

DEC 21 2015

U.S. DISTRICT COURT  
W. DIST. OF N.C.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA**

Jamie R. Spake,

FILE NO: 1:15 CV 284

Dana A. Shedd,

Brian K. Lewis,

**CLASS ACTION COMPLAINT**

John Roe and Jane Roe,

**JURY REQUESTED**

John Miles and Jane Miles,

for all claims triable to the Jury;

John Stiles and Jane Stiles,

EQUITABLE RELIEF

Individually and on behalf

AND DECLARATORY

Of those similarly situated,

RELIEF REQUESTED

Plaintiffs,

FOR CLASS CLAIMS

AND INDIVIDUAL,

CLAIMS AMENDABLE

TO DECLARATORY

AND EQUITABLE RELIEF

V.

NC Department Of Public Safety/ Division of Prisons

David W. Guice, Commissioner

Frank L. Perry, Secretary

Paula Y. Smith MD, Medical Director

Sandra Pittman, Western Regional Medical Director

Norma Melton, Lead RN, Mt View Correctional

Mike Slagle, Administrator, Mt View Correctional

Mike Ball, Administrator, Avery Mitchell Correctional

Robert J. Uhren, MD

Keith C. D'Amico, PA

John Doe and Jane Doe A-Z

Defendants,

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### **INTRODUCTION**

1. The NC Department of Public Safety/ Division Of Prisons/ Health Services, by policy, procedure and practice systematically denies necessary medical care for inmates, (but not limited to) diagnosed with Hepatitis C Viral Infections (HCV), thereby placing them at substantial and unnecessary risk for severe illness, injury and death.

2. The Plaintiffs, individually and as a class, sue the defendants in their respective, specified individual and official capacities for their joint and several actions that constitute deliberate indifferences to their serious medical needs as HCV patients, in violation of their clearly established Eighth and Fourteenth Amendment Rights under the US Constitution, for which 42 U.S.C. ~ 1983 provides declaratory, equitable, and legal remedies.

3. The plaintiffs, individually and as a class, sue the defendants, NC Dept of Public Safety a recipient of federal monies, Commissioner David W Guice a recipient of federal monies, and the other named defendants in their individual and official capacities for acts of constituting discrimination because of their disability of HCV under Title II of the Americans with Disabilities Act as Amended and ~ 504 of the Rehabilitation Act of 1973.

4. The Plaintiffs class representatives have exhausted their administrative remedies under governing national and state laws.

5. Plaintiffs Jamie R. Spake, Dana S. Shedd, and Brian K. Lewis are incarcerated in the NC Dept of Public Safety/ Division of Prisons, with serious health complications stemming from their HCV.

The defendants have refused to provide medical treatment to plaintiffs and others incarcerated in the Division of Prisons with HCV infections for non-medical reasons that is consistent with current and prevailing medical standards, as reflected in recommendations from the Center for Disease Control and Prevention (CDC) and the United States Public Health Service, Surgeon General, the Food and Drug Administration, also public and private medical providers including the Federal Bureau of Prisons (BOP) and the United states Dept of Veteran Affairs. As a result the defendants have denied plaintiffs, and others similarly situated, access to necessary and

proper medical care in violation of the herein named Constitutional Amendments and State laws.

### **JURISDICTION AND VENUE**

6. Plaintiffs set forth claims under United States Constitutional Amendments VIII and XIV, 42 U.S.C. ~12131 et. Seg. and 29 U.S.C. ~ 791 et. Seg.

7. 28 U.S.C. ~ 1331 (Federal Question) and 1343 (Federal Civil Rights Question) confer subject matter jurisdiction on this court.

8. North Carolina Constitution Article 1, Section 1, 2, 3, 27 and Article 4, Section 13(1).

9. 28 U.S.C. ~1367 confers Supplemental jurisdiction for all claims that arise under North Carolina Laws

10. The substantial number of events in this lawsuit took place in Mitchell and Avery Counties in the state of North Carolina.

11. Plaintiffs lay venue in this court per 28 U.S.C. ~ 1391

### **PLAINTIFFS**

12. Plaintiffs Mr. Jamie R Spake, Mr. Dana A. Shedd, and Mr. Brian Lewis are adult individuals currently incarcerated at the Mountain View Correctional Institution, in Spruce Pine, North Carolina. All sue for injunctive and declaratory relief on behalf of themselves, and on behalf of a class of Plaintiffs who are currently or will in the future be subject to defendants' discriminatory and unconstitutional policy and procedure for treating HCV infections.

13. In the cases of Mr. Jamie R. Spake, Mr. Dana A. Shedd, and Mr. Brian K. Lewis HCV is a disability and disease of the digestive and circulatory system that substantially and materially impairs their respective major life activities of: A. Self Caring, B. Social and Interaction with other persons, C. Manual tasks particularly those involving knives, scissors, needles, toothbrush, eating utensils, shaving razors, D. Reproduction, and E. Life itself.

14. Each day the Defendants, NC Dept of Public Safety, delays treatment of Mr. Jamie R. Spake, Mr. Dana A. Shedd, and Mr. Brian K. Lewis's cases of HCV, the likelihood of cirrhosis of the liver, liver cancer, a liver transplant, and death from HCV grows for each one of them, as well as each member of the class, as does the likelihood of infection for those with whom they come in contact with in the correction facilities and after their respective release, with whom they make contact with in the general public.

15. The Plaintiffs liver, digestive system, and circulatory systems continue to deteriorate, as do those of other members of the named class, the sub-class of plaintiffs with known cases of HCV that are not treated, and the sub-class of plaintiffs with unknown and untreated cases of HCV.

16. Plaintiffs Mr. Jamie R. Spake, Mr. Dana A. Shedd and Mr. Brian K. Lewis have requested the new “break through” drug therapy adopted January 2014 by the American Association for the study of Liver disease and Association for the study of Infectious Disease (AALSD/ ASID). The new drug, replacing the highly toxin and less effective 48 week Interferon base injection therapy in very short order, consisting of a 12 week daily pill therapy protocol, with a 95% cure rate, as the medical community “Standard of Care” to treat HCV.

17. Plaintiff John Roe and Jane Roe are the estimated 50-80% of male and female inmates within North Carolina prisons who have not been screened for HCV, as they were for HIV/ AIDS, and do not know their HCV status.

18. Plaintiffs John Miles and Jane Miles are the respective male and female inmates within the North Carolina prisons who have tested positive for HCV, and have not received treatment for HCV, in compliance with the professional standard of medical care for HCV Positive individuals that the FDA, FBOP, CDC, US Public Health Services, and US Dept of Veterans Affairs approved since December 2013.

19. Plaintiffs John Stiles and Jane Stiles are the respective male and female inmates within the NC Prisons who are HCV positive, and do not know that they are HCV positive, and have not received treatment for HCV, in compliance with professional standard of medical care for HCV positive individuals that the FDA, FBOP, CDC, US Public Health Services, and US Department of Veterans Affairs since December 2013.

20. All Plaintiffs are daily exposed to HV infection, or re-infection while incarcerated, due to the deliberate indifference of Defendants who have not adopted the safer, more effective treatment protocols for HCV treatment adopted by the CDC, FBOP, FDA, US public Health Services, and US Department of Veterans Affairs to prevent infection and re-infection of inmates.

21. Plaintiffs respective requests for the treatment have been denied for non-medical reasons.

### **DEFENDANTS**

22. Defendant NC Dept of Public Safety is an agency of the state of North Carolina, that Mountain View Correctional Institute and Avery Mitchell Correctional Institute in the town of Spruce Pine, North Carolina, among other correctional institutions. The principle

office is located at 831 W. Morgan Street, in Raleigh, North Carolina. The NC Dept of Public Safety is responsible for providing adequate medical health services, comparable to Medical Community Standards and to Creating policy, procedure and practices that ensure appropriate medical treatment to plaintiffs and all those similarly situated.

23. Defendants are being sued by plaintiffs for creation and implementation of policy and procedure that have directly inflicted harm and demonstrated deliberate indifference to the disability, disease, and serious life threatening medical needs of all plaintiffs, in defiance of the plaintiffs clearly established rights under the US Constitution Amendment VIII and XIV through 42 U.S.C. ~1983, b. Discriminated against plaintiffs on the basis of their disability in defiance of the Title II of the Americans with Disabilities Act as amended t 42 U.S.C. ~1212et. Seg., ~504 of the Rehabilitation Act of 1973 at 29 U.S.C. ~791 et. Seg., and c. have directly inflicted harm and demonstrated deliberate indifference to the disability, disease, and serious life threatening medical need of plaintiffs clearly established rights under North Carolina Constitution Article 1, Section 1, 2, 3, 27 and Article 4 Section 13(1).

24. Defendant David W. Guice, an adult individual, is the Commissioner of Corrections within the NC Department of Public Safety. Whom, NC Governor, Pat McCrory appointed as commissioner of the NC Dept Of Public Safety/ Division of Prisons. (Commissioner Guice).

25. Commissioner Guice is responsible for policy and procedure, administration, and supervision of staff and employees within the NC Division of Prisons during all times relevant to this action.

26. Plaintiffs sue Commissioner Guice in his individual and official capacity. At all relevant times, Defendant Commissioner Guice has acted and will continue to act under the color of state law.

27. Defendant Frank L. Perry, an adult individual, is the Secretary of the NC Dept of Public Safety / Division of Prisons. He is responsible for all oversight, operation, and administration of the NC Dept of Public Safety/ Correctional System, including providing appropriate medical treatment and the formulation of policy and procedure that ensures the provision of that treatment of plaintiffs and those similarly situated. He is sued in his official and individual capacities. At all relevant times, Defendant Frank L. Perry has acted and will continue to act under the color of state law.

28. Defendant Paula Y. Smith, an adult individual, is the Medical Director of the NC Dept of Public Safety/ Division of Prisons/ Health Services. Dr. Paula Y. Smith, as medical director, serves on the U.R. Board and has the responsibility in overseeing the delivery of all medical services in the NC Division of Prisons. Dr. Paula Smith is responsible for the establishment of medical policy and procedure that governs all the medical treatment of all inmates within the NC Division of Prisons. Defendant Smith is

sued in her individual and official capacities. At all relevant times she has acted and will continue to act under color of state law.

29. Defendant Sandra Pittman, an adult individual, and the Western Regional Medical Director for the NC Dept of Public Safety/ Division of Prisons/ Health Services. She is responsible for supervising and monitoring the delivery of all medical and dental care services, throughout the Western District of North Carolina, which must be provided at a level consistent with community standards. Defendant Pittman is sued in her individual and official capacities. At all relevant times she has acted and will continue to act under color of state law.

30. Defendant Norma Melton, an adult individual, is the Mountain View Correctional Institution Medical Lead Nurse for the NC Dept of Public Safety/ Division of Prisons/ Health Services. Responsible for supervising and monitoring the delivery of all medical and dental care services within Mountain View Correctional Institution. Which must be provided at a level consistent with community standards. Defendant Melton is sued in her individual and official capacities. At all times relevant she has acted and will continue to act under color of state law.

31. Defendant Mike Slagle, an adult individual, is the administrator of the Mountain View Correctional Institution, for the NC Dept of Public Safety/ Division of Prisons. He is responsible for supervising and monitoring the delivery of all medical and dental care

services which must be provided at a level consistent with community standards. Defendant Slagle is sued in his individual and official capacities. At all relevant times he has acted and will continue to act under color of state law.

32. Defendant Mike Ball, an adult individual, is the Administrator of Avery Mitchell Correctional

Institution for the NC Dept of Public Safety/Division of Prisons. He is responsible for supervising and monitoring the delivery of all medical and dental care services, which must be provided at a level consistent with community standards. Defendant Ball is sued in his individual and official capacities. At all times relevant he has acted and will continue to act under color of state law.

33. Defendant Robert J. Uhren MD and Keith C. D'Amico PA, are adult individuals, and are the primary medical providers for NC Dept of Public Safety/ Division of Prison/ Health Services. Both provide medical care at Mountain View Correctional Institution and at Avery Mitchell Correctional Institution. Both defendants are treating physicians of Plaintiffs.

34. Defendant Robert J. Uhren MD and Keith C. D'Amico PA have the obligation to provide independent, individual, safe, effective, medical care to each plaintiff and class members similarly situated and consistent with current community standard of professional medical care.

35. Plaintiffs sue Dr Robert J Uhren and Keith C. D'Amico PA in individual and official capacities for action taken under color of state law as plaintiffs' treating physician and physician's assistant as employees or contractors of the NC Dept of Public Safety, for their deliberate indifference in refusing to treat plaintiffs' disability, disease, and serious medical needs of HCV infection in compliance with current standards of individualized professional medical care.

36. Defendants John Doe and Jane Doe A-Z, adult individuals, are male and female doctors, nurses, case managers, correctional officers, supervisors and any NC Dept of Public Safety/ Division of Prisons, employees, agents or representatives whose work place are Mountain View Correctional Institution, Avery Mitchell Correctional Institution and any other prisons operated by the defendants charged with responding to requests for medical care for HCV Infections from now – unknown inmates with in the NC Prison Systems.

37. Plaintiffs sue defendants John Doe and Jane Doe A-Z in their respective individual and official capacities for action taken under color of state law. For their deliberate indifference refusal to treat plaintiffs' disability, disease, and serious medical needs of HCV in Compliance with current standards of individualized professional medical care.

38. Plaintiffs sue named defendants for creation and implementation of policy and procedure and practices that have directly inflicted harm and demonstrated deliberate

indifference to the debilitating disease, and serious medical needs of plaintiffs and all similarly situated class members in defiance of United States Constitutional Amendment VIII and XIV thru 42 U.S.C. ~1983, Title II of the Americans with Disabilities Act as Amended at 42 U.S.C. ~12131 et. Seg.

39. Plaintiffs sue defendants in their respective, specified capacities for action under color of state law at all times relevant to this lawsuit, for their joint and several action, policy creation, and policy and procedure implementations that manifest deliberate indifference to the plaintiffs serious medical needs of HCV in violation of plaintiffs rights under US Constitutional Amendment VIII and XIV thru 42 U.S.C. ~ 1983 and NC Constitution Article 1, section 1, 2, 3, 27 and Article 4, section 13(1). And discriminate against plaintiffs on account of their disabilities in violation of Title II of the Americans with Disabilities Act as amended. 42 U.S.C.~ 12131 et. Seg. ~504 of the rehabilitation Act of 1973, 29 U.S.C. ~ 791 et. Seg.

## **FACTS**

### **A. HEPATITIS C VIRUS (HCV) – Defined**

40. HCV was not discovered until 1989. Blood screening was not possible until the mid 1990's. According to the Center for Disease Control (CDC) everyone born between 1945 and 1965 is at risk and should undergo testing for HCV

41. The CDC estimates the potentially fatal blood borne HCV infects some four million Americans of all ages and walks of life (about 2% of the population) and causes more deaths than HIV/ AIDS.

42. Between 20-50% of American's 2.3 million inmates are HCV positive according to the CDC, therefore most prisoners and 98% of the general population are at risk from unscreened, untreated inmates.

43. Eliminating HCV from correctional facilities filters HCV from the entire nation's blood pool.

44. HCV is a chronic, potentially fatal, blood-borne, viral disease that substantially and materially degrades the liver's ability to convert substances in the blood to glucose, inflicting progressive damage on the liver. Which substantially and materially, impairs the body's digestive and circulatory system with continuing mental and physical deterioration each day.

45. HCV can be spread by mere contact with an infected individual's blood. Under such circumstances as: A. Physical Sport Activity, B. Tattooing, C. Use of needle not properly cleaned and sterilized, D. Exposure to an infected person's blood in the course of medical care, E. Barber and cosmetology care, F. Sexual activity, H. Shaving razors or other personal grooming supplies, I. Sharing bathroom or shower facilities, J. Sharing living quarters or, K. Physical violence between inmates or involving staff members.

46. If left untreated, even a symptomatic HCV causes cirrhosis, or destructive irreversible scarring of the liver, liver cancer, and may require a liver transplant, and eventually cause other symptoms to those it affects as a communicable disease. HCV poses an unreasonable and substantial risk of serious present and future medical and physical harm to the plaintiffs and the general public after plaintiffs release from prison. (See *Roe vs. Elyea*, 631 F3d 843 (7<sup>th</sup> cir. 2011).

47. HCV substantially and materially impairs the individual's and these plaintiffs' major life activities of: A. Social interaction with other persons, B. Manual tasks (particularly those involving knives, scissors, shaving razors, C. Reproduction, D. Normal life itself.

48. Each day treatment is postponed the likelihood of: A, Cirrhosis of the liver, B. Liver cancer, C. Liver transplant, and D. Death from HCV steadily grows for each member of the class and does the likelihood of infection for those whom they come in contact with in

the NC Division of Prison facilities and the members of the general public after they are releases into the general public.

**B. BACKGROUND – CDC, FDA, FBOP, US PUBLIC HEALTH SERVICE AND THE US DEPARTMENT OF VETERANS AFFAIRS.**

49. Eradicating HCV from the whole population became possible in December 2013 because of the FDA approval of the new “break through” drugs.

50. In December 2013 the United States Food and Drug Administration (FDA) approved a new class of safer, direct acting, anti viral drugs that cure HCV infection in 12 weeks of daily pill therapy at a 95% success rate.

51. In January 2014 the Infectious disease Society of America (IDSA) and the American Association for the Study of Liver Disease (AASLD) issued guidelines recommending Sososbuvir (Sovaldi) and similar new drugs as first-line therapy to replace year long Interferon based injections entirely . (See: [www.hcvguidelines.org](http://www.hcvguidelines.org))

52. In June 2014 the Federal Bureau of Prisons (FBOP) issued “Clinical Practice Guide Lines” (Guide Lines or Protocol) for HCV treatment of inmates.

53. The protocol specifically lists the ASSLD/ IDSA Sofosbuvir, twelve week, one pill a day regimen as the safer, more effective, and standard of care in all FBOP facilities. The FBOP specifically rejected the more dangerous, less effective 48 week toxin Interferon based injection treatment regimen.

54. Other agencies of the United States, including the Center for Disease Control (CDC), the United States Dept of Veteran Affairs (VA) and the United States Health Services – Surgeon General have adopted the one pill a day/ twelve week protocol as the standard of care for treatment of HCV, and specifically rejected the 48 week toxin Interferon injection regimen. As well as private insurers including United Health, Anthem, and Aetna cover the 12 week oral pill anti-viral treatment.

55. As set forth in the FBOP June 14<sup>th</sup>, 2014, clinical practice Guidelines for HCV, the above protocol's only medical criteria are that the patients: A. Are not pregnant, B. Have significant time in custody to complete treatment, and C. demonstrate willingness and ability to adhere to rigorous treatment and abstain from high risk activities.

56. According to the AALSD/ IDSA, FBOP, CDC, and VA protocols, chemical dependency treatment is not a medically required condition for the new HCV treatment.

57. The AASLD/ IDSA, FBOP, CDC, and VA standard HIV/ Aids treatment protocols require treatment upon a positive test for HIV, without waiting for the onset of HIV related illness, including kaposi, sarcoma, or pneumonia.

58. Similarly the AALSO/ IDSA, FBOP, CDC, and VA HCV protocols do not prescribe delay in HCV treatment until the onset of fibrosis, cirrhosis of the liver, or liver cancer for medical reasons.

59. Since the adoption of the 12 week, one pill a day, GCV standard of care by agencies of the United States, barriers that the Defendants, jointly and severally, have erected in fact and as a matter of policy and procedure and practice, screening and treatment of HCV that differ significantly from HIV/ AIDS lack material justification, and do not survive scrutiny on rational basis grounds.

60. Defendants must assume the constitutional obligation under United States Constitution Amendment VIII and XIV and North Carolina Constitution Article 1, Section 1, 2, 3, 27 ; Article 4, Section 13(1), and the statutory obligation under United States Constitution Article VI, cl. 2, 42 U.S.C. ~ 12131 et. Seg. And 29 U.S.C. ~ 791 et. Seg. To provide safer more effective, non-Interferon based medical care for HCV that evolving science and the CDC, FBOP, FDA, VA, and US Health Service protocol have made the new professional medical community standard of care, to eradicate HCV infection from the NC prison population.

61. In doing so, the Defendants reduce and then eliminate the likelihood of HCV re-infection of Plaintiff and all similarly situated class members, while increase the likelihood of reduction and ultimate eradication of HCV amongst the general public population as a result.

**C. HCV AS A SERIOUS MEDICAL NEED, IN WHICH ASSERTED FAILURE OF DELAY IN TREATMENT STATES CLAIMS OFR DELIBERATE INDIFFERENCE TO PRISONER'S MEDICAL NEEDS UNDER THE EITH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.**

62. Erickson vs. Pardus, 551 U.S. 89, 90, 127 S. ct. 2197 (2007), holds that conscious delay, conscious denial of access to, or conscious interference in the medical treatment of HVC for non-medical reasons, standing alone, states a plausible claim for deliberate indifference against prison doctors, prison guards, or prison officials to the serious medical needs of a prisoner in violation of United States Constitution Amendment Eight and Fourteen through 42 U.S.C. ~ 1983.

63. At all times relevant to this lawsuit, Defendants NC Dept of Public Safety, its agents, employees, representatives, or contractors provide free routine screening for HIV within 14 days of prisoner's intake, with treatment available at all NC Divisions of Prisons facilities.

64. In contrast, at all times relevant to this lawsuit, Defendants NC Dept of Public Safety, its Agents, Employees, representatives, or contractors, provide no routine screening for HCV during or after intake to identify source of infection, or to protect inmates from sources of infection.

65. Upon information and belief, Defendants, Medical Director, Paula Y. Smith, Western Regional Medical director, Sandra Pittman, Lead RN at Mountain View Correctional Institution, Norma Melton, Primary Provider, Dr. Robert J. Uhren, Physicians Assistant, Keith C. D'Amico and other Defendants had actual knowledge through professional journals, yearly professional medical meetings, Federal Bureau of Prisons publications, and the news media or general media of the new medications for HCV treatment that are safer and more effective than the current NC Dept of Public Safety/ Division of Prisons/ Health Services HCV treatment protocols.

66. Despite Defendants knowledge of the new safer and more effective standard of care, the Defendants, jointly and severally have not provided the current 12 week one pill a day professional medical community standard of care HCV treatment described in the June 2014 FBOP "Clinical Treatment Guidelines", and other peer reviewed sources, to meet the individual needs of the Plaintiffs, and similarly situated class members, to screen and cure prisoners infected with the HCV virus for non-medical reasons.

67. At all times relevant to this lawsuit, Defendants, NC Dept of Public Safety, its agents, employees, representatives, or contractors, jointly and severally have "willfully

denied” or with manifest deliberate indifference to the serious medical needs of the Plaintiffs, and similarly situated class members denied the current medical professional Medical Community standard of care HCV treatment of individualized medical care, specifically, the daily 12 week treatment protocols for non-medical reasons.

68. At all times relevant to this lawsuit, Defendants, NC Dept of Public Safety, its agents, employees, representatives, or contractors jointly and severally, have intentionally delayed, denied, or interfered with Plaintiffs and all similarly situated class members, timely HCV treatment by withholding HCV treatment until Plaintiff and all similarly situated Class Members timely HCV treatment by suspending all HCV treatment in 2013.

69. At all times relevant to this lawsuit, Defendants, NC Dept of Public Safety, its agents, employees, representatives, or contractors have intentionally delayed, denied, or interfered with Plaintiffs and all similarly situated class members, timely HCV treatment until Plaintiff and all similarly situated class member manifest symptoms of fibrosis, cirrhosis of the liver, or liver cancer, for non-medical reasons.

70. Upon information and belief, and at all times relevant to this lawsuit, Defendants, NC Dept of Public Safety, its agents, employees, representatives, or contractors suspended all HCV treatment for non-medical reasons. Systematically denying and continue to deny systematically NC Division of Prisons inmates request for the FDA approved one pill a day, 12 week treatment protocol drug Harvoni and Viekira pak,

which as of June 2014 the FDA, CDC, BFOP, VA and the US Public Health Service have adopted as the safest most effective professional medical community standard of care for the treatment and cure of HCV.

71. As a direct result of the Defendants, joint and several policies and procedure and practices that lack medical foundation or rational basis, and which substitute administrative convenience, caprice and whim for individualized professional medical care and judgment for the Plaintiffs and all similarly situated class members. Each day the Defendants deny to Plaintiffs the new, safer, more effective, 12 week, one pill a day cure for HCV. Defendants needlessly force Plaintiffs and all similarly situated class members to suffer the progressive effects of the chronic, life threatening disease of Hepatitis C.

72. The Defendants, joint and severally, willful, deliberate actions make progression of Plaintiffs and all similarly situated class members' cases of HCV foreseeable, and increase public expense inevitable.

73. The Defendants, joint and severally, willful, deliberate actions increase without medical reason or lawful purpose. The likelihood of the Plaintiffs and all similarly situated class members' deaths for reasons arising from their HCV infection.

74. Day by day, uninfected inmates, and the public at large run increasing risks of HCV infection. Which Defendants could “cure” this known knowledge of freedom of infection by HCV, not acted on by the Defendants, jointly and severally demonstrates deliberate indifference for non-medical reasons, through policy, procedure and practice.

Plaintiff individually, Jamie Ray Spake

75. Mr. Spake, on June 2011, at Frye Regional Medical Center; Dr. Steven D. Harlan preformed a needle liver biopsy. Revealing, Mr. Spake suffers from “End Stage Liver Disease” (Stage 4) due to the HCV Infection Virus.

76. On June 14, 2012, Mr. Spake was sentenced to 20 months and remanded into the control and custody of the Defendants, NC Dept of Public Safety/ Division of Prisons.

77. Immediately after being sentenced Mr. Spake Lapsed into an Hepatic Encephalopathy Comma, upon belief, directly caused by his “End Stage Liver Disease”.

78. Mr. Spake was transferred from county jail to Salisbury Correctional Institution and was confined in the infirmary. However due to his deliriousness and fatal condition he was moved without justification to segregation.

79. Mr. Spake’s condition finally improved enough to be moved. Then was transferred to Avery Mitchell Correctional Institution.

80. Mr. Spake immediately began seeking treatment for his debilitating end stage liver disease through sick calls and grievances. But was repeatedly denied treatment by Defendants Dr. Robert Uhren and Keith C. D'Amico PA quoting Policy and Procedure with deliberate indifference clearly in mind.

81. Mr. Spake was seen by Defendants, Dr. Robert J. Uhren and Keith C. D'AmicoPA. Upon further information and belief conveyed to Mr. Spake even though he was in a life threatening condition due to his end stage liver disease, no treatment was available to treat his HCV virus Infection.

82. On March 2014 Mr. Spake was released from custody.

83. On September 27<sup>th</sup> 2014 Mr. Spake was sentenced to 35 to 54 months by The Honorable Judge Ron Spivey and remanded into the control of Defendants, NC Dept of Public Safety/ Division of Prisons.

84. During the sentencing hearing Mr. Spake explained to Judge Spivey his serious "End Stage Liver Disease" and current medical issues. It appears on the court record transcript on page 196, line 16-18, Judge Spivey ordered "The court would order the benefit of any educational or vocational opportunities or needed medical treatments, given his condition". Court record transcript page 200 line 18-20, Judge Spivey ordered

“And he directed that he be the recipient of any treatment that might help him, whatever that maybe”. However no treatment of any kind has been provided.

85. The above quoted transcript line of September 27<sup>th</sup> 2014 court proceeding was transposed by Richard Dimartino, Court Reporter in the state of North Carolina, PO Box 796, Morganton, NC.

86. Mr. Spake was processed at Salisbury Correctional Institution and in mid August was shipped to Mountain View Correctional Institution.

87. Mr. Spake upon arrival immediately began seeking treatment for his chronic end stage liver disease thru sick calls and grievances.

88. During this time waiting for the Defendants to provide medical care for Mr. Spake's chronic condition, his health has significantly deteriorated; he now suffers from liver failure.

89. Mr. Spake has been hospitalized 6 times in the last 2 years due to chronic end stage liver disease.

90. Since June 2012 Defendants, including Paula Y. Smith, medical director, Sandra Pittman, Western Regional Medical Director, Norma Melton, Lead RN at Mountain View

Correctional Institution, Robert J. Uhren, Primary Physician, and Keith C. D'Amico PA have denied and continue to deny treatment which is the professional medical community standard of care to cure his HCV and relieve the deleterious effects, due to end stage liver disease and chronic liver failure.

91. Since June 2012, Defendants, including Paula Y. Smith Regional Medical director; Sandra Pittman, Lead RN at Mountain View Correctional Institution; Norma Melton, Primary Provider; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA have denied and continue to deny the necessary medical follow up to track and halt the deleterious emotional and painful effects due to end stage liver disease and chronic liver failure, including but not limited to regular blood work, ultra sound and CT scans which are medically necessary for individuals with HCV.

92. Defendants, including Paula Y. Smith, Medical director; Sandra Pittman, Western Regional Director; Norma Melton, Lead RN at Mountain View Correctional; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA have refused with deliberate indifference to provide Mr. Spake with access to be seen or evaluated by an Hepatologist or a Gastroenterologist for the proper medical treatment of his HCV.

93. During Mr. Spake's time incarcerated he has diligently requested HCV treatment, routine blood work and monitoring. And he has repeatedly been denied for non-medical reasons.

94. Mr. Spake has fully grieved the denial of requested medical treatment for the Defendants refusal to treat his HCV virus.

95. As a direct result of Defendants deliberate indifference and refusal to treat Mr. Spake for non-medical reasons his condition continues to deteriorate causing great suffering with emotional and physical pain, this being directly associated and caused by the HCV. Ultimately this condition will inevitably cause Mr. Spake's death.

96. Due to Mr. Spake's advanced end stage liver disease and the deterioration of his liver, medical treatment for his HCV is of the utmost urgent and immediately needed. Once Mr. Spake's liver decompensates, the only treatment for him will be a liver transplant.

97. The refusal for non medical reasons with deliberate indifference of Defendants to provide Mr. Spake and other similarly situated class members with the new medical community standard of care "break through" drug for all Plaintiffs needing treatment for HCV constitutes a violation of the United States Constitution Amendment XIII and XIV Title II of the Americans with Disabilities Act ~504 of the rehabilitation Act of 1993 and state laws.

Plaintiff individually, Dana Allen Shedd

98. On November 7<sup>th</sup> 2014, Mr. Shedd was sentenced to 40 months and remanded to the control and custody of the Defendants, NC Dept of Public Safety/ Division of Prisons.

99. Mr. Shedd was processed at Salisbury Correctional Institution, there he informed Defendants, and Medical Employees, he had been diagnosed in 2009 with HCV, detailing all current medical issues, including but not limited to great emotional and physical pain and suffering due to extreme end stage liver disease and chronic liver failure.

100. Mr. Shedd immediately began seeking medical care by diligently submitting sick calls and grievances

101. Mr. Shedd was seen by Defendants, Dr. Robert J. Uhren MD and Keith C. D'Amico PA, who refused to provide the new medical community standard of care "break through" drug to cure his HCV and ultimately save his life.

102. On December 2014 Mr. Shedd had to be taken to Rowan County Hospital to receive a blood transfusion, because of his life threatening low blood platelet count and chronic liver failure from HCV.

103. On June 2015 Mr. Shedd had to be taken to Grace Hospital in Morganton, North Carolina. He had to remain in the hospital for three weeks in order to recover enough to be able to return to Mountain View Correctional Institution from his serious medical complications from HCV.

104. On July 2015 Mr. Shedd had to be taken to Central Prison in Raleigh, North Carolina. He had to remain in the hospital for two weeks in order to recover enough to be able to return to Mountain View Correctional Institution from his serious medical complications from HCV.

105. On August 2015 Mr. Shedd had to be taken to Nash General Hospital in North Carolina. He had to remain in the hospital for seven days in order to recover enough to be able to return to Mountain View Correctional Institution from his serious medical complications from HCV.

106. The above documented times Mr. Shedd has had to be hospitalized , demonstrates the extreme, dire, life threatening medical condition he is kept in by Defendants refusal to provide the new break through treatment and cure his HCV. Demonstrating deliberate indifference with the knowledge, that Mr. Shedd's mental and physical condition continues to deteriorate significantly, ultimately causing death.

107. Defendants, Paula Y. Smith, Medical Director; Sandra Pittman, Western Eegional Medical Director; Norma Melton, Lead RN at Mountain View Correctional Institution; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA refused with deliberate indifference to have Mr. Shedd evaluated by an Hepatologist or a gastroenterologist for proper treatment of his life threatening medical deterioration due to HCV.

108. Since November 2014 Defendants including Paula Y. Smith Regional Medical director; Sandra Pittman, Western Regional Medical Director; Norma Melton, Lead RN at Mountain View Correctional Institution; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA have denied and continue to deny treatment which is the professional medical community standard of care to cure his HCV and relieve the deleterious effects due to end stage liver disease and chronic liver failure.

109. Due to Mr. Shedd's advanced end stage liver disease and the deterioration of his liver, medical treatment for his HCV is of the utmost urgent and immediately needed. Once Mr. Shedd's liver decompensates, the only treatment for him will be a liver transplant.

110. The refusal for non medical reasons with deliberate indifference of Defendants to provide Mr. Shedd and other similarly situated class members with the new medical community standard of care "break through" drug for all Plaintiffs needing treatment for HCV constitutes a violation of the United States Constitution Amendment XIII and XIV

Title II of the Americans with Disabilities Act, amended 504 of the Rehabilitation Act of 1993 and state laws.

Plaintiff individually Brian Kevin Lewis

111. On December 10<sup>th</sup> 2008, Mr. Lewis was sentenced to approximately 200 months and remanded into control and custody of Defendants, NC Dept of Public Safety/ Division of Prisons.

112. Mr. Lewis was processed at Central Prison in Raleigh, North Carolina. During intake he was tested for HIV but not for HCV.

113. On September 11<sup>th</sup> 2009 due to unexplainable weakness and skin rashes Mr. Lewis requested to be tested for HCV. The test results were positive for Genotype 1-A, viral load of 2,313,630.

114. In May 2010 Mr. Lewis began the 48 week toxic Interferon injection, Ribavirin treatment.

The side effects from the medication were both emotionally and physically devastating.

115. Within ten weeks the treatment was deemed not successful enough to continue and treatment was terminated. Mr. Lewis' viral load on July 14<sup>th</sup>, 2010 was 5,250,090.

116. On September 26<sup>th</sup>, 2012 Mr. Lewis had an abdominal ultrasound due to unexplained abdominal pain. The diagnosis confirmed pancreatic pancreatitis and liver inflammation that impairs the body's ability to digest essential nutrients and filter toxins from the blood to prevent infections.

117. On March 2013 Mr. Lewis had an U.R. Approved, scheduled appointment with Dr. Thomas C. Nuzum, Hepatologist at UNC Chapel Hill, North Carolina. However the appointment was withdrawn for undocumented reasons.

118. Mr. Lewis inquired as to why the appointment had been cancelled but no response was given.

119. Mr. Lewis submitted sick calls on November 26<sup>th</sup>, 2014 and December 19<sup>th</sup>, 2014 inquiring on any treatment plan to treat his HCV.

120. In late December 2014 Mr. Lewis saw Dr. Byrd at Maury C.I. who viewed the records and did not find any documented reason for the withdrawal of the March 5<sup>th</sup>, 2013 appointment with Dr. Nuzum. He commented "it appears as if my treatment plan had fallen through the cracks". Dr. Byrd initiated the appropriate request and obtained approval for another appointment with Dr. Nuzum, Hepatologist on March 2015.

121. On January 29<sup>th</sup>, 2015 Mr. Lewis was shipped to Mountain View Correctional Institution where again for undocumented reasons his appointment with Dr. Nuzum was withdrawn.

122. On March 22<sup>nd</sup>, 2015 Mr. Lewis submitted sick calls concerning why his scheduled appointment had been cancelled and to explain the treatment plan in place to manage and treat his HCV.

123. Mr. Lewis was notified by Defendants, Dr. Robert J. Uhren MD, Keith C. D'Amico PA and medical employees that there was no treatment available for HCV.

124. After finding out about the FDA approval of the "new break through" drugs to treat and cure HCV, Mr. Lewis has diligently requested the new medical community standard of care break through treatment and has been repeatedly refused treatment for non medical reasons.

125. As a direct result of Defendants, including Paula Y. Smith Regional Medical director; Sandra Pittman, Western Regional Medical Director; Norma Melton, Lead RN at Mountain View Correctional Institution; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA have denied and continue to deny treatment which is the

professional medical community standard of care to cure his HCV and stop emotional and physical pain and suffering and deteriorating condition.

126. The refusal for non medical reasons, with deliberate indifference of Defendants to provide Mr. Lewis and others similarly situated class members with the new Medical Community Standard of Care, “breakthrough” drug for all plaintiffs needing treatment for HCV Constitutes a violation of the United States Constitutional Amendment XIII and XIV and state laws.

#### **D. CLASS ALLEGATIONS**

127. Plaintiffs bring this action on behalf of themselves and others similarly situated, (the ‘class’) pursuant to Fed. R. Civ. P. 23 (a) and 23 (b) (2).

128. Plaintiffs seek to represent the following Class and Sub-Classes on claims for declaratory and injunctive relief and damages.

A. All persons (male and female) incarcerated in the Defendants North Carolina Division of Prisons (NCDOP) facilities with twelve weeks remaining on their sentence; who test HCV Positive and wish to participate in the twelve (12) week oral medication HCV treatment, equivalent to Federal Bureau of Prisons Clinical Treatment Guidelines.

B. All persons as in (A.) who tested HCV positive before entering North Carolina Division of Prisons facilities.

C. All persons as in (A) who are not HCV positive before entering facilities and became while in NCDOP facilities.

D. All persons as in (A) in various stages of HCV infection who are not being treated because of other non medical reasons.

E. All persons as in (A) who are HCV positive but have not been screened by Defendant NC Dept of Public Health Services and are unaware of their HCV status and cannot request the twelve week oral medication.

F. All persons as in (A) who are not aware of their HCV status, who are fearfully of being exposed to HCV because of Defendant, North Carolina Dept of Public Safety policies, procedures and practices that make it impossible to know if any other inmates with whom they come in contact with are HCV positive or not.

129. Plaintiffs seek to represent the following Class on claims for declaratory and injunctive relief from state created danger of HCV infection: All persons (male or female) incarcerated in Defendants, NC Division of Prisons facilities as January 1<sup>st</sup>, 2014 who have been, are, and will be exposed to risk of harm daily by deliberate indifference

of Defendants' failure to adopt the twelve week FBOP Clinical HCV Treatment Guidelines – and successor non-interferon therapies- who were not HCV positive upon entering Defendants, NC Division of Prison facilities, or do not know their HCV status and wish to be screened and treated if tested positive.

130. As a result Defendants' joint and several deliberated indifference to the serious medical needs of the Class, the members of the Class are or will be subjected to cruel and unusual punishment and deprived of other constitutional and statutory rights, and will face ongoing, threatened and imminent physical harm.

131. Plaintiffs seek declaratory and injunctive relief to enjoin Defendants actions, policy and procedure that infringe on their rights.

132. The requirements of Rules 23 (a) and 23 (b) are met by this action.

A. Numerosity under Fed. R. Civ. P. (a) (1): The precise number of inmates in the class and their identity are within the control of Defendants. The names and locations of inmates testing positive for HCV and whether all inmates have ever been screened for HCV are data controlled by Defendants. National averages predict the number to exceed 1,500, a size much too large to make joinder practicable.

B. Commonality under Fed. R. Civ. P. 23(a) (2): Questions of law and fact are common to the class, including but not limited to: 1.) the nature and scope of the safer, more effective standard of care, exemplified by the Federal Bureau of Prisons Clinical Treatment Guidelines; 2.) The Defendants, NC Division of Prisons policy and procedure for the treatment of HCV with toxic Interferon that is now outmoded for all patients, as less safe and less effective; 3.) whether the Defendants, NC Division of Prisons use of an outmoded medical treatment that is less safe and less effective, than the current standard of care, violates the Eighth Amendment; 4.) whether the Defendants, NC Division of Prisons use of an outmoded medical treatment that is less safe and effective than the current standard of care violates Article II of the ADA amended; and 5.) whether the Defendant, NC Division of Prisons use of an outmoded medical treatment that is less safe and less effective than the current standard of care violates Section 504 of the Rehabilitation Act.

C. Typically – Fed. R. Civ. P. 23(a) (3): Plaintiffs claims are typical of the Class Members because Plaintiffs and all class members were injured by the same wrongful policy and procedures of Defendants as described in the Complaint. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class Members and are based on the same legal theories.

D. Representativeness - Fed. R. Civ. P. 23 (a) (4): (1) Plaintiffs will fairly and adequately protect the interests of the Class. (2) Plaintiffs have no interests that are

contrary to or in conflict with those of the Class they seek to represent. (3) Plaintiffs are requesting appointment of counsel, skilled and competent, whose interests are aligned with the interest of the Class. (4) Relief concerning Plaintiffs rights under the laws herein alleged and with respect to the Class would be proper. (5) Defendants have acted or refused to act with respect to the Class, thereby making appropriate final injunctive relief or corresponding injunctive relief with regard to Class Members as a whole and certification of the Class under Rule 23 (b) (2) proper.

E. Superiority – Fed. R. Cir. P. 23 (b) (3): (1) A Class action is superior to other available methods for the fair and efficient adjudication of this litigation since joinder of all members of the class is impracticable. (2) The number would prove unduly burdensome and inefficient for the court and parties. (3) Because a common set of facts, grievances and remedies predominate over individual litigation increases expenses to all parties. (4) Conduct of this action as a class action will protect the rights of all Class Members and promote judicial efficiency and consistency.

Notice can be provided to Class Members by United States Mail.

#### **E. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

133. Defendants, including Paula Y. Smith, Medical director; Sandra Pittman, Western Regional Director; Norma Melton, Lead RN at Mountain View Correctional Institution; Dr. Robert J. Uhren, Primary Physician; Keith C. D'Amico PA have (a) Actual notice of

Plaintiff Jamie Ray Spake, Dana Allen Shedd and Brian Kevin Lewis request for the one pill per day, 12 week regimen that the FBOP has adopted as its Hepatitis C treatment protocol. (b) Actual notice of the discounted availability of Harvoni and Viekira Pak. In the one pill per day, 12 week regimen, that eliminates toxic Interferon therapy. And (c) Plaintiffs Jamie Ray Spake, Dana Allen Shedd and Brian Kevin Lewis have grieved their life threatening medical condition of end stage liver disease and their need for immediate treatment which may be only a liver transplant.

134. As Medical Director of the NC Dept of Public Safety/ Division of Prisons, Defendant, Paula Y. Smith at times relevant to this lawsuit, has had actual knowledge of the serious medical needs of Plaintiff, Jamie Ray Spake, Dana Allen Shedd and Brian Kevin Lewis as Hepatitis C sufferers.

135. At times relevant to this lawsuit Defendants, (through its agents, employees, representatives, contractors and medical staff) has actual knowledge of the dire life threatening medical condition and needs of Plaintiffs,

Jamie Ray Spake and Dana Allen Shedd, as end stage liver disease sufferers and the respective requests of Plaintiffs Spake and Shedd for the life saving, one pill per day, 12 week protocol cure of Harvoni.

136. At times relevant to this lawsuit, Defendants (through its agents, employees, contractors or medical staff) jointly and severally have denied to Plaintiffs Jamie Ray

Spake, Dana Allen Shedd and Brian Kevin Lewis with deliberate indifference to their serious medical needs as Hepatitis C sufferers, their requests for the life saving cure Harvoni.

137. Plaintiffs have exhausted their Administrative remedies.

138. The foregoing assertions of Plaintiffs constitute averments that Plaintiffs face imminent danger of serious and continuing physical, medical deteriorating injury.

### **CLAIMS**

#### **CLAIM I**

#### **DEPRIVATION OF EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT**

(Against Defendants, David Guice, Frank L. Perry, Paula Y. Smith, Sandra Pittman, Norma Melton, Mike Slagle, Mike Ball, Dr. Robert J. Uhren, Kevin C. D'Amico PA and does A-Z in their joint and several respective individual capacities).

139. Plaintiffs Jamie Ray Spake, Dana Allen Shedd, Brian Kevin Lewis and all similarly situated Plaintiffs reallege and reassert each and every claim and averment above.

140. Defendants Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Uhren, D'Amico, and A-Z, through their decision to refuse (for non medical reasons) Plaintiffs Spake, Shedd and Lewis the new 'break through' drug that has been the HCV medical treatment Community Standard of /care since June 2014, demonstrated deliberate indifference to the life threatening, continuously debilitating medical condition of Plaintiffs. Thereby violating their right to be free from cruel and unusual punishment under US Constitutional Amendment VIII and XIV, for which 42 U.S.C. ~1983 provides declaratory, injunctive, equitable, and other legal remedies.

141. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain and suffering and eventually death.

## **CLAIM II**

### **DEPRIVATION OF EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT**

142. Plaintiffs Spake, Shedd, Lewis Et. Al. reallege and reincorporate each and every claim and averment herein.

143. plaintiffs Roe, Miles and Stiles assert the same foregoing causes of action from the perspective of inmates who were HCV free when entering the NC Prison System, or who

have been cured of HCV, and who spend each day facing “imminent danger” from being exposed to the debilitating and potentially fatal virus from other inmates, Defendants could eradicate the HCV, however decline to do so for non medical reasons.

144. All new HCV infections in the NC prison Systems since January 1<sup>st</sup>, 2014 are the direct and proximate consequence of the danger knowingly and intentionally created by Defendants refusal to adopt the FBOP, CDC, VA and US Public Health Service protocols for treatment of HCV.

145. The joint and several actions of the Defendants in their respective Official and individual capacities demonstrate deliberate indifference to the serious medical need of Plaintiffs Roe, Mile and Stiles Et. Al. to be free from infections by the blood borne pathogen of HCV, and violates Plaintiffs rights under US Constitutional Amendment VIII and XIV to be free from cruel and unusual punishment, for which 42 U.S.C. ~1983 provides declaratory, injunctive, equitable, and other legal remedies.

146. These allegations constitute averments of imminent danger of continuing deteriorating,  
serious mental and physical pain, suffering and eventually death.

### **CLAIM III**

#### **DENIAL OF EQUAL PROTECTION OF THE LAW UNDER US CONSTITUTIONAL AMENDMENT V AND XIV, THROUGH 42 U.S.C. ~ 1983**

147. Plaintiffs Spake, Shedd, Lewis Et. Al., Reallege and reincorporate each and every claim and averment above and incorporate them below. 148. Both HCV and HIV/ AIDS are blood borne viral diseases.

149. Both diseases are transmitted through the blood and by personal contact between individuals.

150. Preventative vaccines for HCV and HIV/ AIDS do not exist at this time.

151. The HCV and HIV/ AIDS viruses can be suppressed to reduce or prevent transmission, but only HCV can be cured.

152. Defendants screen for and treat HIV/AIDS in a manner that differs significantly from HCV, without rational medical justification basis for doing so.

153. The Defendants, Health Services - policy and procedure – require HCV infection of inmates to progress to the point of significant cirrhosis of the liver (scarring of the liver which cannot be reversed), before HCV positive inmates qualify to receive any treatment.

154. The Defendants refusal to treat HCV infection of inmates until manifesting liver fibrosis, cirrhosis of the liver, or liver cancer, lacks medical justification of a rational basis, in violation of Plaintiffs' Et. Al. Rights to equal protection of the laws under US Constitutional Amendment V And XIV, for which 42 U.S.C. ~ 1983 provides declaratory, injunctive, equitable and other legal remedies.

155. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain, suffering and eventually death.

#### **CLAIM IV**

#### **DEPRIVATION OF US CONSTITUTIONAL AMENDMENT VIII AND XIV** **RIGHT TO BE FREE FROM INFLICTION OF CRUEL AND UNUSUAL** **PUNISHMENT** **FOR WHICH 42 U.S.C. ~ 1983 PROVIDES REMEDIES**

156. Plaintiffs Spake, Shedd, Lewis Et. Al., reallege and reassert each and every claim and averment above and incorporate them below.

157. Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Uhren, D'Amico and does A-Z, in their respective official and individual capacities, jointly and severally have enforced the Health Service policy and procedure that: contravenes the clearly established HCV professional medical community standard of care with reference to:

**ERECKSON vs. PARDUS, 551 US 89, 90, 127, S. CT. 2197 (2007)**

Which constitutes a deliberate indifference for the denial of a serious medical need for non medical reasons, refusal to treat Plaintiffs Spake, Shedd, Lewis and all similarly situated class members for HCV, thereby establishing a violation of the Plaintiffs protection under US Constitutional Amendment VIII and XIV, for which 42 U.S.C. ~ 1983 provides declaratory, injunctive, equitable, and other legal remedies.

**CLAIM V**

**DENIAL OF EQUAL PROTECTION OF THE LAW UNDER US CONST.  
AMEND. V AND XIV, THROUGH 42 U.S.C. ~ 1983**

158. Plaintiffs Spake, Shedd, Lewis Et. Al. reallege and reincorporate each and every claim and averment above and incorporate them below.

159. Defendants, Health Services – policy and procedure – require HCV infections in inmates progress to the point of significant cirrhosis of the liver, (scarring which cannot

be reversed), when the new FDA designated HCV “break through” treatment drugs are equally effective for all patients of all levels of infection.

160. The June 2014 professional medical community protocol adopted by the AASLD/ASID, CDC, FBOP, VA and US Public Health Services do not differentiate between HCV patients with respect to VIRAL LOAD or those who have tested positive for HCV without fibrosis, Cirrhosis of the liver, or liver cancer, or those who have fibrosis, cirrhosis or liver cancer.

161. Defendants, Health Services – policy and procedure – that allow differential treatment for HCV positive inmates, waiting to treat HCV sufferers until they reach a set VIRAL LOAD, or manifest fibrosis, cirrhosis, or liver cancer lacks rational basis under prevailing science and medicine, and clearly established laws.

162. Defendants, Health Services – policy and procedure – refusal to treat HCV positive inmates, until they reach a set VIRAL LOAD, or manifest fibrosis, cirrhosis, or liver equal protection of the laws under US Constitutional Amendment V and XIV, for which 42U.S.C. ~ 1983 provides declaratory, injunctive, equitable and other legal remedies.

163. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain and suffering and eventually death.

## **CLAIM VI**

### **DENIAL OF EQUAL PROTECTION OF THE LAW AND CRUEL AND UNUSUAL PUNISHMENT IN DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS OF PLAINTIFFS Et, Al. IN VIOLATION OF US CONST.AMEND. V, VIII AND XIV, PROTECTED THROUGH 42 U.S.C. ~1983**

164. Plaintiffs Spake, Shed, Lewis Et. Al. reallege and reincorporate each and every claim and avertment above and incorporate them below.

165. Defendants, Health Services – policy and procedure – require HCV positive inmates develop liver cirrhosis or scarring, which cannot be reversed, when the new break through treatment drugs are equally effective on all levels of HCV infection.

166. The June professional medical community protocol adopted by the AASLD/ASID, CDC, FBOP, VA and US Public Health Services do not differentiate between HCV patients with respect to VIRAL LOAD or those who have tested positive for HCV without fibrosis, cirrhosis of the liver, liver cancer or those who HAVE fibrosis, cirrhosis or liver cancer.

167. Defendants, Health Services – policy and procedure – differential treatment for HCV positive inmates waiting to treat HCV sufferers when they reach a set VIRAL

LOAD, or manifest fibrosis, cirrhosis of the liver, or liver cancer, lacks rational medical basis under prevailing science and medicine, and demonstrates deliberate indifference to the serious medical needs of the Plaintiffs, Spake, Shedd, Lewis, Et. Al. in defiance of clearly established Federal and State Laws.

168. Defendants, Health Services – policy and procedure – refusal to treat HCV positive inmates until they reach a certain viral load or manifest fibrosis, cirrhosis or liver cancer, lacks rational medical basis, violating plaintiffs and all similarly situated Class members, rights to equal protection of the laws, under U.S.C. Amendment V and XIV, and the right to freedom from cruel and unusual punishment, under U.S.C. Amendment VIII and XIV, for which 42 U.S.C. ~ 1983 provides declaratory, injunctive, equitable, and other legal remedies.

169. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain, suffering and eventually death.

#### **CLAIM VII**

**DEPRIVATION OF NORTH CAROLINA CONSTITUTION ARTICLE 1, SECTION 27, RIGHT TO BE FREE FROM INFLECTION OF CRUEL AND UNUSUAL PUNISHMENT, FOR WHICH NORTH CAROLINA CONSTITUTION ARTICLE 1, SECTION 1, 2, 3 AND ARTICLE 4, SECTION 13 (1), PROVIDES LEGAL REMEDIES**

170. Plaintiffs Spake, Shedd, Lewis Et. Al. reallege and reassert each and every claim and averment above and incorporate them herein.

171. Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Uhren, D'Amico and does A-Z, in their respective official and individual capacities, jointly and severally have contravenes the clearly established professional medical community standard of care for treating inmates infected with HCV, by refusing to treat inmates until they reach a certain VIRAL LOAD or manifest fibrosis, cirrhosis of the liver or liver cancer, lacks rational medical basis, demonstrates deliberate indifference for non medical reasons to their serious medical needs. Plaintiffs Spake, Shedd, Lewis Et. Al. continuing deterioration for non medical reasons establishes a violation of the NC Constitution Article 1, 2, 3 and Article 4, section 13 (1) provides declaratory, injunctive, equitable and other legal remedies.

172. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain, suffering and eventually death.

### **CLAIM VIII**

### **TITLE II OF THE ADA AGAINST NORTH CAROLINA DIVISION OF PRISONS**

173. Plaintiffs Spake, Shedd, Lewis Et. Al. reallege and reassert each and every claim and averment above and incorporate them herein.

174. Defendants, NC Department of Public Safety/Division of Prisons, by act and through Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Uhren, D'Amico, and does A-Z in their respective official and individual capacities, discriminated against Plaintiffs Spake, Shedd Et. Al. and caused them to be excluded from participation in programs and denied access to services available to non-infected inmates within the NC Prison Systems, specifically and without limitation, Mountain View Correctional institute and Avery Mitchell Correctional Institute because of their disabilities of HCV in violation of Title II of the Americans with Disabilities Act.

175. These allegations constitute averments of imminent longer prison sentence being denied ADA gain time available to inmates.

## **CLAIM IX**

### **TITLE II OF THE ADA AMENDED AGAINST NORTH CAROLINA DIVISION OF PRISONS**

176. Plaintiffs Spake, Shedd Et. Al., reallege and reassert each and every claim and averment above and incorporate them below.

177. Defendants, NC Department of Public Safety/Division of Prisons, by act and through Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Uhren, D'Amico, and does A-Z in their respective official and individual capacities and through the action of agents, employees, representatives or medical staff did discriminate against Plaintiffs Spake, Shedd Et. Al. and caused them to be excluded from participating in programs and denied access to services in the NC Prison System, specifically and without limitation Mountain View Correctional Institute and Avery Mitchell Correctional Institute because of their disabilities of HCV, in violation of the Title II of the Americans with Disabilities Act as amended, and especially in view of the availability of the new breakthrough, twelve week cure of Sovaldi of Harvoni.

178. These allegations constitute averments of imminent longer prison sentence being denied the ADA gain time available to inmates.

### **CLAIM X**

#### **~ 504 OF THE REHABILITATION ACT OF 1973 AGAINST NORTH CAROLINA DIVISION OF PRISONS**

179. Plaintiffs Spake, Shedd and all similarly situated Plaintiffs reallege and reassert each and every claim and averment above and incorporate them herein.

180. Defendants, NC Dept of Public Safety/ Division of Prisons a federally funded entity, by and through Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Urhen, D'Amico and does A-Z, in their respective official and individual capacities, discriminated against Plaintiffs Spake, Shedd, Et. Al. and caused them to be excluded from participation in programs and denied access to services in the NC Prison System, specifically and without limitation Mountain View Correctional Institute and Avery Mitchell Correctional Institute due to their HCV disabilities in violation of ~504 of the Rehabilitation Act of 1973, 29 U.S.C. ~ ~791, 794(a).

181. These allegations constitute averments of imminent danger of continuing deterioration, serious mental and physical pain, suffering and eventually death.

### **CLAIM XI**

#### **~ 504 OF THE REHABILITATION ACT OF 1973 AGAINST NORTH CAROLINA/ DIVISION OF PRISONS JOINTLY AND SEVERALLY**

182. Plaintiffs Spake, Shedd and all similarly situated Class members, rellege and re assert each and every claim and averment above and incorporate them herein and above.

183. Defendants, NC Dept of Public Safety/ Division of Prisons, by and through Defendants, Guice, Perry, Smith, Pittman, Melton, Slagle, Ball, Urhen, D'Amico and

does A-Z, in their respective official and individual capacities, through the actions of its agents, employees, representatives, or medical staff, jointly and severally, discriminated against Plaintiffs Spake, Shedd, Et. Al., and caused them to be excluded from participation in Federally Subsidized Programs and denied access to services in the NC Prison System, specifically and without Limitations, Mountain View Correctional Institution and Avery Mitchell Correctional Institution because of their HCV disabilities, in violation of ~ 504 of the Rehabilitation Act of 1973. Especially denial of all Federally Funded Programs and programs designed to better cure the deteriorating HCV effects.

184. These allegations constitute averments of imminent danger of continuing deteriorating, serious mental and physical pain, suffering and eventually death.

### **RELIEF REQUESTED**

1. Plaintiffs' Spake, Shedd and Lewis are requesting to proceed In Forma Pauperis in pursuant to U.S.C. ~ 1915 due to their incarceration (application and trust fund account information enclosed)

2. Certification that has this action be declared and maintained a Class Action for all Plaintiffs and Class Members within the NC Prison System, who know or may not know they are HCV positive.

3. Appointment of attorney or Attorneys, this court may deem necessary, to protect Judicial Integrity of this court and the collective interests of Plaintiffs and all Class Members.

4. Enjoin Defendants from taking any action to interfere with Plaintiffs Right to maintain this action, or retaliating in any way against Plaintiffs' for bringing this action.

5. Judgment against Defendants, jointly and severally.

A) For Plaintiffs and all Class and Sub-class Members, declaratory judgment the Defendants, NC Dept of Public Safety/ Division of Prisons/ Health Serviced/ Policy and Procedure, for the evaluation and treatment for Hepatitis C violates US Const. Amend. V, VII and XIV; Title II for the Americans with Disabilities Act as amended; ~504 of the Rehabilitation Act of 1973, through 42 U.S.C. ~1983 and North Carolina Constitution Article 1, Section 27.

B) For Plaintiffs, all Class Members, injunctive RELIEF ORDERING that Defendants, NC Dept of Public Safety/ Division of Prisons, by and through Defendants Guice, Perry, Smith, Pittman, and does A-Z formulate and implement a Hepatitis C treatment/ Policy and Procedure that meet Federal Bureau of Prisons/ Clinical Treatment Guidelines/ Medical Community Standard of Care for inmates with HCV.

C) That Plaintiffs, all Class members be treated with the new 'break through' direct acting, twelve week, oral daily pill, antiviral drugs.

D) That Plaintiffs, all Class members receive ongoing monitoring and medical care for their level of fibrosis and cirrhosis of the liver, including, but not limited to, direct access and evaluation by a Hepatologist and assessment regarding their need for partial or full liver transplant.

6. For Plaintiffs, and all Class Members;

A) Permanent injunction against the perpetuation of the Defendants, NC Dept of Public Safety/ Division of Prisons/ Health Care Services/ Policy and Procedure, treating any inmate within the NC prison System using the highly toxic Interferon injection for their infection.

B) Permanent injunction against the perpetuation of the Defendants, NC Dept of Public Safety/Division of Prisons/ Health Care Service/ Policy and Procedure, that withholds the twelve week/oral daily pill antiviral HCV medication treatment to inmates until they present evidence of significant fibrosis, cirrhosis of the liver or liver cancer which CANNOT be reversed.

C) Permanent injunction against the perpetuation of the Defendants, NC Dept of Public Safety/ Division of Prisons/ Health Care Service/ Policy and Procedure that DOES NOT administer the twelve week, oral daily pill, antiviral HCV medication treatment to inmates, with twelve or more weeks in the custody of Defendants, immediately upon testing positive for HCV.

D) Permanent injunction against any NC Dept of Public Safety/ Division of Prisons/ Health Service/ Policy and Procedure that DOES NOT test inmates upon intake into the NC Prison System (regardless of custody level) for HCV, as the intake process does for HIV/ AIDS.

7. For Plaintiffs Spake, Shedd, Lewis and all similarly situated Class Members, Equitable relief to order IMMEDIATE commencement of the twelve week, oral daily pill HCV treatment protocol that uses Viekera-Pak or Harvoni in order to stop imminent danger of continuing deteriorating, serious mental and physical pain, suffering and eventually death.

8. For Plaintiffs Roe, Miles and Stiles.

A) Identification of all NC Prison System inmates with twelve or more weeks remaining on their sentences who were denied HCV treatment since June 2013 with the twelve week, oral daily pill, antiviral drugs.

B) Identification of all NC Prison System inmates with twelve or more weeks remaining on their sentences who were denied HCV treatment for non medical reasons.

C) Provision of the twelve week, oral daily pill, antiviral HCV treatment protocol, which the Federal Bureau of Prisons approved in June 2014 to all Federal inmates with twelve or more weeks left on their sentences and tested positive for HCV.

D) Immediate screening of all inmates who have not been tested for Hepatitis C Virus.

E) Immediate screening of all newly admitted inmates into the NC Prison System, consistent with the screening already in place for HIV/ AIDS virus.

9. For Plaintiffs Spake, Shedd, Lewis and all similarly situated Class Members, an award of appropriate compensatory damages against Defendants, jointly and severally,

for all claims which compensatory damages are available, in an amount to be determined by a jury.

10. For Plaintiffs Spake, Shedd, Lewis and all similarly situated Class Members, an award of punitive damages against the Defendants sued in their respective individual capacities for claims arising under US Constitutional Amendment V, VIII and XIV in an amount to be determined by jury.

11. Prejudgment interest;

12. Post verdict interest;

13. All costs and disbursements;

14. All reasonable attorney fees in accordance with 42 U.S.C. ~ 1988; And

15. Grant all other relief as the court deems just and proper.

**PLAINTIFFS REQUEST JURY TRIAL ON ALL CLAIMS  
TRIABLE TO THE JURY**

Respectfully submitted this 3 day day of December 2015

By Plaintiff Brian Kevin Lewis PKL - SE

On behalf of Jamie Ray Spake, Dana Allen Shedd and all similarly situated Class Members.

Mountain View Correctional Institution  
545 Amity Park Road  
Spruce Pine, North Carolina 28777

DEC 21 2015

CERTIFICATE OF SERVICE

U.S. DISTRICT COURT  
W. DIST. OF N.C.

I hereby certify that a copy of the foregoing document was mailed/ delivered to the following individuals at the addresses listed:

2- Class Action Complaint (2 copies)  
Summons  
3- In Form Pauperis for each Plaintiff  
2- Motion Requesting Appointment of Counsel (2 copies)

This the 19<sup>th</sup> day of December, 2015.

Connie B. Spake  
Signature

Connie B. Spake  
(Print Name)

Mailed to:

Clerk of Court  
Western District  
100 Ollis St-Room 309  
Asheville, NC 28801

Witnessed By: Van B. Strickland  
USPS

