

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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V.C.<sup>1</sup>

c/o Washington Lawyers' Committee  
for Civil Rights and Urban Affairs  
700 14th St., NW Ste. 400.  
Washington, DC 20005

B.L.,

c/o Washington Lawyers' Committee  
for Civil Rights and Urban Affairs  
700 14th St., NW Ste. 400.  
Washington, DC 20005

and L.S.,

c/o Washington Lawyers' Committee  
for Civil Rights and Urban Affairs  
700 14th St., NW Ste. 400.  
Washington, DC 20005

individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

DISTRICT OF COLUMBIA  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Defendant.

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Case No. 1:23-cv-01139

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF AND INDIVIDUAL CLAIM FOR DAMAGES**

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<sup>1</sup> Concurrent with the filing of this Complaint, Plaintiffs are filing a sealed motion for the use of pseudonyms and their counsel's address.

## NATURE OF THE ACTION

1. The District of Columbia Department of Corrections fails to provide constitutionally adequate health care in its detention facilities. Plaintiffs, who are three individuals currently held in the Central Detention Facility and the Correctional Treatment Facility (collectively, “the Jail”), bring this action on behalf of themselves and all others detained in the Jail because they have been and continue to be seriously injured by the District’s deliberate indifference to their serious medical needs.

2. A significant percentage of incarcerated people suffer from serious chronic health conditions and infectious diseases including diabetes, high blood pressure, asthma, tuberculosis, hepatitis C, cardiovascular disease, HIV, and AIDS.<sup>2</sup> Indeed, people are often incarcerated precisely because of their unmet health care needs, including untreated mental health conditions and substance use disorders that disproportionally intersect with physical health conditions.<sup>3</sup>

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<sup>2</sup> See Leah Wang, *Chronic Punishment: The unmet health needs of people in state prisons*, Prison Policy Initiative (June 2022), <https://www.prisonpolicy.org/reports/chronicpunishment.html>, last visited (April 24, 2023); Wang EA, Redmond N, Dennison Himmelfarb CR, Pettit B, Stern M, Chen J, Shero S, Iturriaga E, Sorlie P, Diez Roux AV, *Cardiovascular Disease in Incarcerated Populations*, *J Am Coll Cardiol*, 2017 Jun 20;69(24):2967-2976; American Academy of Family Physicians, *Incarceration and Health: A Family Medicine Perspective*, AAFP (July 2021), <https://www.aafp.org/about/policies/all/incarceration.html#:~:text=Compared%20to%20the%20general%20population,hepatitis%20C18%20and%20tuberculosis>, last visited (April 24, 2023); I.A. Binswanger et al., *Prevalence of Chronic Medical Conditions Among Jail and Prison Inmates in the USA Compared With the General Population*, 63 *J. Epidemiology & Community Health* 912 (2009) (concluding that incarcerated people in the U.S. had a higher burden of most chronic medical conditions than the general population, even adjusting for sociodemographic differences and alcohol consumption); and, Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland (Mar. 25, 2020), <https://cutt.ly/stERiXk>.

<sup>3</sup> AAFP, *supra*, at <https://www.aafp.org/about/policies/all/incarceration.html#:~:text=Compared%20to%20the%20general%20population,hepatitis%20C18%20and%20tuberculosis>; and, Alexis Jones and Wendy Sawyer, *Arrest, Release, Repeat: How police and jails are misused to respond to social*

3. Health care is one of the primary responsibilities the District assumes for the approximately 1,400 people in its custody, and individuals confined to the Jail are entirely dependent on the District for their healthcare needs. Individuals in custody cannot obtain or manage their own medications, cannot schedule their own appointments, cannot seek an outside provider for specialty care, cannot ask for a second opinion, cannot access prescribed medical supplies, cannot ensure tests or follow up instructions are fulfilled, and cannot even access medical personnel without permission and assistance from correctional officers. They are therefore completely reliant on Defendant to provide necessary health care.

4. The District is deliberately indifferent to its obligation, and the Jail's provision of health care is systemically dysfunctional, resulting in people with serious medical needs being unable to access necessary medical, pharmaceutical, and dental care.

5. Defendant is well aware of these systemic failures. The constitutionally deficient health care provided through the Jail's system has been the subject of multiple lawsuits, a federal agency report, hearings of the D.C. Council, rulings by judges of both the D.C. Superior Court and this Court, as well as a multitude of grievances filed by individuals within the Jail itself. Despite these repeated warnings, the District remains deliberately indifferent to the substantial risk of pain and suffering of people in the Jail, and continues to provide constitutionally inadequate health care in violation of the Fifth and Eighth Amendments of the United States Constitution.

6. Plaintiffs seek injunctive and declaratory relief to compel the District to provide themselves and the class they represent with a constitutionally adequate health care system.

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*problems*, Prison Policy Initiative (August 2019), <https://www.prisonpolicy.org/reports/repeatarrests.html>, last visited (April 24, 2023).

Plaintiff B.L. also seeks damages for injuries he suffered because of the Defendant's deliberate indifference.

### **JURISDICTION**

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 because Plaintiffs seek declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201, and 2202, and 42 U.S.C. § 1983, for violations of their federal constitutional rights.

### **VENUE**

8. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(b)(2) because Plaintiffs' claims for relief arose in this district.

### **PARTIES**

9. Plaintiff V.C. suffers from multiple serious medical conditions, including congestive heart failure, prediabetes, gastroesophageal reflux disease, and hypertension. He has a cardioverter-defibrillator implanted in his chest and requires nine daily medications to prevent a serious cardiac event. Despite being aware of V.C.'s serious medical condition, Defendant regularly fails to provide V.C. with his medications on time and sometimes at all.

10. Plaintiff B.L. suffers from severe, chronic medical conditions including epididymo-orchitis (inflammation of the testicle), chronic dysuria (pain, burning or discomfort on urination), neurogenic bladder (lack of bladder control), nephrectomy (surgical removal of one or more kidneys) complications, neuropathy (damage to nerves outside the brain and/or spinal cord, causes pain and numbness in hands and/or feet), lower extremity weakness, and gastroesophageal reflux disease (GERD) (stomach acid repeatedly flows back up to the esophagus). Because B.L. does not have control over his bladder, he must self-catheterize four to six times a day. Despite being aware of these serious medical conditions, Defendant regularly

fails to provide B.L. with the catheters and supplies he needs to self-catheterize safely. Additionally, B.L. has developed a mass in one of his testicles and an enlargement of his remaining kidney since entering the Jail. Despite conducting ultrasounds identifying both a mass in his testicle and an enlarged kidney, Defendant has repeatedly failed to schedule specialist appointments for B.L. to further diagnose and treat these conditions.

11. Plaintiff L.S. has multiple severe eye conditions that have left him blind in his right eye and with limited vision in his left eye. In order to see more than vague blurry shapes, L.S. requires Atropine drops to enlarge the pupil in his left eye, as well as lubricating drops and glasses to correct his vision further. Defendant has repeatedly denied L.S. his prescribed eye drops and glasses, without which his vision is severely impaired. L.S.'s inability to see clearly puts him at physical risk of injury while attempting to move around a crowded jail facility.

12. Defendant District of Columbia is a municipality. Defendant maintains and operates the Jail and is and was at all relevant times responsible for the actions, inactions, policies, procedures, and practices of the Department of Corrections and its employees and/or contracted agents. The District is responsible for providing constitutionally adequate health care for those in its custody.

### **FACTUAL ALLEGATIONS**

#### **I. Defendant Has Been Deliberately Indifferent to Plaintiffs' Serious Medical Needs.**

##### **V.C.**

13. Plaintiff V.C. suffers from multiple serious medical conditions, including congestive heart failure,<sup>4</sup> prediabetes, gastroesophageal reflux disease, and hypertension.

14. Doctors diagnosed V.C. with congestive heart failure in or around 2010 and he underwent surgery two years later to implant a cardioverter-defibrillator. The defibrillator helps regulate potentially rapid and life-threatening electrical problems within V.C.'s heart.

15. As of November 2022, V.C.'s ejection fraction (the measurement of the percentage of blood leaving the heart each time it contracts) was 20%, which represents a significant risk of death.

16. To treat his heart failure, V.C. is prescribed nine medications to take ten times per day. He is prescribed to take Amiodarone (once per day); Coreg (twice per day); Xarelto (once per day); Entresto (once per day); Spironolactone (once per day); Furosemide (once per day); Omeprazole (once per day); Jardiance/Empagliflozin (once per day); and Aspirin (once per day).

17. Without his prescribed daily medications, V.C. is at risk of serious cardiovascular complications, further permanent damage to his heart, or death. For example, failing to receive the Carvedilol creates a higher risk of high blood pressure that could result in damage to V.C.'s heart and a decrease in his ejection fraction rate. Furosemide actively helps clear extra fluid from

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<sup>4</sup> Congestive heart failure is a condition that varies in severity. To reference the level of severity, doctors often refer to a patient's ejection fraction, which indicates how well the heart is working. Ejection fraction is the percentage (fraction) of blood that is pumped (ejected) from the heart as it beats. Bamira D, Picard MH. *Imaging: Echocardiology—Assessment of Cardiac Structure and Function*, Science Direct, Essentials of Nuclear Medicine Imaging (Sixth Edition) (2012), <https://www.sciencedirect.com/topics/nursing-and-health-professions/heart-ejection-fraction>, (last visited April 24, 2023); Vasan RS, Sawyer, DB, eds., *Encyclopedia of Cardiovascular Research and Medicine*, Elsevier; 2018:35-54, (last accessed March 13, 2023). Normal EF is between 50 and 70%. *Id.* A lower percentage is indicative of a more significant failure. *Id.* EF below 30% is considered severely abnormal. V.C.'s EF is 12%.

V.C.'s body that builds up due to his heart condition. Missing a dose or two of Furosemide can exacerbate those symptoms and lead to worsening heart failure.

18. However, since at least October 2021, Defendant has repeatedly failed to provide V.C. with each of these medications on time, and sometimes at all. Between October 2021 and present, Defendant has denied V.C. his medications on at least nineteen occasions, sometimes for a few hours and sometimes for multiple days at a time.

19. V.C. has repeatedly notified Defendant of his lack of access to necessary medication via sick call slips, verbal communications, and multiple grievances.

20. V.C.'s medical records document some of the occasions Defendant has failed to provide V.C. his medication and note that he has reported concerning symptoms accompanying his medication denials. For example:

a. On December 11, 2021, V.C. did not receive Entresto, a medication prescribed for his heart failure and used to slow damage to his heart, because, according to his medical records, it was "out of stock."

b. On April 4, 2022, V.C. noted symptoms including shortness of breath and chest pains due to medication delays.

c. On May 4, 2022, V.C. told medical staff that he had not received his Furosemide, a medication that as discussed in paragraph 17, above, reduces excess fluid build-up from heart failure and helps to reduce symptoms such as shortness of breath.

d. Again, on June 14, 2022, V.C. reported medication issues to medical staff, noting that he was not consistently receiving his evening heart medications.

e. A June 15, 2022 note in the medical record indicates that V.C.’s medications were never switched over when his housing unit changed, causing him to miss necessary medication.

f. Just two weeks later, Defendant denied V.C. a majority of his medication for two days. After issues with his medication in April and early May 2022, V.C. was allowed to keep some of his medication in his cell. However, he still relied on a nurse to bring him two pills in the morning and two pills in the evening.

g. On June 29, 2022, the medication V.C. kept in his cell on his person ran out. On the morning of June 30, after V.C. returned from Court, he asked about his morning medication, and was told he “missed it”. In the evening, he was brought only the two pills the nurse generally brings—and those two were the only pills (of the nine he took at the time) that he received that day.

21. Multiple attorneys have raised concerns about Defendant’s failure to provide V.C. his medication via email, court pleadings, and oral motions. On July 1, 2022, V.C.’s defense attorney emailed Defendant’s general counsel notifying them that V.C. had been denied all of his keep-on-person medications on June 30 and July 1, 2022.

22. Then, on July 22, 2022, V.C.’s defense attorney filed a motion with the Superior Court about Defendant’s continued denial of his medication. The motion noted that V.C. had an ejection fraction of 12%, putting him well below the 20% indicator for very severe heart failure, and had been hospitalized multiple times during his incarceration due to heart problems.

23. Defendant was further made aware of its failure to provide V.C. with necessary medication when V.C. provided notice to Defendant’s Office of Risk Management on December



14, 2022, stating that he suffered from serious medical conditions including congestive heart failure and that Defendant repeatedly delayed or denied his necessary medications.

24. Most recently, on February 1, 2023, undersigned counsel emailed Defendant's general counsel because Defendant had deprived V.C. of some of his medications for two days. An attorney in the Department of Corrections Office of the General Counsel stated that the electronic pharmaceutical system inexplicably failed to order or dispense the four-day medication package that V.C. regularly receives. No explanation was provided for the persistent pharmacy problems that have deprived V.C. of his vital medications, and have remained unaddressed despite repeated notice to Defendant.

25. Because of Defendant's deliberate indifference, V.C. suffered unnecessary and debilitating chest pains, shortness of breath, risk of heart failure, and severe anxiety over whether his heart could fail completely.

26. Defendant is and has been aware of the ongoing risks to V.C. but has disregarded them by failing to take reasonable measures to address its repeated failures to provide him necessary medication.

B.L.

27. Plaintiff B.L. was shot in the back on July 13, 2019, resulting in severe and permanent damage to his urinary tract system. B.L. underwent surgery and spent multiple weeks in the hospital.

28. As a result of his injuries, B.L. suffers from severe, chronic medical conditions including epididymo-orchitis (inflammation of the testicle), chronic dysuria (pain, burning, or discomfort on urination), neurogenic bladder (lack of bladder control), nephrectomy (surgical removal of one or more kidney), prediabetes, neuropathy (damage to nerves outside the brain

and/or spinal cord, causes pain and numbness in hands and/or feet), lower extremity weakness, and gastroesophageal reflux disease (GERD – stomach acid flows repeatedly flows back to esophagus).

29. Defendant was aware of B.L.'s injuries, the severity of his medical condition, and his various medical needs when he entered the Jail as a pre-trial detainee on October 8, 2020. At his intake screening, B.L. explained, at minimum, that he had previously suffered a gunshot wound to the spine/abdomen, that he underwent a nephrectomy, suffered with a neurogenic bladder, and self-catheterized using size 14 or 15 French catheters. At intake, he also suffered from lower extremity weakness and was walking only with the assistance of a cane.

*Necessary Medical Supplies*

30. In order to pass urine, B.L. is required to self-catheterize four to six times a day. That process entails inserting a latex, polyurethane or silicone tube known as a urinary catheter into the bladder through the urethra. B.L. needs a new one-use catheter tube each time he catheterizes, as well as lubricant and sanitizing wipes.

31. Medical personnel are aware of this need and have ordered that B.L. receive a sufficient number of catheters and related supplies so that he has unused sterile equipment for each catheterization.

32. However, Defendant has consistently failed to provide B.L. with the lubricant and proper catheter tubes he needs to self-catheterize, as well as the alcohol wipes he needs to sanitize the insertion site.

33. Defendant rarely, if ever, provides as many lubricant packets as catheter tubes, meaning that B.L. will almost always be without a new lubricant pack for several catheterizations, and reusing open single-use lubricant packets can also raise the risk of infection.

34. Further, without lubricant, the insertion of the catheter tube is painful, can cause bleeding, and can result in scarring.

35. Similarly, Defendant regularly fails to provide B.L. with sufficient sanitizing wipes. Defendant is aware of its failure to provide B.L. with the necessary sanitizing wipes through a grievance B.L. filed on October 25, 2022. B.L. was told the issue was flagged for nursing staff, but has only received two sanitizing wipe packs since the October 2022 grievance.

36. Defendant also repeatedly fails to provide B.L. with the correct number of catheters. Instead, Defendant has insisted that B.L. reuse catheters, and clean them between uses in the sink in his cell.

37. Re-using catheter tubes raises the risk of infection. Re-using catheters without access to sterilizing wipes, particularly when the only place to clean them is in an unhygienic sink, creates an even greater risk.

38. Further, Defendant regularly provides B.L. with catheters that are too large or the incorrect shape. Providing the incorrect type and size of catheter causes trauma to the urethra, including bleeding and scarring, and makes it harder and more painful to catheterize in the future.

39. As a result, B.L. frequently limits his fluid intake so that he can avoid having to urinate and then change catheters. Limiting fluid intake could cause damage to his kidneys and put him at higher risk for kidney stones.

40. Despite the risk of harm and the obvious need for these supplies, Defendant regularly fails to provide B.L. with necessary catheter tubes, lubricant, and sanitizing products.

*Need for Urology Specialty Care*

41. Due to his injury and permanent urological damage, B.L. has ongoing urological problems including recurrent infections resulting in severe pain and bleeding when urinating.

42. Despite a traumatic injury due to a gunshot wound and permanent resulting damage, Defendant did not arrange for B.L. to see an urologist until eight months after he arrived at the Jail.

43. When he finally saw an urologist on June 4, 2021, the doctor ordered an ultrasound.

44. The ultrasound, which was not conducted until three months later, showed an enlargement of B.L.'s remaining kidney. Those results were not provided to B.L. until three months after the ultrasound, around the time he was scheduled for the follow up appointment with the urologist.

45. When B.L. was seen for that appointment in December 2021, the doctor told him he needed to return for another follow-up six months later. Defendant, however, did not schedule that follow-up for over a year.

46. During the same time, B.L. was having pain and swelling in one of his testicles. He was seen in the emergency room on January 21, 2022, where an ultrasound was done showing an abnormal mass in one of his testicles.

47. Medical personnel noted that the significance of the ultrasound findings were unclear and that B.L. needed a follow up specialty appointment. However, Defendant did not schedule a specific appointment to address the undiagnosed mass. Rather, the records indicate that Defendant simply decided to send the ultrasound report with B.L. when he went to his next scheduled urology appointment.

48. Defendant, however, did not schedule that appointment for a year.

49. This delay was not simply an oversight. B.L.'s medical records contain multiple notations about the urology consultation not yet being approved or remaining pending.

50. B.L. also notified Defendant of the needed specialty appointment by filing grievances on September 9 and 14, 2022, to no avail.

51. When Defendant finally took B.L. to see the urologist, in January 2023, the doctor did not discuss and was apparently unaware of the mass in B.L.'s testicle.

52. Once again, medical personnel decided simply to wait until his next follow up appointment with the urologist to address the issue with the specialist, and to counsel B.L. to raise the issue at his next-scheduled appointment. This appointment is not yet scheduled.

53. The mass in B.L.'s testicle could be cancerous. If malignant, denying diagnosis or treatment of the mass risks allowing potential cancer to spread to the rest of his body, which could be lethal.

54. Defendant is deliberately indifferent by failing to provide any follow up specialty care for the unidentified mass in B.L.'s testicle.

*Need for Gastroenterology Specialty Care*

55. B.L. also has recurrent blood in his rectum and stool.

56. He saw a gastroenterologist for his GERD and an H. pylori bacterial infection on January 5, 2022. This specialist ordered a follow-up appointment the next month.

57. For more than a year, Defendant refused to schedule the follow-up appointment, despite regular notations in B.L.'s medical records documenting the need for specialty care due to gastrointestinal symptoms, including blood in his rectum and stool.

58. The need for specialty care was noted in B.L.'s records no fewer than nine times since January 5, 2022, but it took Defendant more than a year to schedule a follow-up appointment. Blood in stool is never normal, and the cause of B.L.'s bleeding is still unknown 15 months after he reported the symptoms.

L.S.

59. Plaintiff L.S. is blind in his right eye and has limited vision in his left eye as the result of several severe eye conditions, including posterior synechiae (a condition in which the iris adheres to the lens of the eye, interferes with vision, and leads to glaucoma) and an irregular left pupil with impaired movement.

60. He requires Atropine once daily and lubricating drops 4 or more times daily. With the drops, L.S. can see out of his left eye as well as a person with 20/70 vision, but requires glasses to correct his vision further. Without the drops, L.S.'s vision is so blurry that he has trouble orienting himself, struggles to move around his cell, and regularly bumps into people and objects.

61. Defendant has repeatedly denied L.S. his prescribed eye drops, either by letting prescriptions lapse or by failing to provide enough drops to last L.S. until his next appointment.

*Failure to Provide Necessary Medication*

62. On June 3, 2022, L.S. requested to see the doctor to have his eyes checked and obtain more drops. Receiving no response, on June 6, 2022, L.S. again requested a refill of his eye drops.

63. It took Defendant more than twenty days and additional sick call slips to refill his Atropine eye drops.

64. When he finally received the drops, the nurse practitioner noted in his medical file that L.S. needs the Atropine drops “to see,” that he would be given the drops “in the next 5 minutes,” and that the nurse had instructed L.S. to put them in his eye “immediately.”

65. Although L.S. had an appointment with an ophthalmologist scheduled for October, where he expected to have his prescriptions refilled, Defendant cancelled that appointment due to quarantine. During the quarantine, he did not receive any medical treatment for his eyes, and was without eye drops.

66. Defendant again let the prescription for eye drops lapse in early November. It was not refilled until L.S. filed a grievance.

67. L.S. has repeatedly raised the failure to provide his eye drops with medical staff and has filed multiple grievances on this issue.

68. Regardless, Defendant continues to fail to provide L.S. with enough lubricating and Atropine eye drops. As a result, L.S. has to ration his prescribed medication, choosing which days he will be able to see.

#### *Need for Glasses*

69. Even when L.S. is able to use the eye drops, Defendant continues to deny him the glasses necessary to allow him to see fully out of his one good eye.

70. L.S. informed Defendant that his glasses broke in October 2020.

71. Defendant was aware L.S. was without the glasses necessary to help him see out of at least one eye and sent him for an appointment to replace his glasses.

72. It took two years, however, for Defendant actually to provide L.S. with any glasses.

73. Defendant was aware of the delay, as evidenced by the documentation in his medical file in June and August 2022, that L.S. still had not received his prescription glasses.

74. When Defendant finally provided L.S. with glasses in October 2022, two years later, they were the wrong prescription. To this day, L.S. does not have the right glasses; wearing the glasses Defendant has provided actually worsens his vision so he does not wear them.

75. Because of Defendant's failure to deliver his medical prescriptions and supplies, L.S. suffers from significant loss of vision. He also suffers risk of physical injury and severe anxiety from being unable to see in a crowded, unpredictable, volatile environment where it is easy to bump into objects or people, and where an individual's physical safety requires a hypervigilance to one's surroundings. L.S.'s limited vision so impedes his ability to be cognizant of any impending or developing threats to his safety that he often does not leave his cell.

*Specialty Care*

76. Finally, L.S. needs dental care including tooth restoration and extraction. As early as January 2022, Defendant acknowledged that seven of L.S.'s teeth were decayed and one needed extraction. However, more than 15 months later, he has still not received any treatment or had the rotted tooth extracted.

77. Such delay causes existing cavities and decay to worsen, and makes it more likely that additional teeth will have to be extracted. Further, failure to remove teeth that need extraction creates a risk of nerve infection. If teeth remain in the mouth under these conditions, it will continue to compromise bone foundation and lead to more bone loss and discomfort.

78. L.S. has only a handful of teeth remaining. Defendant, however, will not provide him with dentures to assist him with eating. In February 2023, a dental assistant told L.S. that they will only order dentures for individuals who will be at the Jail for at least six more months.



The decision not to provide L.S. dentures, therefore, appears to be based on financial concerns rather than an exercise of professional judgment.

79. Defendant's deliberate indifference to L.S.'s need for timely prescription eye drops and glasses so that he can see, and need for dental care to prevent further decay and infections, puts him at significant risk of future harm.

M.K. – Class Member

80. M.K. is HIV positive and suffered a heart-related medical emergency just prior to being detained at the Jail.

81. Defendant failed to address M.K.'s repeated reports of heart palpitations and difficulty breathing.

82. Defendant has also failed to provide M.K. with necessary HIV medication—resulting in a deterioration of his HIV status.

83. Defendant also failed to timely provide M.K. prescription glasses.

*Failure to Provide Cardiac Care*

84. M.K. has had recurrent heart palpitations since entering the Jail on December 21, 2021.

85. M.K.'s heart issues began prior to his incarceration. In early December 2021, after complaining of heart palpitations, M.K. was found unresponsive. He was transported via ambulance to the emergency room at Washington Hospital Center. The doctor there referred him to a cardiologist, but M.K. was arrested before he could complete the follow-up.

86. About a month after his admission to the Jail, on January 21, 2022, M.K. reported to a psychiatrist that he was experiencing episodes where he was unable to breathe and had a racing heartbeat.

87. The next day, M.K. again reported to medical personnel that at times he had shortness of breath, difficulty breathing, and heart palpitations at night.

88. On February 5, 2022, M.K. reported that the palpitations were becoming more frequent.

89. Three days later, M.K. reported that the palpitations were “increasing in frequency and intensity” and had worsened since his incarceration six weeks prior. Notes from this medical encounter indicate that the provider dismissed M.K.’s symptoms as due to the stress of incarceration.

90. Throughout this time, Defendant failed to conduct a basic cardiac exam or an electrocardiogram (also known as an EKG).

91. It was not until February 10, 2022 that Defendant even referred M.K. to Washington Hospital Center for a cardiology appointment.

92. It took another six months for Defendant to actually bring M.K. to see a cardiologist. M.K. had to go through the entire administrative grievance process before Defendant finally got him to the cardiology appointment, which was an unnecessary treatment delay.

93. During that delay, M.K. repeatedly reported palpitations and that the palpitations were getting more frequent and intense.

94. When M.K. finally saw the cardiologist at Washington Hospital Center in August 2022, the cardiologist provided him with a cardiac monitor and ordered him to wear it for two weeks and then return the device to its manufacturer for data analysis.

95. M.K. wore the monitor as prescribed, and packaged it as he had been instructed. It was too big for the mailbox on his unit, so M.K. attempted to give it a member of Unity staff.

When she declined to take the monitor, M.K. gave it to a Lieutenant in his unit. Defendant subsequently lost the monitor and all of the collected data.

96. Five months later, when Defendant finally took M.K. for a follow up cardiology appointment on January 6, 2023, the doctor told M.K. the manufacturer had never received the monitor back and did not have the data it collected. Because this information was necessary to the creation of an ongoing treatment plan for M.K., he was forced to start the process over, losing valuable time to treat his underlying heart issues.

97. M.K. wore the second monitor for two weeks, and again packaged it up and gave it to Defendant's staff to send to the manufacturer. Upon information and belief, Defendant sent the monitor to the hospital rather than the manufacturer again, meaning the collected data was again lost.

#### *Denial of Medication*

98. Like V.C., Defendant has also denied M.K. necessary medication.

99. M.K. has HIV and has been taking Biktarvy for the past ten years. The purpose of this medication is to suppress the HIV virus and prevent it from developing into AIDS.

100. Before entering the Jail, M.K.'s viral load (the number of HIV RNA copies per millimeter of blood) was undetectable, meaning that the medication was successfully suppressing the HIV virus.

101. Because Defendant has failed to ensure that he gets his medication, M.K. has missed more doses in the nearly 16 months he has been at the D.C. Jail than he missed collectively over the past 10 years.

102. On January 31, 2023, during a search of M.K.'s cell Jail staff threw his Biktarvy on the floor and stepped on it, rendering it unusable.

103. When Biktarvy doses are missed, even sporadically, two different major problems can result: a higher amount of HIV in the bloodstream and a reduction in the effectiveness of the drug due to increased resistance.

104. On September 6, 2022, lab tests results showed that M.K.'s viral load had risen from undetectable to "40." The increased viral levels in his blood suggest that these missed doses allowed the virus to replicate, increasing M.K.'s risk of a significantly weakened immune system, related infection and diseases, and even death.

*Need for Glasses*

105. Defendant has also denied M.K. the glasses he needs to see clearly.

106. On February 8, 2022, M.K. submitted a request to see the ophthalmologist because of his "double astigmatism."

107. More than six weeks later, on March 30, 2022, M.K. submitted a grievance because he still had not seen the ophthalmologist.

108. Almost three months after his initial request, M.K. finally saw an ophthalmologist on May 2, 2022. At the exam, the ophthalmologist recorded 20/200 vision in his right eye and 20/400 vision in his left eye. This means that what the average person can see from 200 and 400 feet away, respectively, M.K. can see only if he is 20 feet away. The ophthalmologist wrote M.K. a prescription for glasses.

109. More than six months later, however, medical personnel noted in M.K.'s records that, although the prescription was in his file, there was no indication that the glasses had ever been ordered, despite M.K.'s repeated requests.

110. As recently as the week of February 13, 2023, M.K. submitted another sick call requesting his glasses. Per his medical record, the glasses were finally ordered the following day—nine months *after* they had been prescribed.

111. However, when M.K. was seen for another ophthalmology appointment three weeks later, on March 6, 2023, the ophthalmologist found that M.K.’s visual acuity in his right eye had deteriorated from 20/200 to 20/400, meaning the glasses that the Jail finally ordered in February 2023 are too weak.

112. Visual acuity between 20/200 and 20/400 is considered severe vision loss. As detailed in paragraph 78, above, this inability to see clearly affected M.K.’s day-to-day ability to safely interact with his environment for over a year, until he finally received the correct prescription glasses in April 2023.

K.B. – Class Member

113. K.B. has significant dental issues, including multiple “mobile” teeth and extensive decay that required the removal of multiple teeth.

114. Despite being aware K.B.’s medical needs, Defendant repeatedly failed to provide him with the health care necessary to address his dental issues by failing to schedule appointments, failing to escort K.B. to the few appointments that were eventually scheduled, and failing to provide required antibiotics and follow up appointments.

115. Rather, Defendant has repeatedly left K.B. in severe pain for weeks or months without timely care for his dry sockets, tooth decay, and abscesses in his mouth. Even though Defendant provides dental care onsite, it repeatedly failed to respond to K.B.’s requests for dental care via sick call requests. When Defendant eventually scheduled K.B. for dental

appointments, Jail staff regularly cancelled the appointments or simply failed to transport him to the appointments.

116. Defendant was aware of K.B.'s specialty dental needs starting two weeks after his arrival at the Jail. On November 29, 2021, K.B. submitted a sick call slip requesting dental procedures. Medical personnel noted that there was "[d]ecay present in most teeth" that could require extractions. They also noted that K.B. had "[m]ultiple mobile teeth," indicating potential for further problems.

117. Despite that documented need and the sick call slip, Defendant refused to provide a dental appointment.

118. K.B. submitted another sick call in early February 2022. K.B. complained of dental cavitation and multiple decayed teeth, and relayed that he still had not seen a dental provider.

119. Defendant finally took K.B. to the dentist on February 22, 2022.

120. Defendant waited an additional six weeks, despite two additional sick call requests, before providing another dental appointment. During that time, K.B. experienced severe pain, which made it difficult to eat and sleep.

121. After more than a five month wait, the dentist finally extracted three of K.B.'s teeth on April 5, 2022.

122. During that visit, K.B. was told that one of his remaining teeth was abscessed, and that both that tooth and another needed to be removed at the next visit.

123. No next visit was scheduled.

124. Instead, K.B. continued to suffer unnecessary pain and infection for over three months from the abscessed tooth. During this time, K.B. submitted two sick call slips complaining of severe pain in his molar and pain when eating.

125. Defendant finally provided a dental visit on July 22, 2022, where the dentist reiterated that an extraction needed to be scheduled.

126. An extraction appointment was scheduled, but Defendant cancelled it with no explanation.

127. On August 8, 2022, K.B. again notified Defendant of the unmet dental need by grieving the appointment cancellation.

128. The next day, Defendant took K.B. to the on-site dentist to have his abscessed tooth extracted, but the surgery could not be performed because Defendant had failed to ensure K.B. had the antibiotic he needed to take prior to the extraction.

129. As a result, the dentist was unable to remove the abscessed tooth until August 17, 2022—more than four months after first identifying the health care need.

130. While the August 17, 2022 appointment resolved K.B.'s abscess, K.B. still had teeth that would ultimately require extraction.

131. It would take another two months and yet another grievance for Defendant to schedule an appointment for October 11, 2022. That appointment did not happen, however, because Jail staff failed to escort K.B. to the dentist.

132. It was only after K.B. submitted two additional grievances that Defendant finally scheduled K.B. to have three additional teeth extracted. That appointment was scheduled for November 1, 2022, but Jail staff again failed to transport him for the appointment. The teeth were finally removed on November 3, 2022.

133. On November 11, 2022, K.B. again requested to see the dentist due to pain in his jaw—the result of having a piece of a pulled tooth remaining in his gums. Defendant failed to arrange for K.B. to see the dentist to address this complication for nearly a month.

134. Defendant’s denials of prompt dental care have caused harm to K.B., including unnecessary infections and pain.

R.B. – Class Member

135. When Mr. R.B. entered the Jail, he was in good health and was able to participate in a number of physical activities.

136. However, R.B. tore his anterior cruciate ligament (ACL) while he was detained and had reconstructive knee surgery in January 2022.

137. His medical records include repeated notes stating that R.B. should see a physical therapist.

138. Defendant failed to provide R.B. with physical therapy until almost a month after his surgery, causing R.B. to miss a crucial recovery window.<sup>5</sup> The first four weeks of physical therapy after surgery have successive goals. Early physical therapy leads to faster recovery in leg surgery and improved range of motion in the short term. Defendant’s failure to provide R.B. with the medically necessary physical therapy hindered his recovery.

139. In addition, according to his medical records, R.B. had at least 12 physical therapy appointments cancelled due to time constraints, correctional staff errors, lack of an exam room, or other unspecified reasons.

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<sup>5</sup> See Adams, D., Logerstedt, D., et al., *Current Concepts for Anterior Cruciate Ligament Reconstruction: A Criterion-Based Rehabilitation Progression*, JOSPT 2012 42(7): 601-614.



140. R.B. still experiences knee pain more than a year after surgery and his mobility remains limited.

**II. Defendant Has an Obligation to Provide Constitutionally and Statutorily Sufficient Health Care.**

141. People confined in the Jail are dependent on Defendant for their health care needs.

142. Defendant has an obligation under the Fifth and Eighth Amendments to the United States Constitution to provide humane conditions of confinement, which includes the provision of health care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Bell v. Wolfish*, 441 U.S. 520, 560–61 (1979).

143. Defendant also has a duty under District of Columbia law to contract for delivery of health care for individuals held in the Jail. DC Code § 24-1401. Specifically, Defendant is required to contract with an organization that can provide the “full healthcare continuum, including primary care, specialty care, emergency care, and hospital care, and for connecting inmates with a health center in the community for continued care after the inmates are released from the custody of the Department of Corrections.” *Id.*

144. Defendant is aware of its obligations under the Fifth and Eighth Amendments and District of Columbia law.

145. Defendant contracts with Unity Healthcare to provide health care services to persons within its custody. Defendant has established a series of policies, in the form of written “Program Statements,” that govern the delivery of those health care services to individuals in the Jail. *See* Program Statements 6000.1I through 6080.2G.

146. In addition, the program statements specifically require Defendant’s Health Services Administrator to conduct regular program reviews of the health care delivery system, as

well as collect and evaluate data to ensure the health care contractor is providing adequate services. Program Statement 6000.1H at Ch.1, § 6(a)(2-3).

147. Defendant and the health services provider are also required, per the program statements, to meet at least once every three months to review any issues regarding the provision of comprehensive health care services. *Id.* at § 6(b)(1)(b).

148. Despite contracting with an outside health care provider, Defendant retains ultimate authority over the health care and treatment of people in the Jail. *See* D.C. Code § 24–211.02(a); *West v. Atkins*, 487 U.S. 42, 56 (1988) (“Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State’s prisoners of the means to vindicate their Eighth Amendment rights.”); *Herbert v. District of Columbia*, 716 A.2d 196, 202 (D.C. 1998).

### **III. Defendant Fails to Provide Health Care Consistent With Constitutional and Statutory Obligations or With its Own Policies.**

149. Defendant’s health care system routinely fails to identify serious medical conditions, and once identified, fails to ensure that proper treatment is provided, including necessary medications, medical supplies, diagnostic care, specialty care and chronic care. Defendant has long been aware of the denial of necessary care and the harm that it has caused, has the capacity to address these systemic deficiencies, and has with deliberate indifference chosen to continue to allow incarcerated persons to suffer, and to allow otherwise treatable medical conditions to continue unabated, progressing into more debilitating disease, and decreasing quality of life, and/or hastening death.

**A. Defendant Has the Obligation to Identify and Treat Serious Medical Conditions But Fails To Do So.**

Screening for Health Care Issues at Intake

150. The program statements require medical personnel to conduct a screening during each incarcerated person's initial intake at the Jail. District of Columbia Department of Corrections Program Manual 6000.1H at Ch. 4, § 1. Per the program statements, medical personnel are required to put a completed medical and mental health evaluation into each individual's medical record after completing the initial screening, and within four hours of the person's entry into the Jail. *Id.* at § 2.

151. The health care screening is supposed to identify acute and chronic medical needs of those entering the jail, including but not limited to: current and past illnesses, presently prescribed medication(s), and current health, dental and/or mental health complaint(s) and treatment. *Id.* at § 1.

152. Medical personnel are also supposed to test for infectious diseases, conduct physical exams, take vitals, ask medical and mental health history questions, and ascertain whether the individual currently takes any prescription medication. *Id.*

153. Additionally, where the screening indicates that further medical or mental health assessments are needed, the policies require medical personnel to conduct those assessments. *Id.* at § 1(d).

154. Where the screening identifies a chronic illness, medical personnel are required to develop a written treatment plan to provide the ongoing medical services necessary to treat the individual's chronic medical condition, and to prevent or reduce complications. *Id.* at § 10.

155. Medical personnel are required to complete the screenings and any chronic illness assessments before the individual leaves the intake unit. *Id.* at § 1(a)

156. For individuals who are not identified as having a chronic illness during the initial screening, medical personnel must complete the screening on intake and a more comprehensive health care evaluation must be completed 10 to 14 days after entry into the Jail. *Id.* at § 1(d)(4).

157. Thus, per the procedures set forth in the program statements, Defendant should be aware of any serious medical condition known to an individual entering the Jail within hours of admission. Further, the comprehensive health care examination should identify any unknown serious medical conditions no later than 14 days after the person enters the Jail. *Id.*

#### Sick Call

158. Individuals who become ill after entering the Jail must access health care through the “sick call” system. *Id.* at § 8.

159. The individual must fill out a call slip and put it in the sick call box on their unit in order to request medical care. *Id.*

160. Defendant’s program statements require that medical personnel are responsible for collecting sick call slips and triaging patients’ medical needs within one business day of receipt. *Id.*

161. Because sick call slips are not triaged on the weekends in general population units, individuals can suffer from urgent medical conditions for days before being seen. *Id.* at § 8(b).

#### Medication and Medical Supplies

162. Defendant’s program statements require it to ensure its health care contractor provides pharmaceutical and medical supplies. *Id.* at Ch. 1, § 1(b).

163. Many chronic care patients take prescribed medication, often several medications at a time. Defendant must ensure those medications are administered at the correct dosage. Failure to do so can result in serious medical complications and even death.

164. In addition, individuals in the Jail also regularly require medical supplies such as catheters, sterile cleaning supplies, orthodontics, glasses, and other supplies necessary to manage their serious medical conditions.

#### Specialty Care

165. Chronic care patients and individuals with serious medical conditions often require secondary services—including consultations with specialists, diagnostic services, medical procedures, or other treatment not available in the Jail.

166. As recognized in the program statements, Defendant is responsible for ensuring the health care contractor manages and/or refers individuals to medically necessary secondary services. *Id.* at Ch. 4, Sec. 13.

167. Certain specialists—such as ophthalmologists and dentists—provide specialty services onsite at the Jail. *Id.* at Ch. 1, § 1(b); Ch. 4, § 15.

168. To access onsite specialty care, detained individuals fill out a sick call slip, just like any other time they need medical care. Medical personnel triage the sick call requests and place individuals on the appropriate waiting list(s).

169. Those specialty care providers come to the facility at regularly scheduled intervals and see individuals in the order they are added to the waiting list. However, the wait times are often excessively long, and follow-up treatment is often severely delayed.

170. A different process is used when specialty health care services are only available offsite. Such cases require a medical referral and scheduling of specific appointments by the medical personnel. *Id.* at Ch. 4, § 21.

171. When individuals who are detained need to attend an appointment with an offsite specialist, Defendant is responsible for providing transportation to those appointments, as well as collecting and returning any documents from the specialists to the Jail's medical personnel. *Id.*

**B. Defendant is Aware of and Deliberately Indifferent to the Systemic Failures in Its Health Care System.**

172. Defendant's system of health care routinely denies health care for serious medical needs. The system fails at critical inflection points and, despite being well known to the Defendant, there is no mechanism in place to identify and correct the denial of care nor to address complaints.

173. The systemic breakdown results in the regular failure to schedule or transport individuals to medically necessary specialty and follow-up care. Defendant is aware of these repeated failures because they are noted in residents' medical records, are the subject of multiple and repeated grievances, and, as discussed in more detail below, have been the focus of several hearings before the Superior Court of the District of Columbia.

Systemic Failure to Schedule Specialty Care or Provide Health Care Follow-Up

174. Defendant contracts for limited onsite specialty care such as dentistry, physical therapy, and ophthalmology, but the vast majority of specialty care must be provided offsite.

175. Defendant, through its health care contractor, is responsible for identifying, scheduling, financing, and arranging transport for specialty care appointments with outside providers.

176. Defendant, however, routinely fails to schedule or transport patients to outside specialty appointments, or else does so only after unreasonable and harmful delays.

177. Despite medical personnel repeatedly noting the need for specialty care in medical records, specialty referrals are regularly listed as “pending” for months with no explanation as to the delay and no apparent steps taken to address overdue appointments.

178. Further, Defendant consistently fails to provide necessary follow-up care.

179. Plaintiff B.L.’s experience is a prime example. Defendant has failed to provide necessary specialty care for at least three different serious medical conditions.

180. As described more fully above, B.L. has multiple urological conditions that require him to self-catheterize four to six times a day, and that result in recurrent painful infections and blood in his urine.

181. B.L. also has a mass in one of his testicles that has not been diagnosed or treated. Defendant has failed to schedule B.L. for these necessary specialty care appointments, resulting in delays of as much as a year.

182. Further, although B.L. has seen a gastroenterologist for his GERD and an H. pylori bacterial infection. The specialist requested a follow-up appointment. It took Defendant over a year to schedule the follow-up appointment despite regular notations in B.L.’s record that specialty care was needed due to blood in his rectum and stool.

183. The Jail has also failed to provide M.K. with the cardiology care he requires.

184. Despite repeated complaints of shortness of breath and worsening heart palpitations, Defendants failed to bring M.K. to a cardiologist for seven months after he first reported these issues.

185. As described more fully above, Plaintiff L.S. has been without the glasses necessary for him see out of his one functioning eye since October 2020.

186. Although Defendant scheduled an appointment for L.S. with the ophthalmologist, it took two years to get the prescription filled. The glasses Defendant finally delivered, however, were the wrong prescription. Two-and-a-half years after his glasses broke, L.S. is still waiting for Defendant to provide him with the prescription glasses necessary for him to see.

187. Similarly, another class member, Z.S. started complaining about blurred vision in March 2022 and noted that straining his eyes was causing headaches. He did not have an appointment with an ophthalmologist until June 2022, and his prescription glasses did not arrive until more than three months later.

188. Likewise, after a May 2022 ophthalmologist appointment, the Jail failed to order glasses for M.K. He repeatedly followed up about the missing glasses, and was told they were ordered but had not come in yet. M.K. never received the glasses.

189. Ten months later, M.K. was seen for another eye exam. By that time, the vision in his right eye had deteriorated significantly. As a result, a new prescription was required. M.K. finally received a pair of glasses in early April 2023, nearly a full year after his initial eye exam.

190. Both Z.S. and K.B. waited months for dental care that was medically indicated much sooner.

191. In November 2021, K.B. submitted a sick call slip requesting dental procedures. Despite the fact that, as discussed more fully above, K.B.'s dental issues were sufficiently obvious that medical personnel took note, it took three months for K.B. to see the dentist. At that appointment, the dentist noted that several teeth required extraction. Despite continued difficulty eating and sleeping, K.B. had to wait another two months—until April 5, 2022—before the dentist finally extracted three of K.B.'s teeth. During that visit, the dentist noticed that one of



K.B.'s remaining teeth was abscessed, and that both it and another needed to be removed at the next visit.

192. It took another four months, including three grievances and two unnecessary cancellations, before the August 17, 2022 appointment that resolved K.B.'s abscessed tooth. The notes from that visit however, indicate that K.B. still had teeth that required extraction.

193. After three additional months, three additional grievances and two canceled appointments, K.B. had three additional teeth extracted on November 3, 2022. After the procedure, Defendant ignored K.B.'s complaints of continued pain, the result of a complication following his November 3, 2022 extraction, and failed to return him to the dentist for nearly a month. All of these delays caused K.B. significant unnecessary pain and the worsening of an otherwise treatable issue.

194. Similarly, Z.S. first complained of severe tooth pain in March 2022. Despite multiple complaints of pain and dental issues that were so obvious they were identified by medical, not dental, personnel, a June 2022 dental appointment resulted only in a diagnosis of gingivitis. After multiple additional complaints, the Jail finally returned Z.S. to the dentist in September 2022, where Z.S. had to have two teeth pulled. He had and continued to complain of additional dental pain until he was transferred to the BOP five months later. The Jail provided no additional treatment.

195. Although the jail provided R.B. with the knee surgery he required, they failed to provide him access to adequate physical therapy. Still now, more than a year after routine reconstruction surgery, R.B. has not regained full strength or full range of motion of his knee.

196. Despite being aware of the Jail's ongoing failures to provide necessary specialty and follow-up care, Defendant has not taken reasonable measures to correct these issues.

Defendant has never identified specific medical personnel to be responsible for scheduling all specialty and follow-up care to ensure that care is actually timely scheduled. The Defendant does not incorporate electronic scheduling reminders to ensure referrals are complete in a reasonable period of time. The Defendant does not require the medical staff to review referrals on a weekly basis for the specific purpose of identifying non-emergent referrals that have remained outstanding for more than 30 days. Patients are not required to be seen within 48 hours of returning from a specialty visit to review test results, diagnosis and treatment plans. The Defendant does not have any quality control measures, such as requiring medical staff to review a random set of at least 14 medical records each week to identify failures in providing follow-up care and to document such review. The Defendant does not incorporate regular training or disciplinary measures of staff who fail to meet pre-determined standards regarding specialty referrals and follow-up care.

#### Systemic Barriers to Accessing Specialty Appointments

197. Defendant controls every movement of each detained individual. As a result, it is impossible for individuals to get to pill call, sick call, chronic care, or specialty care appointments without being escorted by Jail staff.

198. Individuals commonly miss health care appointments simply because Jail staff fail to transport them.

199. For example, M.K.'s medical records document at least thirteen instances of jail staff canceling appointments with both with Unity doctors and with external medical providers. The most common excuse for these cancellations is the lack of staff to provide the escort.

200. Similarly, appointments are regularly cancelled without notice, and are even sometimes scheduled and cancelled without telling the detained individual either that they were scheduled or that they were canceled.

201. For example, in the fall of 2022, K.B. was in his counselor's office and saw a list of dental appointments that he "missed" on the computer. K.B. did not know that those appointments were scheduled, let alone that he missed them. Similarly, L.S. has over thirteen "missed" appointments in his record, none of which he intentionally missed. The missed appointments are due to medical staff failing to transport him, something that is outside of his control.

#### Systemic Failure to Provide Necessary Medication and Supplies

202. Defendant regularly fails to provide medically necessary medications and medical supplies.

203. Medication/medical supply delivery is hampered by, at minimum, errors in the electronic pharmaceutical system, medical personnel ignoring supply orders, Jail staff failing to communicate housing changes to medical personnel, and the failure of medical personnel to identify when individuals have missed medications.

#### Failure to Provide Necessary Medication

204. It is not uncommon for individuals to miss pill call—the name colloquially given to the time when medical staff come to each unit to give out medication—because of legal visits, court dates, or other scheduling conflicts. Because Defendant has no system in place to track and follow up when an individual misses pill call, residents are often forced to go without necessary medication.

205. For example, as described more fully above, for the past year-and-a-half Defendant has repeatedly failed to provide Plaintiff V.C. with all the medications necessary to protect him from life threatening cardiac complications.

206. V.C. has repeatedly told medical personnel and grieved Defendant's failure to provide his medication.

207. Multiple attorneys have raised concerns via email with Defendant and have brought Defendant's failure to provide V.C. with his medication to the attention of the Court through oral and written motions.

208. Yet, as recently as February 1, 2023, Defendant had again failed to provide V.C. with necessary medication for two days.

209. Similarly, Defendant has repeatedly failed to provide Plaintiff L.S. with his medically necessary eye drops.

210. As described more fully above, L.S. is blind in his right eye and has limited vision in his left as the result of several severe eye conditions. He requires eye drops every four to six hours to enlarge the pupil in his left eye in order to have any meaningful vision at all. Without the drops, L.S.'s vision is so blurry that he has trouble orienting himself, struggles to move around his cell, and regularly bumps into people and objects.

211. Defendant has failed to provide L.S. with the necessary eye drops on numerous occasions, leaving him without any drops—and therefore the inability to see—for as long as several month.

212. Similarly, Defendant has failed to provide M.K.'s HIV medication, resulting in his viral load became detectable for the first time in nearly a decade. By providing his

medication at inconsistent intervals, the medicine is more likely to lose its efficacy, and M.K. is at greater risk for developing AIDS.

Medically Necessary Supplies

213. Systemic deficiencies in Defendant's health care system also results in the regular failure to provide medically necessary supplies to individuals in the Jail.

214. After he wore his heart monitor for two weeks, M.K. packaged the device as he had been instructed by his cardiologist and gave it to Defendant staff to put in the mail. M.K. did not even learn that Defendant had lost the monitor until he attended his follow-up cardiology appointment in January 2023, five months later, at which point he was provided another heart monitor. M.K. again wore the monitor for two weeks and again packaged it up and gave it to Defendant's staff. Based on documentation that M.K. saw, he believes the second monitor was also sent to the wrong location.

215. As described more fully above, Plaintiff B.L. is required to self-catheterize four to six times a day.

216. However, Defendant has consistently failed to provide B.L. with the required number of catheters, lubricant, and related supplies he needs to sanitize the insertion site. Instead, Defendant insists that B.L. reuse the catheters, and clean them between each use in the sink in his cell.

217. Moreover, Defendant regularly provides B.L. with catheters that are either too large or the incorrect shape—making them unusable—and consistently fails to provide necessary lubricant and sanitizing wipes, increasing the risk of infection.

**VI. There is a Long History of the Defendant Being Deliberately Indifferent to Health Care at the Jail.**

218. The District has long been aware of the problems at the Jail. As discussed above, Defendant has repeatedly noted these issues in residents' medical records. Defendant is also aware of the failure of the health care system at the Jail through multiple filed grievances and a detailed written notice to the Defendant's Office of Risk Management.

219. These failures, and Defendant's deliberate indifference to them, has been the subject of repeated litigation, hearings before the Council of the District of Columbia, and public reporting.

220. Thus, despite being acutely aware of its failure to provide constitutionally adequate health care at the Jail, Defendant remains deliberately indifferent to the serious medical needs of those in its custody and care.

Prior Litigation to Address Health Care Failures

221. In the 1970s, two class action lawsuits challenged the totality of conditions at the Jail. *See Campbell v. McGruder*, 416 F. Supp. 100 (D.D.C. 1975) (on behalf of pre-trial residents); *Inmates, D.C. Jail v. Jackson*, 416 F. Supp. 119 (D.D.C. 1976) (on behalf of post-conviction residents).

222. In both cases, part of the trial court's order required the jail to establish procedures regarding the treatment of those exhibiting symptoms of mental illness. *Campbell*, 416 F. Supp. at 106; *Inmates*, 416 F. Supp. at 124.

223. After years of substantial non-compliance with the orders in those cases, the Court appointed a receiver for both medical and mental healthcare. *McGruder*, 1993 U.S. Dist. LEXIS 5377 at \*2-3, 5-6. In its order appointing a Special Master, the Court cited not only specific violations of three prior orders, but also the concealment of information that would have

allowed for the discovery of the nature and extent of the violations much sooner, “to the detriment of the plaintiff class.” *Id.* at \*4. During an Oversight Hearing on the District of Columbia Jail’s Medical and Mental Health Services in June 2000, Chairman Tom Davis of the House of Representatives’ District of Columbia Subcommittee characterized the Court’s receivership order as a necessary response to “the physical danger that the D.C. government’s continued blatant violation of the court’s previous order was tragically causing.” Comm. on Gov’t Reform, House of Representatives, 106, 2 (June 30, 2000) at 2. The receivership lasted for eight years, not ending until 2003.

224. In 2006, five plaintiffs won a combined \$248,000 jury verdict against the Jail for inhumane treatment, including inadequate medical care. The Court found that plaintiffs were denied medical treatment despite “repeated requests.” *Battle v. District of Columbia*, 99-cv-01788 (D.D.C.), ECF No. 169 at 13.

225. In 2020, a District Court found that the Jail was deliberately indifferent to residents’ medical needs during a deadly pandemic—chief among them the failure to respond to sick calls regarding COVID-19 symptoms and provide medical appointments or medical supplies to help stem the spread of the virus. See *Banks v. Booth*, 468 F. Supp. 3d 101, 113–14 (D.D.C. 2020); *Banks v. Booth*, 518 F. Supp. 3d 57, 64–65 (D.D.C. 2021).

226. The District Court twice issued injunctive relief in that case after finding that the Jail’s conduct in significantly delaying and failing to provide COVID-19 prevention and treatment violated the Fifth and Eighth Amendments. *Banks*, 468 F. Supp. 3d at 105, 125–26; *Banks*, 459 F. Supp. 3d at 147, 161–63 (D.D.C. 2020).

227. Over the past two years, judges in both U.S. District Court for the District of Columbia and the Superior Court of the District of Columbia have repeatedly found that Defendant has failed to provide constitutionally adequate health care.

228. In October 2021, this Court held Defendant in contempt after the Jail inexplicably failed, for months, to provide Christopher Worrell with necessary surgery for a broken wrist. *United States v. Worrell*, 21-cr-00292, ECF 106 at 1 (D.D.C. Oct. 12, 2021). The Court was “dumbfounded” at the lack of explanation for this failure: “Does no one care? Does no one follow up? Does no one do anything? It just goes into Never Never Land, like this one.” *United States v. Worrell*, 21-cr-00292, ECF 108 at 13–14 (D.D.C. Oct. 12, 2021). The Court went on to find, “the rights of this Defendant were violated by the D.C. Department of Correction,” and that the matter should be referred to the Attorney General of the United States. *Id.* at 23.

229. Less than a month later, the Court released Mr. Worrell because he required chemotherapy and the Court had “zero confidence that the D.C. Jail will provide the treatment required by the defendant’s condition and that the D.C. Jail staff will not retaliate against Mr. Worrell as they recently have against other prisoners and detainees.” *United States v. Worrell*, 21-cr-00292, ECF 127 at 16 (Nov. 3, 2021 D.D.C).

230. Just over a year ago, a judge in the Superior Court released a pretrial detainee because Defendant was unable to provide necessary health care.

231. Brandon Grey-Mitchell had fallen several times while in the Jail causing significant injury to his knee. *See generally United States v. Grey-Mitchell*, 2020 FD 19608 (D.C. Super. Ct. Jan. 20, 2022). Mr. Grey-Mitchell told Jail staff about the severe pain repeatedly, but they ignored him.



232. Mr. Grey-Mitchell spent the following months unable to move, unable to shower or use the bathroom, and unable to change clothes. His hygiene deteriorated so badly that his feet began to dry out, crack, bleed, and became covered with dead skin and orange fungal patches.

233. Defendant finally took him to the hospital for x-rays several months after he first notified the Jail and medical personnel about his injuries and constant pain. Those x-rays identified abnormalities in his knee and a partial tear in his patellar tendon that required surgery and physical therapy.

234. Despite those findings, Defendant failed to schedule either surgery or physical therapy, simply giving Mr. Grey-Mitchell a single ice pack.

235. Due to Defendant's failure to treat Mr. Grey-Mitchell's injury for so long, the Court ordered him released pretrial. As the Court explained: "it is really unconscionable that it got to that point, it really is. I could order the Department of Corrections to do a lot of things. But in a very practical sense, the absence of a response to an injury from September until now and the additional concern, everyone, about the reliability of the entries in his medical records, it's just stunning." *United States v. Grey-Mitchell*, 2020 FD 19608 (D.C. Super. Ct. Jan. 20, 2022).

236. Just three months later, a different Superior Court Judge expressed serious concern about Defendant's refusal to provide Joseph Warren Cephas a prosthetic leg based solely on its cost. *See United States v. Cephas*, 2020 CF3 000567 (D.C. Super. Ct. Apr. 8, 2022). The Court found there was "no dispute" that the prosthetic was necessary and implored the Jail to "redouble its efforts to obtain a prosthesis."

237. At a hearing on April 20, over a week later, Defendant had still failed to provide Mr. Cephas with a prosthesis. It would take until the middle of May for Defendant to get the prosthesis to Mr. Cephas.

The District was Aware of the Conditions at the Jail from Proceedings in the District of Columbia Council.

238. In response to ongoing conditions at the Jail, the D.C. Council passed the Jail Improvement Amendment Act of 2003. Through inspections, monitoring, and reporting, the Act was supposed to address “currently unsafe, unhealthy, overcrowded and inhumane conditions at the” Jail. *See* Committee on the Judiciary, Committee Report, Bill 15-31, “District of Columbia Jail Improvement Act of 2003,” May 22, 2003.

239. In explaining the purpose of the bill, the D.C. Council referenced the Department of Correction’s “continued noncompliance” with court orders, “which was particularly egregious in regard to medical and mental health care services.” *Id.* at 2.

240. Yet problems with the Jail continue today. Over the past two years alone, the D.C. Council held at least eight public hearings involving discussion about the Jail’s failing health care system.

241. Advocates and formerly incarcerated people gave testimony at these hearings, identifying system-wide concerns. They provided specific examples of the horrendously inadequate care including Defendant releasing an individual from the Jail despite blood soaking through insufficient bandages; an individual being unable to see a doctor despite coughing up blood; and it taking over thirty minutes to get medical attention for someone who appeared to be bleeding to death in a holding cell.

242. On November 10, 2021, the D.C. Council’s Committee on the Judiciary and Public Safety held an emergency oversight round table to discuss the conditions of confinement of the Jail. Charles Allen, then-chair of the Committee, began the meeting by stating, “The situation is a crisis and I don’t use that term lightly. The District of Columbia has a moral and

constitutional duty to provide dignified and humane conditions of confinement and to do so immediately, and that is not happening here. Period.”

Public Reports from Outside Sources

243. Defendant’s failure to provide constitutionally adequate health care at the Jail was also raised through outside sources.

244. Thirty-five detainees in cases related to the January 6, 2021, attack on the United State Capitol signed a letter decrying conditions in the Jail, including lengthy delays in receiving health care or the failure to receive health care at all. *United States v. Nichols et al.*, 21-cr-00117, ECF 168, Exhibit 3 at 3–4 (D.D.C. Sept. 30, 2022).

245. Partially in response to that letter, the U.S. Marshals Service conducted an inspection and issued a preliminary report in November 2021, finding that the conditions at the Jail “do not meet the minimum standards of confinement as prescribed by the Federal Performance-Based Detention Standards.” U.S. Marshals Service, Re: Recent Inspection of DC Jail Facilities, November 2, 2021, available at <https://www.usmarshals.gov/news/press-release/statement-us-marshals-service> (last visited April 24, 2023).

246. During their inspection, the Marshals Service noted observable injuries to detained individuals with no corresponding medical or incident reports. U.S. Department of Justice, U.S. Marshals Service, District of Columbia Unannounced Jail Inspection at 9 (2021). In response to these conditions, the U.S. Marshals Service removed 400 inmates in its custody from the Jail. *See* U.S. Marshals Service, Re: Recent Inspection of DC Jail Facilities.

Defendant's Failure is Due to Deliberate Indifference

247. Since the 1970s, courts, the D.C. Council, and outside agencies have recognized the utter failure of Defendant to provide health care consistent with the requirements of the United States Constitution and District of Columbia law.

248. Fifty years later, these problems persist.

**CLASS ACTION ALLEGATIONS**

249. Plaintiffs B.L., V.C., and L.S. bring this action on behalf of themselves and a class of similarly situated individuals under Federal Rule of Civil Procedure 23, defined as:

All people who are or will be incarcerated at the Jail who have serious medical needs.

250. This action is brought, and may properly be maintained, as a class action as it satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 23(a) of the Federal Rules of Civil Procedure, and at least one of the prerequisites of Rule 23(b).

251. Numerosity: The proposed classes satisfy the requirements of Rule 23(a)(1) because the class is so numerous that joinder is impracticable. The Jail population averages 1,400 people per day and all incarcerated individuals are at risk of developing serious medical needs while in the Jail. While the exact number is unknown, plaintiffs believe there are hundreds of individuals at any given time who already have serious medical needs. Indeed, the contract between the Jail and Unity confirms that chronic conditions such as hypertension, asthma, diabetes, and kidney disease are prevalent in significant numbers. Additionally, the inclusion of future members and the transient nature of the jail population both make naming and joining each individual member practically impossible and therefore independently support a finding that the class is so numerous that joinder is impracticable.

252. Commonality: The classes meet the commonality requirements of Rule 23(a)(2).

The class shares common questions of law and fact including, but not limited to:

- a. Whether Defendant's operates a constitutionally inadequate health care system;
- b. Whether Defendant operates a constitutionally inadequate health care system in unreasonably delaying or failing to provide specialty care when medically necessary;
- c. Whether Defendant operates a constitutionally inadequate health care system in failing to deliver medications as prescribed;
- d. Whether Defendant operates a constitutionally inadequate health care system in failing to provide prescribed medical supplies;
- e. Whether Defendant has chronically understaffed the Jail such that understaffing causes patients to be unconstitutionally denied necessary medical care;
- f. Whether Defendant knew or should have known of the risk of constitutional violations resulting from its inadequate health care system, but showed deliberate indifference to that risk by failing to act;
- g. Whether Defendant's deliberate indifference to those it owes a duty of care violates the Due Process Clause of the Fifth Amendment;
- h. Whether Defendant's deliberate indifference to those it owes a duty of care violates the Eighth Amendment to the United States Constitution;
- i. Whether injunctive relief should be issued;
- j. The appropriate form of injunctive relief.

253. Typicality: The proposed classes meet the typicality requirements of Rule 23(a)(3). The claims of all class members arise from their incarceration in the Jail and their reliance on Defendant to provide necessary health care. The Plaintiffs and all class members

were, and are likely in the future, to be deprived of constitutionally adequate medical care because of Defendant's deliberate indifference. Thus, the claims of the Plaintiffs are typical of the claims of the class because their claims arise from the same policies, practices, and courses of conduct and their claims are based on the same theory of law as the class's claims.

254. Adequacy: The proposed classes meet the adequacy requirements of Rule 23(a)(4) because Named Plaintiffs will fairly and adequately protect and represent the interests of the classes. The Named Plaintiffs have no interests adverse to or in conflict with the class members whom they propose to represent. In addition, Named Plaintiffs are represented by counsel who are experienced and competent in the prosecution of civil rights litigation and have particular expertise with respect to class actions based on civil rights violations of individuals in custody, including specifically at the D.C. Jail.

255. Rule 23(b)(2): The proposed class meets the requirements of Rule 23(b)(2) because Defendant refuses to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. A single injunction addressing Defendant's deliberately indifferent failure to meet its constitutional obligations to those in its custody would provide relief to each member of the class.

### **CLAIMS FOR RELIEF**

#### **CLAIM ONE: VIOLATION OF THE EIGHTH AMENDMENT VIA 42 U.S.C § 1983**

256. By the practices described herein, Defendant subjects Plaintiffs and the proposed class to a substantial risk of serious harm and injury from constitutionally inadequate health care.

257. These practices have been and continue to be implemented by Defendant and its agents, officials, employees, and all persons acting in concert with them under color of District of

Columbia law and are the proximate cause of Plaintiffs' and the proposed class's ongoing deprivation of rights secured by the United States Constitution under the Eighth Amendment.

258. Defendant's denial of health care is the result of deliberate indifference to Plaintiffs' and the proposed class members' serious medical needs and causes unnecessary and wanton infliction of pain in violation of the Eighth Amendment's prohibition on cruel and unusual punishment.

259. Because of Defendant's deliberate indifference, Plaintiffs and proposed class members have suffered and will continue to suffer irreparable injury, including physical pain and suffering, mental anguish, and emotional distress.

**CLAIM TWO: VIOLATION OF THE FIFTH AMENDMENT VIA 42 U.S.C. § 1983**

260. Because Plaintiffs and class members who are detained pretrial have been, and continue to be, subjected to the same medical care failures that violate the Eighth Amendment, the pretrial Plaintiffs and class members' Fifth Amendment right to be free from punitive conditions are a fortiori violated.

261. Independently and in the alternative, Defendant's broad pattern of failure to enable class members to access their medically necessary health care constitutes unconstitutional pretrial punishment because it is objectively unreasonable.

262. As a result of the objectively unreasonable failure to provide adequate health care, pretrial Plaintiffs and proposed class members have suffered and will continue to suffer irreparable injury, including physical pain and suffering, mental anguish, and emotional distress.

**PRAYER FOR RELIEF**

WHEREFORE, Named Plaintiffs request that this Court:

A. CERTIFY the case as a class action on behalf of the proposed class;

B. APPOINT the undersigned counsel as Class Counsel;

C. DESIGNATE Named Plaintiffs as representatives of the class;

D. DECLARE that Defendant's deliberately indifferent failure to provide access to adequate health care violates the rights of all Plaintiffs and all members of the proposed class under the Fifth and Eighth Amendments to the United States Constitution;

E. ENTER a preliminary and permanent injunction enjoining Defendant, its subordinates, agents, employees, representatives and all others purporting to act in concert with them or on their behalf from subjecting Plaintiffs to the unlawful and unconstitutional treatment described herein, and issue such injunctive orders as are necessary and/or appropriate to preclude such conduct on an ongoing basis;

F. MAINTAIN ongoing supervisory jurisdiction of this matter in order to monitor and enforce the Defendant's full and continuing compliance with the injunctive relief ordered herein;

G. ENTER JUDGMENT awarding Named Plaintiff B.L. compensatory damages;

G. ENTER JUDGMENT awarding Named Plaintiffs their costs and reasonable attorneys' fees and costs in this action as provided in 42 U.S.C. § 1988(b); and

H. GRANT Plaintiffs such further relief as this Court may deem just and proper.

### **JURY DEMAND**

Plaintiffs request a trial by jury of all claims so triable.

Dated: April 24, 2023

Respectfully Submitted,

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