

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

TRACY COPELAND et al.,

Plaintiffs,

v.

CASE NO. 4:15cv452-RH/CAS

JULIE L. JONES, etc., et al.,

Defendants.

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**ORDER APPROVING CLAIMS, OVERRULING  
MR. PARKHURST'S OBJECTIONS, AND DENYING  
MR. DePRIEST'S MOTION FOR RECONSIDERATION**

The plaintiffs in this class action challenged the treatment of hernias by the Florida Department of Corrections and its prior contracted medical provider, Corizon LLC. There were separate injunctive and damages classes. A settlement has been approved. This order addresses two pending motions and one belated objection. A separate order will address additional motions that were filed while this order was in final proofreading.

First, the plaintiffs have moved to approve the qualified and unqualified claims of damages-class members. The defendants consent.

Second, Jon Duke DePriest has moved to reconsider the overruling of his “motion for belated objection and relief from court order establishing deadline for eligible party to be added as damages class member.” ECF Nos. 156, 199 (capitalization altered). In the objections Mr. DePriest asked for additional time to “opt in” to the class. *Id.* at 5.

Third, Derrick R. Parkhurst, a Wyoming prisoner whose motion to intervene was denied, has filed an objection to the order approving the settlement based on his appeal of the denial of intervention. The United States Court of Appeals for the Eleventh Circuit has dismissed the appeal as frivolous. This order overrules the objection without further discussion.

## I

The damages class consists of prisoners in the Department of Corrections who were diagnosed with or treated for a hernia between September 8, 2013 and May 31, 2016 at a Department facility at which Corizon was the medical provider. Mr. DePriest was a prisoner in a Department facility at which Corizon was the medical provider. He was not included in the list the plaintiffs compiled of potential damages-class members. He asserts that he learned of the settlement of this action in November 2016 when he read an injunctive-class notice. The notice said damages-class members would receive a notice in the mail and continued: “If you have been diagnosed with a hernia and did not receive a notice in the mail, you

may write to Class Counsel at the address below so that they can attempt to verify whether you qualify to receive a monetary settlement, but not everyone will be receiving money.” ECF No. 156 at 6.

The deadline to request inclusion in the damages class was December 16, 2016. Mr. DePriest did not contact class counsel and did not request inclusion in the damages class before the deadline. He says he was unaware of the deadline. He says he contacted class counsel later and was told he could not be added to the class because he missed the deadline.

Mr. DePriest mailed to the court on March 7, 2017 a “motion for belated objection and relief from court order establishing deadline for eligible party to be added as a damages class member.” ECF No. 156 (capitalization altered). He acknowledged that he learned of the settlement in November 2016 and waited until mid December before contacting—or even attempting to contact—class counsel. He said he had been diagnosed since 2012 with an “Imbilical Hernia”—presumably a reference to an umbilical hernia. *Id.* at 2. On June 29, 2017, Mr. DePriest submitted another copy of the same motion. ECF No. 199.

The order of September 11, 2017, finally approved the settlement. The order included this paragraph:

All objections and motions have been fully considered. None provides a basis to disapprove or alter the terms of the settlement. The implementation of the settlement has consisted of the best practicable effort to identify prisoners who might have claims and

to include them in the proper classes, the best practicable notice to all prisoners in an effort to allow the submission of claims by any prisoner who might have been missed, the setting of a reasonable deadline for submission of claims by any such prisoner, and a reasonable methodology for allowing late submission of claims if warranted. That other prisoners have asserted belated claims is not a basis to disapprove the settlement. Without a reasonable methodology and reasonable cutoff, claims of this kind could never be finally settled—a result that would not serve the interests of class members.

ECF No. 217 at 3.

## II

This record shows or suggests the following chronology of Mr. DePriest's hernias and treatment within the Department of Corrections:

On April 14, 2011, Mr. DePriest received a health pass to sleep on a low bunk and wear an abdominal binder. He was restricted from lifting, bending, and other physical activities. ECF No. 156 at 27-28. On April 19, 2011, Mr. DePriest completed a health appraisal form. *Id.* at 11. He listed two hernias as current medical problems but did not specify the types of hernias. He reported an extensive history of other medical conditions. *Id.*

On April 20, 2011, the Department printed a health problem list for Mr. DePriest with an entry noting an onset date of 2005 for an inguinal hernia. *Id.* at 30. An entry was added, perhaps on May 11, 2011, noting a urethral hernia, perhaps with an onset that same day. *Id.*

On January 9, 2012, Mr. DePriest presented at a Department “chronic illness clinic.” A record of the visit apparently prepared by a medical professional—perhaps a doctor—is difficult to read. There may be a reference to an umbilical hernia. There is no apparent reference to an inguinal or hiatal hernia. *Id.* at 12.

The events described to this point all occurred long prior to the opening date for the damages class, September 8, 2013.

On September 30, 2015—within the damages-class period—Mr. DePriest filed a grievance alleging, among other things, that he had been waiting for hernia repair since 2013. He referred to hiatal and inguinal hernias and said a specialist had said each could be repaired with a simple outpatient procedure. A nurse responded to the grievance on October 8, 2015, saying Mr. DePriest’s medical file had “no such documentation,” that surgeries were performed when “deemed medically indicated,” and that elective surgeries were “not performed any more than in the community.” *Id.* at 13. The grievance and response do not indicate that Mr. DePriest was diagnosed with or treated for a hernia within the damages-class period.

On December 16, 2015, Mr. DePriest filed a sick-call request stating he had signed two requests for surgical consults but was now being told that the requests were not in his medical file. He asked for an explanation. *Id.* at 14. The record does not include any response. The sick-call request did not indicate when Mr. DePriest

submitted the requests for consults and does not indicate that Mr. DePriest was diagnosed with or treated for a hernia within the damages-class period.

On June 14, 2016, after the end of the damages-class period, Mr. DePriest filed a sick-call request stating he was experiencing moderate to severe pain due to a hiatal hernia. He said he had had the hernia since 2012 and that surgery to repair it was scheduled in 2014 but canceled by Corizon. *Id.* at 15. The record does not include any response. The record does not include any documentation that Mr. DePriest was scheduled for hernia surgery in 2014.

On June 20, 2016, an “abdominal pain report” listed Mr. DePriest’s chief complaints as “hernia worse” and “more pain.” The report said the pain started in 2012, was gradual and intermittent, and that Mr. DePriest had hernia surgery in 2012. *Id.* at 16. The record does not include any documentation that Mr. DePriest actually had hernia surgery in 2012.

Mr. DePriest saw a doctor on June 28, 2016. *Id.* at 17. The doctor ordered an abdominal ultrasound, which was performed on July 11, 2016. *Id.* at 18. The ultrasound showed a periumbilical hernia containing bowel. *Id.* at 19.

On December 28, 2016, Mr. DePriest filed a sick-call request that said he had a “hiatal hernia which is progressing down [his] abdomen wall.” *Id.* at 20. He said the hernia had been bothering him since May 2016, that at that time the pain was mild, but that now it was moderate and sometimes severe. *Id.* Mr. DePriest

was referred for a surgical consult, which occurred on January 24, 2017. The notes of the consult indicate Mr. DePriest had a reducible but grapefruit-sized umbilical hernia. *Id.* at 23. A surgery request was submitted. *Id.* at 26. The record does not indicate whether Mr. DePriest has had surgery.

### III

The plaintiffs, with the assistance of the defendants, made a reasonable effort—indeed, they went above and beyond—to identify damages-class members. They complied at each step of the process with the orders governing the process.

First, the parties knew of or identified during the discovery process some inmates who were damages-class members—that is, inmates who were diagnosed with or treated for hernias during the damages-class period.

Second, a search of electronic records identified most damages-class members. The search did not identify Mr. DePriest. This is not surprising—he was seen by medical personnel for hernias before and after, but not during, the damages-class period.

Third, a notice was posted in each affected facility. Mr. DePriest saw the notice a month before the deadline for asking to be added to the damages class. He says the notice was inadequate, but it was not. The notice made Mr. DePriest aware of the lawsuit and pending settlement and provided information on how to contact

class counsel—information that Mr. DePriest used without difficulty to contact class counsel when he got around to doing it.

To be sure, the notice did not give a deadline for contacting class counsel. When the notice was posted, the deadline had not been set. The notice's main purpose was to provide information to injunctive-class members while also alerting any damages-class members who may have been missed. It was clear that the overwhelming majority of potential damages-class member had already been identified. It was reasonable to believe that most if not all others would promptly contact class counsel. Manually reviewing every medical record from every facility was not feasible. The approach the plaintiffs proposed and the court approved was a reasonable means of identifying class members. Perfection was not feasible and is not required.

In sum, reasonable notice was given to damages-class members. Mr. DePriest's objections were and are unfounded. The September 11, 2017 order properly overruled the objections.

#### IV

Had Mr. DePriest contacted class counsel before the deadline or timely requested inclusion in the damages class, he still might not have been included in the damages class. He was treated for or diagnosed with a hernia in 2012 and again in 2016—before and after, but not during, the damages-class period. He submitted



a grievance and sick-call request during the damages period, but neither indicated he had been treated for or diagnosed with a hernia during that period. He asserted he had been scheduled for surgery in 2014, but no documentation supports the assertion, and it is more likely that, if indeed he was scheduled for surgery, it was in 2012—when he complained about and was seen for treatment of a hernia.

The damages class includes only individuals who were treated or diagnosed during the class period--not individuals who were treated or diagnosed only before or after the class period. Any damages claim for events occurring before or after the class period is beyond the scope of this action.

V

In sum, the settlement was properly approved and has been properly implemented. Accordingly,

IT IS ORDERED:

1. The plaintiffs' motion to approve qualified and unqualified claims, ECF No. 239, is granted. The claims are approved.
2. Mr. DePriest's motion to reconsider, ECF No. 225, is denied.
3. Mr. Parkhurst's untimely objections, ECF No. 226, are overruled.

SO ORDERED on December 4, 2017.

s/Robert L. Hinkle  
United States District Judge