameras throughout the facility that do not work properly, a shortage of radios for CCA staff so as to contact someone in the event of an emergency, the escorting of inmates by untrained and unarmed individuals, such as nurses, leading to the possibility of hostage situations. Further, CCA has failed to report physical altercations between CCA employees and inmates.

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<sup>1</sup> See Judge Sarah Evans Barker decision in Marion County Inmates v. Sheriff Frank Anderson, (2003), 270 F. ~~2d~~ *Supp.* 1034.

35. CCA has exposed Plaintiffs and the class they represent to unsafe and inhumane conditions which include mold growing in vents and on walls and floors at Jail #2; insect infestation at the facility including the presence spiders, roaches, gnats and fruit flies; heating and air conditioning systems that do not work; and a lack of ventilation in the facility. Inmates have been provided used and tattered clothing and shoes with holes that often do not fit. In addition, rather than hire an outside contractor, CCA forced inmates to shovel raw sewage at the facility when a sewer line broke.

36. Plaintiffs and other inmates filed complaints/grievances with the Jail #2 regarding the unsafe and inhumane conditions at the Jail #2 facility.

37. Correction officers at the facility have alerted CCA, including CCA's corporate offices in Tennessee, regarding the security problems at the Jail #2 facility.

38. Sheriff Anderson is aware or should be aware of the unsafe and inhumane conditions of Jail #2 and, in fact, in 2003 was held in contempt by this Court for not adequately addressing the unsafe and inhumane conditions within the Marion County Jail system.<sup>2</sup>

39. The unsafe and inhumane conditions at the Jail #2 facility have resulted in the denial of basic human needs and the minimal civilized measures of life's necessities, thus amounting to punishment in violation of the 14<sup>th</sup> and 8<sup>th</sup> Amendments to the Constitution and a violation of the Indiana law.

#### **D. CCA'S FAILURE TO PROVIDE GRIEVANCE PROCESS TO INMATES**

40. CCA is responsible for providing a process by which inmates may file grievances under the Prison Litigation Reform Act and Indiana law.

41. Sheriff Anderson is responsible for ensuring that CCA provides that grievance process.

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<sup>2</sup> Marion County Inmates v. Sheriff Frank Anderson, (2003), 270 F. <sup>Supp</sup> ~~2~~ 1034.

42. That during their incarceration, the Plaintiffs and several members of the class they represent attempted to lodge numerous administrative grievances pursuant to the Prison Litigation Reform Act prior to filing this matter.

43. CCA administrators at the Jail #2 facility would often require inmates to go through a preliminary complaint stage prior to filing an inmate administrative grievance, would refuse to take complaints/grievances, would "lose" complaints/grievances, return complaints/grievances they received, and even tear up complaint/grievances in the presence of the inmates who tried to file them. On the few occasions in which CCA acknowledged an inmate's administrative complaint/grievance, CCA refused to provide a written response.

44. Out of the numerous administrative complaints/grievances of which Plaintiffs counsel is aware of, not a single inmate ever succeeded in getting a written response from CCA to a complaint/grievance filed regarding the Jail #2 facility.

45. CCA does not process inmate complaints/grievances as part of a deliberate legal strategy to give its legal counsel grounds to argue for dismissal of inmate lawsuits based on their alleged failure to exhaust administrative remedies.

#### **E. FACTS SUPPORTING PUNITIVE DAMAGES AND CANCELLATION OF JAIL #2 CONTRACT**

46. Further support for those sanctions is that CCA has threatened, intimidated and disciplined Jail #2 employees, including nurses and correctional officers, who have attempted to report medication and security problems at the facility. Some of those individuals, such as nurses, are required by Indiana law to file those reports.

47. Further, CCA has altered, concealed and even destroyed reports Jail #2 employees have made regarding problems at the facility.

48. Further, CCA has failed to report medication errors and other problems at the facility as required by Indiana law.

49. That, taken collectively, CCA has engaged in a thorough and systemic effort to cover up problems of the Jail #2 facility and have even sought to deny inmates access to the courts by refusing to process administrative grievances.

50. CCA's conduct with regard to the operation of Jail #2, is befitting the harshest sanctions this Court can offer, including not only an injunction in this matter to ensure legal compliance, but a significant award of punitive damages and the judicial termination of the contract CCA holds with the Marion County Sheriff's Department to operate the Jail #2 facility. In addition, given this Court's previous order in 2003, the Court should consider holding Sheriff Anderson in contempt if the problems at the Jail #2 facility, which are outlined in this Complaint, are not promptly addressed.

### **III. LEGAL CLAIMS**

#### **COUNT I**

#### **(Defendant CCA's Failure to Provide Proper and Adequate Medical Care Violates the United States Constitution)**

51. The failure of CCA to provide proper and adequate medical care to the Jail #2 inmates violates the 14<sup>th</sup> Amendment to the United States Constitution as applied to pre-trial detainees and the 8<sup>th</sup> Amendment to the United States Constitution as applied to convicted prisoners.

#### **COUNT II**

#### **(Defendant CCA's Failure to Provide Proper and Adequate Medical Care to Inmates Violates 210 IAC 3-1-11)**

52. The failure of Defendant CCA to provide proper and adequate medical care to the Jail #2 inmates violates the Indiana Administrative Code, in particular 201 IAC 3-1-11.



**COUNT III**

**(Defendant CCA's Failure to Provide Safe and Humane Conditions at the Jail #2 Facility  
Violates the United States Constitution)**

53. The conditions of the Jail #2 facility operated by CCA violate the 14<sup>th</sup> Amendment to the United States Constitution as applied to pre-trial detainees and the 8<sup>th</sup> Amendment to the United States Constitution as applied to convicted prisoners.

**COUNT IV**

**(Defendant CCA's Failure to Provide Safe and Humane Conditions at the Jail #2 Facility  
Violates the Indiana Administrative Code)**

54. The unsafe and inhumane conditions of the Jail #2 facility operated by CCA violate the Indiana Administrative Code, in particular 210 IAC 3-1-7, 210 IAC 3-1-9, 210 IAC 3-1-10, 210 IAC 3-1-13.

**COUNT V**

**(Defendant CCA's Failure to Provide Proper and Adequate Medical Care  
Violates the United States Constitution)**

55. The refusal of CCA to process grievances at the Jail #2 facility violates the 14<sup>th</sup> Amendment to the United States Constitution as applied to pre-trial detainees and the 8<sup>th</sup> Amendment to the United States Constitution as applied to convicted prisoners.

**COUNT VI**

**(Defendant CCA's Failure to Process Administrative Grievances  
Violate the Prison Litigation Reform Act)**

56. The refusal of CCA to process grievances regarding the lack of proper medical treatment and the conditions at the Jail #2 facility violates the 14<sup>th</sup> Amendment to the United States Constitution as applied to pre-trial detainees and the 8<sup>th</sup> Amendment to the United States Constitution as applied to convicted prisoners.

**COUNT VII**

**(Defendant CCA's Failure to Process Administrative Grievances  
Violate the Prison Litigation Reform Act)**

57. The refusal of CCA to process grievances at the Jail #2 facility violates the Prison Litigation Reform Act, namely 18 U.S.C. §3626.

**COUNT IIX**  
**(Defendant CCA's Failure to Process Administrative Grievances**  
**Violate Inmates Rights Under the Indiana Administrative Code)**

58. The refusal of CCA to process grievances at the Jail #2 facility, including the failure to put responses to those grievances in writing, violates the Indiana Administrative Code, in particular 210 IAC 3-1-15(h).

**COUNT IX**  
**(Defendant CCA Breached**  
**Third Party Contractual Duties Owed to Inmates)**

59. Defendant CCA breached duties it had under the contract it entered into with the Indianapolis-Marion County consolidated government by not providing proper medical care to inmates, not providing inmates with a safe and healthy environment, failing to process grievances of inmates and provide written responses to those grievances, violation of the 14<sup>th</sup> and 8<sup>th</sup> Amendment to the United States Constitution and violation of the Indiana Administrative Code.

**COUNT X**  
**(Defendant Sheriff Anderson Failed to Supervise the**  
**Provision of Medical Care to Inmates at Jail #2)**

60. Sheriff Anderson knew or should have known that CCA regularly failed to provide the inmates at the Jail #2 facility proper and adequate medical care, which failure violated the inmates' rights under the 14<sup>th</sup> Amendment and the 8<sup>th</sup> Amendment as well as violated the inmates rights under the Indiana Administrative Code, in particular 201 IAC 3-1-11.

**COUNT XI**  
**(Defendant Sheriff Anderson Failed to Ensure Safe and Humane Conditions at Jail #2)**

61. Sheriff Anderson knew or should have known that the conditions of the Jail #2 facility operated by CCA violate the 14<sup>th</sup> and 8<sup>th</sup> Amendment to the Constitution, as well as the Indiana

Administrative Code, including 210 IAC 3-1-7, 210 IAC 3-1-9, 210 IAC 3-1-10, 210 IAC 3-1-13. Sheriff Anderson failed to take steps to remedy the violation of those administrative provisions.

**COUNT XII**  
**(Defendant Sheriff Anderson CCA's Permitted CCA to Violate Inmates' Right to Pursue Grievances through the Administrative Process)**

62. Sheriff Anderson knew or should have known that CCA was refusing to process inmate grievances at the Jail #2 facility, and refusing to provide written responses to said grievances, a violation of the Prison Litigation Reform Act, namely 18 U.S.C. § 3626, and Indiana Administrative Code, in particular 210 IAC 3-1-15(h).

**IV. PRAYER FOR RELIEF**

Wherefore, the Plaintiffs, on behalf of themselves and the class they represent, request the following:

63. The Court accept jurisdiction of this case and set it for a hearing.

64. Certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with the class as specified above, and appoint the undersigned as class counsel pursuant to Rule 23(g).

65. Enter a declaratory judgment that the actions and inactions of the Defendants described herein violate the 14<sup>th</sup> and 8<sup>th</sup> Amendments to the United States Constitution.

66. Enter a declaratory judgment that the actions and inactions of the defendants described herein violate the Indiana Administrative Code, in particular 210 IAC 3-1 et seq.

67. Enjoin the Defendants from continuing to violate federal and state law regarding the medical care and treatment of the Jail #2 inmates.

68. Enjoin the Defendants from continuing to violate federal and state law regarding the unsafe and inhumane conditions at the Jail #2 facility.

69. Enjoin the Defendants from continuing to violate federal and state law regarding the failure of CCA to process inmate administrative grievances at the Jail #2 facility, including not providing inmates with written responses to those grievances.

70. Enter an order finding CCA's conduct in this case so egregious, yet so likely to be repeated given CCA's history, as to justify judicial termination of CCA's contract to run the Jail #2 facility.

71. Order CCA to pay substantial punitive damages as permitted by law.

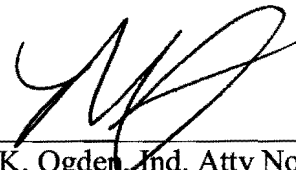
72. Again hold Defendant Sheriff Anderson in contempt if the issues at Jail #2 raised in this Complaint are not promptly addressed.

73. Grant counsel for the Plaintiffs and their represented class reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988 and other applicable law.

74. Award all other proper relief.

Respectfully submitted,

ROBERTS & BISHOP



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