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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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CAMDEN VICINAGE

UNITED STATES  
DISTRICT COURT

WALTER BENNETT, and DANIEL AMOS  
GREGORY ROYAL, and JOHN LACEY,  
individually and jointly on behalf  
of all others similarly situated

CIVIL ACTION

No. 1:02cv04993 (SMO)

CIVIL RIGHTS

Plaintiffs,

vs.

CORRECTIONAL MEDICAL  
SERVICES INC., LOUIS TRIPOLI,  
Vice President Of Medical Affairs for Correctional  
Medical Services, WILLIAM ANDRADE,  
East Coast Supervisor for  
Correctional Medical Services,  
JAMES J. NEAL, M.D., Regional State  
Medical Director for Correctional  
Medical Services, JAMES RUMAN, R.N.  
Regional Vice President for  
Correctional Medical Services,  
ROCK WELCH, Regional Vice President  
for Correctional Medical Services,  
ABU AHSAN, M.D., New Jersey Medical  
Director for Correctional Medical,  
Services, DWIGHT HUTCHISON, personally  
and in his official capacity as New Jersey Medical  
Director for the New Jersey Department of  
Corrections, and JOHN DOE AND  
JANE ROE 1-10,

Defendants.

FILED

JUL 25 2003

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

AMENDED CLASS ACTION  
COMPLAINT

I.

NATURE OF THE ACTION

1. This is a class action for monetary and injunctive relief pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(3). Plaintiffs Walter Bennett, Daniel Amos, Gregory Royal, and John Lacey bring this action individually and jointly on behalf of all persons who are or were incarcerated in New Jersey State prisons from January 1990 to the present. The defendants knowingly exposed plaintiffs and the putative class to hepatitis C virus ("HCV"), a serious communicable disease. Additionally, many of the putative class members entered prison with HCV, or contracted HCV while in prison, but the defendants were deliberately indifferent to their serious medical condition.

2. Defendants' deliberate indifference to the substantial risk of serious harm to prisoners' health and safety posed by exposure to HCV, and deliberate indifference to prisoners' HCV, violated and continues to violate the prisoners' rights, guaranteed under the Eighth Amendment to the U.S. Constitution and made applicable to the state through the Fourteenth Amendment, to be free from cruel and unusual punishments. Accordingly, defendants are liable to the class under 42 U.S.C. §§1983 and 1988. Additionally, defendants' conduct constituted negligence, medical malpractice, intentional infliction of emotional distress, and negligent infliction of emotional distress under the common law of New Jersey, and violated the Americans with Disabilities Act, 42 U.S.C.A. §§ 12131, et. seq.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction over plaintiffs' federal law claims pursuant to 28 U.S.C. §1331 and 1343(a)(3), and jurisdiction over plaintiffs' state law claims pursuant to principles of

pendant and ancillary jurisdiction.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391 because events giving rise to the claim occurred in the southern region of New Jersey.

### III.

#### THE PARTIES

##### Plaintiffs

5. Plaintiff Walter Bennett ("Bennett") is a citizen of the state of New Jersey, residing therein at 64 Regency Drive, Mount Holly, New Jersey 08060.

6. Plaintiff Daniel Amos is a citizen of the state of New Jersey, residing therein at the Riverfront State Prison located in Camden, New Jersey.

7. Plaintiff Gregory Royal is a citizen of the state of New Jersey, residing therein at the New Jersey State Prison, P.O. Box 861, Trenton, New Jersey 08625.

8. Plaintiff John Lacey is a citizen of the state of New Jersey, residing therein at the Riverfront State Prison located in Camden, New Jersey.

##### Defendants

9. Upon information and belief, defendant Correctional Medical Services, Inc. ("CMS") is a corporation organized and existing under the laws of the State of Missouri, and which maintains a principle place of business at 12647 Olive Boulevard, St. Louis, Missouri 63141.

10. Upon information and belief, defendant Louis Tripoli is the Vice President of Medical Affairs for Correctional Medical Services, Inc.

11. Upon information and belief, defendant William Andrade is the East Coast Supervisor for Correctional Medical Services, Inc.

12. Upon information and belief, defendant James J. Neal, M.D. is the Regional State Medical Director for Correctional Medical Services, Inc.

13. Upon information and belief, defendant James Ruman, R.N. is a Regional Vice President for Correctional Medical Services, Inc.

14. Upon information and belief, defendant Rock Welch is a Regional Vice President for Correctional Medical Services, Inc.

15. Upon information and belief, defendant Abu Ahsan, M.D. is the New Jersey Medical Director for Correctional Medical Services, Inc.

16. Defendants Correctional Medical Services, Inc., Louis Tripoli, William Andrade, James J. Neal, M.D., James Ruman, R.N., Rock Welch, and Abu Ahsan, M.D. are collectively referred to herein as the "CMS Defendants".

17. Upon information and belief, defendant Dwight Hutchison is the New Jersey Medical Director for The State of New Jersey Department of Corrections ("NJDOC").

18. Defendants Joe Docs 1 through 10 and Jane Roes are fictitious names for individual persons, partnerships, joint venturers, associations, corporations, professional corporations, successors or predecessors in interest, or other forms of business or governmental entity, the identities of whom are unknown at the present, but all or some of whom reside or are doing business in New Jersey, and who participated in the conduct complained of in this Complaint.

#### IV.

#### FACTS

##### The Defendants And Their Interrelationship

19. The NJDOC and its Medical Director, defendant Hutchison, are legally charged with

the responsibility to ensure that all persons committed to New Jersey State correctional institutions are confined with the level of custody necessary to protect the public and that they are provided with the care, discipline, training and treatment needed to prepare them for reintegration into the community.

20. At all relevant times defendant CMS was and is delegated to provide healthcare services to Plaintiffs pursuant to a contract with the State of New Jersey, specifically the NJDOC.

21. At all relevant times each of the individual CMS defendants was an agent of CMS acting on behalf of CMS and within the scope of his agency and had or was delegated duties owed to the plaintiffs by CMS.

#### Hepatitis C Virus Generally

22. Hepatitis C virus, or HCV, is a virus that causes liver disease. The virus enters the liver cells, uses the cell's inner genetic machinery to make copies of itself, which then infect more cells. In the vast majority of cases (approximately 85%) the infection becomes chronic and slowly damages the liver over many years. Over time, this liver damage can lead to cirrhosis of the liver, end-stage liver disease, and liver cancer. In the United States alone, hepatitis C, which is caused by HCV, affects about four million people, making it much more common than HIV. Hepatitis C is the most common blood borne infection in the United States.

23. HCV causes approximately ten thousand deaths annually in the United States and the annual incidence of death from HCV is on the rise.

24. Hepatitis C can be spread through IV drug use, sexual contact, needlestick injuries, tattooing, body piercing, sharing toothbrushes, razors, straws or utensils, or any other means of transferring blood.

25. HCV is a serious medical condition.

26. Exposure to HCV exposes a person to a substantial risk of severe damage to that person's future health.

**HCV in the New Jersey State Prisons**

27. Persons incarcerated in correctional systems comprise approximately 0.7% of the United States population, and have a disproportionately greater incidence of infectious diseases, including HCV, and other infections of public health importance.

28. Since at least 1990, a significant percentage of the New Jersey State prison inmate population suffers from HCV, and the non-infected members of the inmate population have been and continue to be exposed to HCV while incarcerated in New Jersey State prisons.

**Walter Bennett**

29. Plaintiff Walter Bennett was incarcerated in New Jersey approximately April 15, 1992 to June 5, 2002.

30. Mr. Bennett had a prior history of intravenous drug use. In addition, Mr. Bennett had blood transfusion(s) prior to 1992 so that he should have been offered screening for HCV according to Federal standards and the standard of care in the medical community.

31. While incarcerated, Mr. Bennett underwent blood tests.

32. The results of Mr. Bennett's blood tests showed that he had elevated hepatocellular enzymes so that according to the Federal standards the defendants should have had a heightened suspicion that Mr. Bennett was suffering from HCV and that the virus was doing damage to his liver. He should have been counseled regarding the same and undergone follow-up blood work to determine the need for treatment.

33. Despite that fact, no further testing was ordered to confirm HCV for over two years

nor was Mr. Bennett told of the significance of his history and elevated hepatocellular enzymes.

34. As a part of CMS's routine pre-discharge procedures, Mr. Bennett's blood was tested prior to his originally scheduled parole date.

35. It was not until this blood work was performed just prior to his expected release from prison that a hepatitis C panel was performed, which definitively confirmed the diagnoses of HCV.

36. Despite this fact, Mr. Bennett was not appropriately counseled regarding the fact that he had HCV or the consequences of this disease, nor was he advised of the need for further testing and evaluation for treatment.

37. Defendants' practice of withholding information and testing from Mr. Bennett insured that he would not be eligible for treatment while incarcerated in the New Jersey Prisons, because treatment must be given for several months in order to be effective.

38. Upon discharge from prison on June 5, 2002, Mr. Bennett was finally told by a CMS nurse that he had a diagnosis of HCV. The nurse informed him that he had HCV but gave him no further information regarding the nature of the disease, its potential consequences, and the need to take precautions to avoid spreading the virus to others in the community.

39. Although Mr. Bennett was also informed by the nurse that he should see a doctor, he was not given any copies of his medical records to take to another physician.

40. On June 5, 2002, Mr. Bennett was released from prison.

41. On June 6, 2002, Mr. Bennett married his current wife Rita Bennett and engaged in unprotected sexual relations.

42. In July, 2002, after being discharged Mr. Bennett went to see his family physician, who ordered blood work for Mr. Bennett which was performed on July 8, 2002.

43. Shortly after being discharged, Mr. Bennet sought a medical opinion from his family physician and was referred to a specialist for further evaluation of his HCV and the need for treatment.

**Daniel Amos**

44. Plaintiff Daniel Amos is currently incarcerated in the State of New Jersey at the Riverfront State Prison in Camden, New Jersey.

45. Mr. Amos had been incarcerated in both Wisconsin and Illinois prior to his transfer to New Jersey, and was given blood tests on numerous occasions.

46. Mr. Amos was transferred together with his medical records to the New Jersey prison system from Wisconsin in 1995.

47. After several years of suffering from numerous upper respiratory infections, pneumonia and different viral health problems, Mr. Amos learned in January 2002 for the first time that he suffered from chronic Hepatitis C and had been exposed to Hepatitis A and B. He was provided this information by a CMS nurse practitioner.

48. Mr. Amos requested treatment from medical personnel at Riverfront Prison but was told that treatment was not available at this institution. Amos was told that his liver condition arose from his drinking and he was cautioned to stop drinking. He was told he would be placed on the chronic care list.

49. On January 29, 2002, Mr. Amos submitted an inmate request form to the Office of the Ombudsman because he had not been placed on the chronic care list.

50. From January 2002 through May 2002, Mr. Amos submitted numerous written complaints to, among others, the Ombudsman; the Warden of Riverfront State Prison; NJDOC and



the Prison Medical Department, expressing his concern about his HCV medical condition and the lack of treatment.

51. Mr. Amos' requests for medical treatment were largely ignored. On May 28, 2002 he did have an opportunity to meet and speak with CMS nurse Ljages who told him that he would be fine.

52. Over the next several weeks, Mr. Amos became seriously ill and was losing significant body weight. As a consequence of requests to see a doctor, he was seen on June 26, 2002 by Ms. Miller, a CMS nurse, who gave him some antibiotics for his elevated temperature. Again, he was denied appropriate evaluation and treatment for HCV.

53. In July of 2002 the Philadelphia Inquirer reported about problems experienced by New Jersey State Prison inmates with HCV in receiving treatment. Mr. Amos was a subject of the articles and as a consequence was seen on August 5, 2002 by Nurse Miller of CMS and told he would receive treatment, but that it might take months.

54. On August 8, 2002, Mr. Amos was seen by Defendant Abu Ashan and told he needed numerous tests to determine whether he was an appropriate candidate for treatment. He was told the tests would take about six months.

55. On September 6, 2002, CMS Nurse Miller told Mr. Amos his recent blood tests indicated a need for treatment for his HCV (in contrast to what he had been told in the past) and that he should undergo a liver biopsy, which took place on October 10, 2002.

56. On November 21, 2002, Mr. Amos was told by an Infectious Disease specialist, Kathleen Casey, M.D. at Meridian Health System, that he had Hepatitis C as far back as 1970 or 1980 and treatment was finally offered to him. His much-delayed treatment finally commenced on

January 6, 2003.

Gregory Royal

57. Plaintiff Gregory Royal is currently incarcerated in the State of New Jersey at the New Jersey State Prison.

58. Mr. Royal was institutionalized at Camden County Correctional Facility from approximately October 1996 through approximately May of 1997. In approximately May of 1997 he was transferred to Garden State Reception & Correctional Facility until approximately June of 1997.

59. In approximately June of 1997 Mr. Royal was transferred to CRAF Reception & Assignment Facility until approximately July of 1997. He spent approximately one month at Bayside State Prison and was transferred to Southern State Correctional Facility from approximately July of 1997 through approximately June of 1998.

60. Mr. Royal next was incarcerated in June of 1998 through approximately January 1999 at Camden County Jail. In approximately January 1999 through May of 1999 he was incarcerated at CRAF Reception & Assignment.

61. From approximately May 1999 through the present Mr. Royal has been incarcerated at New Jersey State Prison.

62. In approximately September of 2001 Mr. Royal was told by CMS nurse Amato at New Jersey State Prison that he had chronic Hepatitis C and liver damage. He was told "not to worry about it" and given some type of injection and told that he'd be seen in six months. He does not know what the injection was, and was not seen in follow up.

63. Mr. Royal was not given any counseling for his HCV and/or methods for prevention,

transmission, monitoring or treatment options.

64. Mr. Royal does not know how long he has had HCV because CMS personnel has not informed him of the results of prior blood tests, despite blood tests being done on all prior prison transfers.

65. Mr. Royal has requested information and/or treatment regarding his HCV from CMS medical personnel on numerous occasions but he has never received any answers. He has written letters to Governor McGreevey, Rock Welch, David Clark of CMS, and the Office Administrator at New Jersey State Prison requesting information and/or treatment. He has never received a response to any of these letters.

66. Mr. Royal has filed numerous New Jersey State Prison Administrative Remedy Forms and numerous New Jersey Department of Corrections Health Services Request Forms for information and/or treatment, but has not had any response.

67. Mr. Royal is on blood pressure medication but does not know if this medication has any effect on his HCV. He has asked CMS personnel but has not received any answers to his questions.

68. Sometime near the beginning of April 2003 after complaining again in the infirmary, Plaintiff was informed that he would be scheduled for a colonoscopy and liver biopsy. He was told that he first needed to be tested for HIV, and that if he refused a liver biopsy would not be performed.

69. As a consequence, Mr. Royal signed a consent for HIV test, but to date he has still not been given any information about a colonoscopy and/or liver biopsy.

70. Mr. Royal used IV drugs in the 1970's.

**John Lacey**

71. Since 1983 plaintiff John Lacey has been incarcerated in New Jersey state prisons.

72. Mr. Lacey is not infected with HCV.

**Defendants' Deliberate Indifference to Inmates' HCV  
And the Risk to Non-Infected Inmates**

73. Screening for HCV infection by measurements of anti-HCV by EIA should be considered for any inmate with elevated hepatocellular enzymes of unknown etiology or signs or symptoms of hepatitis or any of the following: history of illicit IV drug use; recipient of drug transfusions or organ transplant before 1992; recipient of clotting factor transfusion prior to 1987; or a history of hemodialysis.

74. Confirmation of the HCV infection should be undertaken once an inmate with risk factors for HCV infection has elevations in hepatocellular enzymes. There should be an initial diagnosis of HCV infection and then tests offered to the inmate to confirm HCV infection. Indeed, even for inmates with no risk factors, if a blood test shows a positive EIA there should always be follow up.

75. A physical examination should be conducted on all inmates diagnosed with an HCV infection which should include, at least: a targeted history and physical examination; serum ALT/AST; serum albumin, bilirubin, a prothrombin time if amino transferases are elevated; and renal function assessment. In addition, there should be periodic, i.e., every four months, clinical evaluation and laboratory study depending on the severity of the HCV infection.

76. Upon information and belief, all defendants have known since at least 1990 that a significant percentage of the New Jersey State prison inmate population suffers from HCV, and that non-infected members of the inmate population are exposed to HCV while incarcerated in a New

Jersey State prison.

77. Despite defendants' knowledge of the substantial health and safety threat posed by exposure to HCV, and the serious medical needs of those actually infected with HCV, Defendants have not made or implemented adequate plans for the screening, counseling, evaluation, and treatment of HCV infected inmates, which has resulted in severe harm to HCV infected inmates, and needlessly exposed the non-infected inmates, prison personnel, and the general population outside of prison with whom paroled inmates come into contact, to the substantial risk of contracting HCV.

78. Defendants have displayed deliberate indifference to the substantial health and safety threat posed by exposing inmates to HCV by, among other things: failing to appropriately screen inmates for HCV (including the failure to keep appropriate records related thereto); failing to confirm the presence of HCV through further testing when indicated; failing to perform appropriate physical examinations and further testing for HCV where indicated; failing to evaluate patients for treatment of HCV where indicated; failing to offer patients the option of treatment or referrals for HCV treatment where indicated; and failing to counsel and educate inmates regarding the diagnoses of HCV and its consequences and how to avoid the risks of spreading HCV to others within the prison population and others in the general population upon release from prison; and how to avoid contracting HCV.

79. Defendants have displayed deliberate indifference to the medical needs of the inmates by, among other things: refusing to appropriately screen for HCV; refusing to test for HCV; refusing to provide treatment to those stricken with the illness even if denying treatment results in a worsening of the condition and/or death; refusing to inform and delaying informing inmates that they have the illness, sometimes until the eve of their release from the New Jersey Prisons and, even

then, failing to fully advise them that the illness can be easily spread to unsuspecting members of society and family members through blood and sexual contact.

80. This epidemic that Defendants have had and now have an opportunity and obligation to control will worsen in the coming years as the prison population grows and remains unscrined, untested, uneducated and untreated, and as infected inmates are released into society ignorant of the virus they carry.

81. Defendant CMS is one of the country's largest inmate health services provider, and the CMS defendants have been and are familiar with the minimally acceptable standard of care for the screening, confirmation, diagnosis, treatment and counseling necessary for an HCV infected inmate.

82. Upon information and belief, at all relevant times the CMS defendants intentionally withheld appropriate HCV testing until just before a prisoner is discharged for economic reasons, i.e., so that CMS would not have to pay for any additional tests or examinations past the initial blood work, including the expensive HCV therapy, which would be required if indicated.

83. Defendants acted and/or failed to act with reckless or callous disregard of, or indifference to, the rights or safety of inmates incarcerated in New Jersey State prisons

#### CLASS ACTION ALLEGATIONS

84. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

85. Plaintiffs bring this action in their own behalf and as representatives of a class consisting of: (1) all individuals who are or were incarcerated in New Jersey State prisons from January 1990 to the present and who are not infected with HCV and (2) all individuals who are or were incarcerated in New Jersey State prisons from January 1990 to the present and who are infected

with HCV.

86. Upon information and belief, there are currently more than 24,000 prisoners incarcerated in correctional facilities operated by the State of New Jersey. Since 1990, the average prison population in New Jersey State prisons has been over 20,000 individuals.

87. Upon information and belief, more than 6,000 prisoners incarcerated in correctional facilities operated by the State of New Jersey are infected with hepatitis C.

88. The conditions, practices, and omissions that form the basis of this complaint are common to all members of the class, and the relief sought will apply to all of them.

89. The claims of the individual Plaintiffs Bennett, Amos, Royal and Lacey are typical of the claims of the entire class. Each plaintiff was an individual who was or is incarcerated in a New Jersey State prison, and was incarcerated in a New Jersey State prison after 1990. As such, they were wrongfully exposed to HCV and/or they were infected with HCV but the defendants ignored the risks associated with HCV and/or ignored their serious medical conditions.

90. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class as a whole.

91. There are questions of law and fact common to the members of the class, including whether Defendants wrongfully exposed the prison population to HCV, which in turn exposed the prison population to a serious and substantial threat to their health and safety, and whether the Defendants ignored prisoners' HCV.

92. The named Plaintiffs will thoroughly and adequately protect the interests of the class. Plaintiffs have adequate financial resources to prosecute this litigation, and have retained counsel experienced in class action, complex litigation, mass tort actions, healthcare litigation, federal

litigation, fraud, and other complex civil matters. Further, Plaintiffs' counsel will advance all reasonable costs to protect the class and prosecute the claims set forth herein.

93. Common questions of law and fact predominate over individual questions, and the class procedure is superior to other available methods for the fair and efficient adjudication of the this litigation.

**COUNT ONE**

**Plaintiffs v. All Defendants**

**Violations Of 42 U.S.C § 1983**

94. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

95. At all relevant times the defendants acted under color of law.

96. The defendants were deliberately indifferent to the substantial risk of serious harm to the health and safety of non-HCV infected prisoners incarcerated in New Jersey State prisons posed by exposure to HCV.

97. The defendants were deliberately indifferent to HCV infected prisoners' serious medical conditions and needs.

98. By their deliberate indifference to the substantial risk of serious harm to non-infected prisoners' health and safety posed by exposure to HCV, and deliberate indifference to the HCV-infected prisoners' serious medical conditions and needs, the defendants deprived plaintiffs and class members of their right, guaranteed under the Eighth Amendment to the U.S. Constitution and made applicable to the states through the Fourteenth Amendment, to be free from cruel and unusual punishments, in violation of 42 U.S.C. §1983.

99. The defendants' violation of the prisoners' Eighth Amendment rights has also caused



plaintiffs and the class members to suffer emotional distress and physical suffering, and in some instances death.

100. The acts and omissions of the defendants were intentional, willful, malicious and/or reckless.

**COUNT TWO**

**Plaintiffs v. CMS Defendants**

**Negligence**

101. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

102. The CMS Defendants owed the following duties to the Plaintiffs:

- a. to adopt, formulate, maintain, and enforce customs, policies and procedures to insure that Plaintiffs were not subjected to deliberate indifference to serious medical needs;
- b. to engage or employ competent and suitable employees in corrections positions; and
- c. properly supervise, direct and control the corrections officials and/or agents

under their control.

103. The CMS Defendants breached these duties by being deliberately indifferent to Plaintiffs' and the infected class members' immediate medical needs, despite knowing that denying testing, education, and treatment to Plaintiffs exposed them to harm to their health.

104. The CMS Defendants' acts and omissions were the proximate cause of the injuries, damages, and losses suffered by the Plaintiffs.

105. The CMS Defendants' acts and omissions increased the risk of harm, injuries and

losses suffered by the Plaintiffs.

106. The CMS Defendants' acts and omissions caused Plaintiffs to suffer serious illness and agonizing physical and emotional pain, which will continue for an indefinite time.

107. As a further result of the aforementioned injuries, Plaintiffs have been and will continue to be hindered and prevented from attending to their usual and daily duties.

108. As a further result of the aforementioned injuries, Plaintiffs have suffered and will continue to suffer in the future, loss of life's pleasures, if not their actual lives.

### **COUNT THREE**

#### **Plaintiffs v. CMS Defendants**

#### **Medical Malpractice**

109. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

110. The negligence, carelessness, and malpractice of the CMS Defendants consisted of the following:

- a. failing to recognize the rights, safety and health of the Plaintiffs;
- b. failing to exercise the standard of skill and care commonly exercised by health care providers in like cases;
- c. failing to properly treat the Plaintiffs during their periods of incarceration;
- d. failing to appropriately screen;
- e. failing to properly perform tests on the Plaintiffs during their periods of incarceration;
- f. failing to inform Plaintiffs of their health status during their periods of incarceration;

- g. failing to utilize and consult competent and experienced physicians and other health care providers in examining, treating and providing medical care to the Plaintiffs during their periods of incarceration;
- h. being otherwise negligent and careless and having committed malpractice upon the Plaintiffs; and
- i. violating the laws, ordinances and statutes of the State of New Jersey.

111. The CMS Defendants' acts and omissions were the proximate cause of the injuries, damages, and losses suffered by the Plaintiffs.

112. The CMS Defendants' acts and omissions increased the risk of harm, injuries and losses suffered by the Plaintiffs.

113. The CMS Defendants' acts and omissions caused Plaintiffs to suffer serious illness and agonizing physical and emotional pain, which will continue for an indefinite time.

114. As a further result of the aforementioned injuries, Plaintiffs have been and will continue in the future to be hindered and prevented from attending to their usual and daily duties.

115. As a further result of the aforementioned injuries, Plaintiffs have suffered and will continue to suffer in the future, loss of life's pleasures, if not their actual lives.

#### COUNT FOUR

#### Plaintiffs v. CMS Defendants

#### Intentional Infliction Of Emotional Distress

116. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

117. The above described malicious, intentional, and/or reckless acts and omissions of Defendants were outrageous, atrocious, and completely intolerable in a civilized society, and went

beyond all possible bounds of decency.

118. The above described malicious, intentional, and/or reckless acts and omissions of the CMS Defendants, caused and continue to cause the Plaintiffs severe emotional distress, anxiety and fear.

119. As a direct and proximate result of the malicious and intentional and/or reckless actions of CMS Defendants, Plaintiffs suffered injuries which are described above.

120. The above described actions of CMS Defendants were so malicious and intentional and displayed such a reckless indifference to the Plaintiffs' rights and well-being, that the imposition of punitive damages is warranted.

#### **COUNT FIVE**

#### **Plaintiff v. CMS Defendants**

#### **Negligent Infliction Of Emotional Distress**

121. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

122. Plaintiffs believe and therefore aver that the CMS Defendants, through the actions of their officers, agents, servants and/or employees, as more fully set forth in the preceding paragraphs of this Complaint, did negligently inflict serious emotional distress upon the Plaintiffs in a negligent and/or reckless manner.

123. As a direct result of the actions of the CMS Defendants, Plaintiffs have been caused serious emotional damages and have experienced great emotional trauma.

124. As a direct result of the actions of the CMS Defendants, Plaintiffs have suffered and will continue to suffer the damages described in this Complaint.

**COUNT SIX**

**Plaintiffs v. All Defendants**

**Violations Of The Americans With Disabilities Act, 42 U.S.C §§ 12131 et. seq.**

125. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

126. HCV is a recognized disability under the under the Americans with Disabilities Act, 42 U.S.C §§ 12131 et. seq., and the Plaintiffs and the infected class members are "qualified individuals with a disability" who are otherwise entitled to the provision of services in the form of medical testing, treatment or education from defendants who are legally bound to provide said services.

127. The Plaintiffs have been excluded from the receipt of services in the form of medical testing, treatment or education from all of the Defendants, and each of them, both jointly and severally, solely on the basis of their HCV disability.

128. All defendants are the legally responsible providers of medical testing, treatment and education for Plaintiffs' HCV disability, and as public entities and/or instrumentalities thereof are in violation of the American with Disabilities Act, 42 U.S.C §§ 12131 et. seq. by virtue of their unlawful, discriminatory and intentional practice of excluding Plaintiffs from the benefit, provision and participation in said services.

129. Defendants' acts and omissions were the proximate cause of the injuries, damages, and losses suffered by the Plaintiffs.

130. Defendants' acts and omissions increased the risk of harm, injuries and losses suffered by the Plaintiffs.

131. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs have

suffered and will continue to suffer serious illness and agonizing physical and emotional pain for an indefinite time.

132. As a further result of defendants' wrongful conduct, Plaintiffs have been and will continue in the future to be hindered and prevented from attending to their usual and daily duties.


133. As a further result of defendants' wrongful conduct, Plaintiffs have suffered and will continue to suffer loss of life's pleasures, if not their actual lives.


### **DEMAND FOR RELIEF**

WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, demand judgment against the defendants jointly, severally, and individually as follows:

- (a) certifying this action as a class action with plaintiffs as the representatives of the class;
- (b) declaring that the conduct of the defendants was unlawful as described in this Complaint;
- (c) enjoining the defendants from continuing to engage in the unlawful acts and/or omissions described in this Complaint;
- (d) ordering the defendants to adopt and implement a detailed plan to address and correct defendants' deliberate indifference to the plight of New Jersey State prison inmates, as described in this Complaint, with the Court retaining jurisdiction until the unlawful conditions and practices alleged in this Complaint no longer exist, and the Court is satisfied that they will no longer occur in the future;
- (e) entering an award against defendants (except defendant Hutchison in his official capacity) and in favor of plaintiffs and other members of the class for compensatory damages, including damages for pain and suffering and emotional distress, and past and future medical expenses, and/or nominal damages;

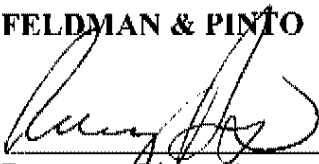
- (f) disgorging all profits derived by defendants (except defendant Hutchison in his official capacity) as a result of their wrongful conduct;
- (g) awarding punitive damages against all defendants (except defendant Hutchison in his official capacity);
- (h) awarding plaintiffs their costs of suit, together with reasonable attorney's fees; and
- (i) such other relief as the Court deems necessary and proper and/or which is available under state or federal law.


**FELDMAN & PINTO**  
  
 \_\_\_\_\_  
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 Laura Feldman, Esq.  
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**FELDMAN, SHEPHERD, WOHLGELERNTER & TANNER**  
  
 \_\_\_\_\_  
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 Attorneys for Plaintiffs

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues.

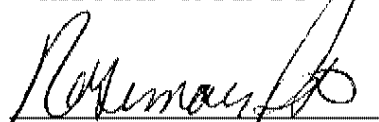
**FELDMAN & PINTO**  
  
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 Rosemary Pinto, Esq.  
 Laura Feldman, Esq.

**FELDMAN, SHEPHERD, WOHLGELERNTER & TANNER**  
  
 \_\_\_\_\_  
 Thomas More Marrone, Esq.  
 Daniel S. Weinstock, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Rosemary Pinto is hereby designated as trial counsel in this matter.

**FELDMAN & PINTO**



Rosemary Pinto, Esq.  
Laura Feldman, Esq.

**FELDMAN, SHEPHERD, WOHLGELERNTER  
& TANNER**

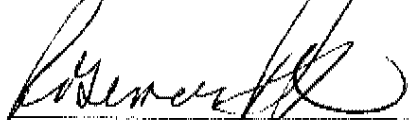


Thomas More Marrone, Esq.  
Daniel S. Weinstock, Esq.

**CERTIFICATION**

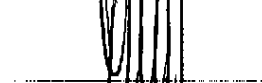
We hereby certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are willfully false, we are subject to punishment.

**FELDMAN & PINTO**



Rosemary Pinto, Esq.  
Laura Feldman, Esq.

**FELDMAN, SHEPHERD, WOHLGELERNTER  
& TANNER**



Thomas More Marrone, Esq.  
Daniel S. Weinstock, Esq.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RECEIVED  
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WALTER BENNETT, individually  
and on behalf of all others  
similarly situated, Plaintiffs,

v.

SPECTRUM HEALTHCARE SERVICES, INC.,  
et. al.  
Defendants.

CIVIL ACTION No.: 1:02cv04993 (S.M.O.)

2003 JUL 25 A 10: 13  
UNITED STATES  
DISTRICT COURT

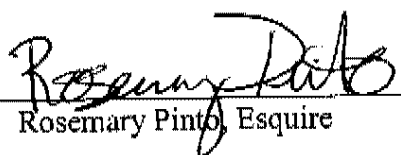
**CERTIFICATION OF SERVICE**

I hereby certify that I caused the below-described documents to be mailed via United States Mail to the person listed below on the date below.

DATE: July 22, 2003  
DOCUMENT: **AMENDED CLASS ACTION COMPLAINT**  
PERSON (S): Joel Schneider, Esq.  
Archer & Greiner  
One Centennial Square  
Haddonfield, NJ 08033

OFFICE OF THE ATTORNEY GENERAL  
Department of Law and Public Safety  
Hughes Justice Complex, 25 W. Market Street  
P.O. Box 112  
Trenton, NJ 08625  
Attention: **Victoria Kuhn, Esquire**

FELDMAN & PINTO

BY:   
Rosemary Pinto, Esquire