



by reference into this motion.

WHEREFORE, the Plaintiff, Richard Nunes, pro-se, moves this Honorable Court to allow this motion, and to order four Summons be issued, and further order said Summons shall be served to Defense Counsel, Sheryl F. Grant, whom represents Department of Correction Defendants.

Respectfully Submitted By,

Dated: October 22, 2011

Richard D. Nunes, Pro-se

Richard D. Nunes, Pro-se, W-90463

Shirley Medium

P.O. Box: 1218

Shirley, Massachusetts

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01464-1218

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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RICHARD NUNES, et. al.,     )  
  )  
                  Plaintiffs,     )  
  )  
Vs.                                    )  
  )  
UMASS CORRECTIONAL         )  
HEALTH, et. al.,                )  
  )  
                  Defendants.     )  

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CIVIL ACTION  
No. 1:10-CV-12013-RWZ.

AFFIDAVIT OF RICHARD D. NUNES IN SUPPORT  
OF MOTION TO TAKE LEAVE TO AMEND CIVIL  
COMPLAINT No. 1-10-CV-12013-RWZ

I, Richard D. Nunes, hereby depose and state:

1. I am the lead plaintiff in Civil Complaint No. 1:10-CV-12013 RWZ.

2. Prior to this case being filed in United States District Court, it was filed in Plymouth County Superior Court, Massachusetts, Docket No. PLC 2009-00135B, by myself, pro-se, and I sought damages. This matter was voluntarily dismissed.

3. I entered into a "Representation Agreement" with Massachusetts Correctional Legal Services, Inc. on April 10, 2009. Within this contract at Part 3, paragraph 3, it states, in part:

"3. MCLS will represent the Client in a lawsuit against officials of the DOC and UMCH seeking judicial relief from the new procedure requiring direct observation therapy for HIV medication, rather than keep-on-person therapy. MCLS will seek injunctive and declaratory relief primarily, and while the lawsuit will also seek damages..."

(See: Exhibit-A, a copy of the Representation agreement between myself and Joel H. Thompson, of MCLS, Now known as Prisoners' Legal Services, Inc.. This exhibit is being filed Ex-Parte for the Courts viewing only and I invoke attorney-client privileged correspondence, and request the Court to impound this document).

4. Because I have voluntarily dismissed this matter, as stated in paragraph 2 above, if a damage claim is not stated in this current case-at-bar, I will be prejudiced from seeking damages, hereafter.

5. The current Civil Complaint, Civil Action No. 1:10-cv-12013-RWZ was filed without my review prior to its final draft and filing.

6. I have repeatedly demanded my Counsel of Record, Joel H. Thompson, place a damage claim in the case-at-bar, and Amend the Civil Complaint, Civil Action No. 1:10-cv-12013-RWZ. (See: Exhibit-B, copies of my June 1, 2010,

December 1, 2010, December 26, 2010, July 21, 2011, September 26, 2011, and October 16, 2011 dated letters to Attorney, Joel H. Thompson demanding and repeatedly requesting damages and Civil Complaint, C.A. No. 1:10-CV-12013-RWZ, be Amended to include a damage claim. This exhibit is being filed Ex-parte for the Courts viewing only and I invoke Attorney-Client Privileged Correspondence, and request the Court impound these documents.).

7. I have suffered damages and have a legal right to claim damages.

8. Additional facts to support damages conform to the evidence, relate back to the date of the original pleading, and also events or occurrences which have taken place since the date of the original pleading of Civil Complaint No. 1:10-CV-12013-RWZ.

9. As a result of my Counsel of Record failing to state facts and a claim for damages in the Civil Complaint, C.A. No. 1:10-CV-12013-RWZ, and failure to Amend said Complaint, I am left with no choice, except to file this claim for damages and Amended Complaint and related documents, pro-se, to preserve my rights to a damage claim.

10. Within my filing of my pro-se "Amended Civil Complaint," C.A. No. 1:10-CV-12013-RWZ, I do not at this time know the names of the 4-Massachusetts Department of Correction Employees that are the subject matter related facts stated on September 6 & 7, 2011, which are within my Amended Complaint, however, will

Submit this individuals names once they have been ascertained, and the additional facts stated within my pro-se, said amended complaint are true and accurate and made under the pain and penalty of perjury.

The above statements are made under the pains and penalty of perjury on this 22nd day of October, 2011

Richard D. Nunes, Pro. se  
Richard D. Nunes, W-90483, Pro-se  
Shirley Medium  
P.O. Box: 1218  
Shirley, Massachusetts  
01464-1218

-Pg. 4 of 4-

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RICHARD NUNES, CARL COE, JOHN DOE,  
PETER POE, and RICHARD ROE, on behalf  
of themselves and all others similarly  
situated,

Plaintiffs,

Vs.

UMASS CORRECTIONAL HEALTH,  
MASSACHUSETTS DEPARTMENT OF  
CORRECTION, 4- UNKNOWN  
MASSACHUSETTS DEPARTMENT OF  
CORRECTION EMPLOYEES, LEONARD  
MCQUIRE, WARREN FURBUSON,  
JUDITH STEINBERG, THOMAS  
GROBLEWSKI, and PETER  
HEFFERNAN,

Defendants.

CIVIL ACTION No.  
1:10-CV-12013-RWZ

AMENDED CIVIL COMPLAINT

I. INTRODUCTION.

This Amended Civil Complaint is incorporated  
and made part of by reference, to the original Civil  
Complaint, C.A. No. 1:10-CV-12013-RWZ, by Plaintiff,

Richard D. Nunes, pro-se, with respect to additional Defendants, facts, and causes of action with respect to only, Plaintiff, Richard Nunes.

The Plaintiff, Richard Nunes, pro-se, states that he is unschooled in law and seeks from this Honorable Court all the protections afforded within Haines vs. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972), and Houston vs. Lack, 493 U.S. 920, 107 L.Ed.2d 263, 110 S.Ct. 284.

## II. PARTIES

7B. The Defendants, 4-Unknown Massachusetts Department of Correction Employees, names are unknown at this time to the Plaintiff, Richard Nunes. The true names of each of these four unknown individuals will be supplemented once this information is ascertained from Defendant, Massachusetts Department of Correction.

## III. FACTS

146 A. The act of Defendants removing HIV-medications from the KOP program and failure to adequately accommodate

Plaintiff, Richard Nunes' disabilities prior to this policy change and thereafter, and failure to insure Plaintiff, Richard Nunes would consistently receive his HIV-medications without interruption has, is, and may in the future cause Plaintiff, Richard Nunes the following injuries and harm:

- A. Plaintiff, Richard Nunes to stop taking his HIV-medications,
- B. Substantial Drop in Plaintiff, Richard Nunes' CD4 and CD4% blood counts,
- C. Substantial increase in Plaintiff, Richard Nunes' HIV-Viral Load blood counts,
- D. Weakened Plaintiff, Richard Nunes' immune system causing increased illness and opportunistic infections, skin lesions, sores and rashes healing more slowly leaving scars, more frequent fatigue and diarrhea,
- E. Risk of drug resistance and stress, anxiety, and frustration associated with this risk,
- F. Plaintiff, Richard Nunes' immune system may not return to the level it was prior to this

- interrupted as a result of the defendants acts, omissions, and policy change at issue,
- G. Greater risk of developing certain types of cancer and other ailments,
  - H. Increased risk of illness and side effects associated with the restart of HIV medications, and
  - I. Plaintiff, Richard Nunes suffers mental anguish, anxiety and frustration as a result of defendants' acts and/or omissions which further weakened his immune system.

146 B. On May 16, 2011, the Court issued an order which stated in part:

"I cannot say that the proposed accommodation is inadequate except in one respect. The record supports plaintiff's assertion that there are a number of days every month when he is absolutely unable to get out of bed or be any distance from a bathroom. Defendants' plan does not address these inevitable contingencies by including a mechanism to provide the medications on those days."

And allowed defendants until June 3, 2011 to address these contingencies.

146 C. On June 3, 2011, Defendants filed a June 1, 2011 Addendum to their original accommodation with the Court to comply with the Court order stated in paragraph 146 B above.

147 D. On September 6, 2011, Plaintiff, Richard Nunes invoked the approved by Acting Superintendent, Scott Anderson addendum accommodation that the defendants submitted to the Court. Plaintiff, Richard Nunes followed the rules of the addendum accommodation by notifying his unit officer of the accommodation and its addendum and showed this said document to his unit officer; however Defendants failed to abide their own rules set forth in the addendum accommodation, by failing to have Plaintiff, Richard Nunes assessed by Defendant, UMass Correctional Health as stated in said addendum accommodation. Instead, Plaintiff, Richard Nunes was punished by being issued disciplinary report #235771, causing injury of stress, anxiety, mental anguish, and further weakening the Plaintiff, Richard Nunes' immune system as a result of Defendants acts and/or omissions.

147 E. On September 7, 2011, Plaintiff, Richard Nunes invoked the approved by Acting Superintendent, Scott Anderson addendum accommodation that the defendants submitted to the Court. Plaintiff, Richard Nunes followed the rules of the addendum accommodation by notifying his unit officer of the accommodation and its addendum and showed this said document to his unit officer, however, Defendants failed

Sneakers and give the items to the officer. Nunes complied with giving the walk man, however, Nunes informed the officer that he suffers from multiple spinal, left leg and left foot injuries and it causes him pain to not have footwear. Nunes was ordered to come to the door to be cuffed up through the food slot in the cell door. Nunes complied and was handcuffed behind his back. Four unknown Massachusetts Correctional Officers proceeded into the holding cell to forcibly remove Nunes' sneakers. Nunes again stated he has multiple spinal injuries, left leg injuries that cause Nunes to have multiple screws and metal rod implanted in his left leg, and left foot injuries and he is not willingly subjecting himself to pain that is caused when he does not have foot wear shock absorption. One officer told Nunes to kneel on the bare metal bed and Nunes stated he could not kneel without pain due to screws in his knee cap. This officer told Nunes to kneel or he would be slammed to the floor. Nunes stated that he is not resisting and can lay down, but must do so in a particular manner so as to not inflame his spinal injuries. Nunes was grabbed by two correctional officers assisting Nunes to lay on the bare metal bed attempting to lay toward Nunes right side, however, one correctional officer became aggressive because ~~was~~ Nunes wasn't moving fast enough and he twisted Nunes' body and spine in the opposite direction causing Nunes to scream out in pain. A third officer then proceeded to take off Nunes sneakers forcibly while a fourth officer

Stood by the cell door. Nunes was left without footwear and the correctional officers left the cell and ordered Nunes to come to the door to be uncuffed. Nunes stated he already told them it causes him pain to not have foot-wear due to Nunes' injuries and he was not getting up and walking barefoot subjecting himself to needless pain. The correctional officers reentered the cell and removed the handcuffs and Mr. Nunes was left without footwear for several hours.

147H. The action of the officers as set forth in paragraph 147G above was done without following Department of Correction Policy, and total disregard and indifference to Mr. Nunes health concerns and injuries, and is a direct result of subject matter "the failure of Defendants" to comply with the June 1, 2011 Addendum Accomodation, deliberately causing Nunes pain.

147I. On September 7, 2011, Plaintiff, Richard Nunes at the 8 P.M. medication time requested his HIV-medications, however, the medication ~~LPN~~ LPN, Laura Amorino dispensed the wrong medication to Nunes. Nunes stated, this is not my medication and LPN Amorino stated, "that is your Kolonopin". Nunes stated he does not take, nor prescribed Kolonopin and requested his HIV-medications. LPN Amorino was rude and hostile because she was embarrassed that I pointed out her error in front of the escorting officer, and she stated to me that I have no meds. LPN Amorino

later returned with my HIV-medications. Being left to believe LPN Amorino was not going to provide my life sustaining HIV-medication caused me to be frustrated, suffer anxiety, stress, mental anguish all of which caused further injury to my immune system. LPN Amorino is employed by the Defendants.

147J. On September 8, 2011, at 8 PM medication LPN Amorino gave me the wrong dosage of my HIV-medication. Specifically, she gave me one Viracept 625 mg tablet, instead of the prescribed 2-Viracept 625 mg Tablets. I pointed this error out to LPN Amorino. She stated you take that or you get nothing. ~~I~~ Nunes stated "I am not taking a partial dose, these medications are suppose to be taken at the same time and in the amount prescribed." Again, LPN Amorino was rude and hostile because she was again embarrassed in front of the escorting officer when Nunes pointed out her error. LPN Amorino took the HIV-medications and left. This caused Nunes extreme stress, anxiety, mental anguish and he started banging on his cell door demanding to see the Shift Commander. The unit officer informed Nunes that the Segregation Lt. has called the HCU to make sure the LPN returns with my correct medication. LPN Amorino returned ~~as~~ with the correct HIV-medication.

147K. On October 3, 2011, the Plaintiff, Richard Nunes received the Courts September 30, 2011 order denying Nunes Preliminary Injunction to reinstate Nunes'

HIV-medications based in part by a false incident report filed by LPN Amorino, and Defense Counsel's portrayal of Nunes being a rule breaker with respect to disciplinary reports 235771 & 235889, previously stated in paragraphs 147D. and 147E. Nonetheless, both said disciplinary reports have been dismissed and said reports were only issued to punish Nunes and paint him in a false light to the Court.

147L. On several occasions since Mr. Nunes has restarted his HIV-medications, Defendants have attempted to dispense wrong unprescribed medication and/or wrong dosages of his HIV Medications. On one occasion his HIV Medications were not dispensed until 11 A.M., when they are suppose to be dispensed at 8 AM and 8 P.M.. Most recently, Nunes was provided wrong medication by LPN Amorino on October 20, 2011. Because Defendants will not document their errors, Nunes refused to turn over this wrong dosage until he had an IPS officer come and photograph this wrongly provided prescription medication. A Captain come instead.

147M. On October 9, 2011, Plaintiff, Richard Nunes, was taken emergently to Leominster Hospital ER, and diagnosed with Colitis. This ailment is known to cause stomach/intestinal pain and diarrhea. Mr. Nunes was passing blood from his intestinal track, however, Defendants employee upon examining Nunes told him he had hemorrhoids and sent him back to his cell leaving him in extreme pain. Nunes was

running a low grade temperature and defecating dark red blood and was in fear for his life and having no other recourse Nunes blocked up his cell window with a sign that stated " I Have AIDS, BLEEDING OUT MY ASS, Temp. 100.04°, I will not ~~die~~ die quietly as a result of UMass Negligence. I demand a doctor now." This window blocking took place at 10:30 P.M. and caused an Ambulance to be sent to take Nunes to the Hospital. Dr. Lane at the Leominster ER ordered Nunes 2-separate antibiotics, however, UMass has failed to prescribe, Fill, and dispense these medications as prescribed. Plaintiff asserts this ailment [colitis] may very well be a side effect of the restart of his HIV-medications and further damage and injury caused to the Plaintiff, Richard Nunes as a result of Defendants Acts and or omissions as set forth in this complaint.

#### IV CAUSE OF ACTION

##### COUNT I

184A. Plaintiff, Richard Nunes, re-states Count I from the original Civil Complaint, C.A. No 1:10-CV-12013-RWZ, paragraphs 1-184, and paragraphs 7B-184A of his Amended Civil Complaint, C.A. No. 1:10-CV-12013-RWZ.

V. PRAYER FOR RELIEF

218A. WHEREFORE, Plaintiff, Richard Nunes, pro-se, request that this Court grant all the relief stated in the Original Civil Complaint, C.A. No. 1:10-cv-12013-RWZ, and in addition grant the following relief:

a. Award Plaintiff, Richard Nunes, punitive damages in the amount of One Million Dollars in United States Currency, (\$1,000,000.00),

b. Award Plaintiff, Richard Nunes, Compensatory damages in the amount of Forty-Eight Thousand Dollars in United States Currency, (\$48,000.00), and

c. Any other damages this Court deems just and proper.

The facts contained in this Amended Civil Complaint are made under the pain and penalty of perjury.

Richard D. Nunes, pro-se  
Richard D. Nunes, Pro-se

Respectfully Submitted By,

Dated: October 22, 2011

Richard D. Nunes, Pro-se

Richard D. Nunes, W-90483, Pro-se  
Shirley Medium

P.O. Box: 1218  
Shirley, Massachusetts,  
01964-1218

## CERTIFICATE OF SERVICE

I, Richard D. Nunes, hereby certify that I have served a copy of the below stated documents:

1. NOTICE OF APPEARANCE,
2. MOTION TO TAKE LEAVE TO AMEND  
CIVIL COMPLAINT No. 1-10-CU-12013-RWZ,
3. AFFIDAVIT OF RICHARD D. NUNES IN  
SUPPORT OF MOTION TO TAKE LEAVE TO  
AMEND CIVIL COMPLAINT NO. 1-10-CU-12013-RWZ,
4. AMENDMENT TO CIVIL COMPLAINT  
No. 1-10-CU-12013-RWZ, and
5. CERTIFICATE OF SERVICE,

to Counsels of record:

James A. Bello, Esq.  
Morrison, Mahoney LLP  
250 Summer Street  
Boston, Massachusetts  
02210

&

Sheryl F. Grant, Esq.  
Commonwealth of Massachusetts  
Department of Correction  
70 Franklin Street, Suite: 600  
Boston, Massachusetts  
02110

&

Joel H. Thompson, Esq.  
Prisoners' Legal Services, Inc.  
10 Winthrop Square, 3rd Fl.  
Boston, Massachusetts  
02110,

by mailing said documents United States First Class Mail, Postage Pre-paid, on October 22, 2011.

Signed under the pain and penalty of perjury.

Richard D. Nunes, Pro-se Dated: October 22, 2011  
Richard D. Nunes, W-90483, Pro-se  
Shirley Medium  
P.O. Box: 1218  
Shirley, Massachusetts, 01464-1218