

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA

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Sealed  
N.D. OF ALABAMA

JERRY BAKER, ANTHONY CABLE,  
BILLY RAY DAVIS, JOHNNY  
DEFRIES, TONY DEXTER, JAMES  
FREEMAN, TED MCGINNIS,  
DARRELL MULLINS, BRUCE  
STRICKLAND, JERRY  
YOUNGBLOOD, ROOSEVELT  
YOUNGBLOOD

Case No. CV 03-C-1114-M

on behalf of themselves and other persons  
similarly situated,

Plaintiffs,

vs.

DONAL CAMPBELL, Commissioner of  
the Alabama Department of Corrections;

RALPH HOOKS,  
Warden of St. Clair Correctional Facility;  
and

NAPHCARE, INC.,

Defendants.

**MOTION FOR PRELIMINARY INJUNCTION,  
EXPEDITED DISCOVERY, AND EXPEDITED HEARING**

Because the lives of seriously ill inmates at St. Clair Correctional Facility hang in the balance, the Plaintiffs move the Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a). The Plaintiffs request the Court to order the Defendants to immediately (1) hire a full-time primary care physician to be assigned to St. Clair; (2) hire sufficient, qualified nursing staff to assist the physician in providing adequate medical care; (3) cease their unlawful and dangerous practice of failing to provide

prescribed medication and necessary medical supplies; and (4) provide all necessary off-site medical specialty consultations. Because of the urgency of the situation at St. Clair, the Plaintiffs request that expedited discovery be permitted (as described later in this motion) and that a hearing on this motion be scheduled immediately after discovery is provided.

**I. INMATES AT ST. CLAIR ARE AT RISK OF DEATH AND SERIOUS MEDICAL COMPLICATIONS DUE TO THE GROSSLY INADEQUATE MEDICAL CARE**

It is no exaggeration to say that the situation at St. Clair is one of life or death. Less than two weeks ago, three St. Clair inmates died of medical illnesses. One of them, Jerry Baker, is the lead named plaintiff in this case. Plaintiffs' counsel met with Mr. Baker the week before he died. Exhibit 1, Declaration of Grace Graham ("Graham Decl."). At that time, Mr. Baker had not received two prescribed medications for his lung disease for almost two months, nor had he been evaluated or given any treatment for his unexplained forty-pound weight loss. *See id.* According to Dr. Michael Puisis, a Board-Certified Internist and an expert on correctional medicine, Mr. Baker's weight loss was extremely serious and, in light of his lung disease, was an indicator that he may have suffered from lung or colon cancer. *See Exhibit 2, Puisis Declaration ("Puisis Decl.")*. Rather than provide Mr. Baker with his prescribed medication and evaluate his dramatic weight loss, the Defendants simply let him waste away and die. *See Graham Decl.* Although the Plaintiffs do not yet know the details of the other two deaths that recently

occurred, information they have received indicates that those two inmates may have also received inadequate medical care.<sup>1</sup>

The three recent inmate deaths are only the tip of the iceberg. As described in more detail in the attached declarations, the Defendants routinely deny or delay the provision of medical care (including emergency care), fail to give inmates their prescribed medications, fail to provide adequate medical supplies, and callously leave inmates to needlessly suffer severe pain.

**A. St. Clair Lacks Sufficient Medical Staff To Adequately Treat Inmates**

The most glaring and serious problem at St. Clair is the lack of qualified medical personnel. Since at least January 2003, the 1500 inmates at St. Clair have been served by only one urologist (who is not certified or trained in primary care medicine), who is present only one day per week, and, possibly, by a nurse practitioner.<sup>2</sup> See Exhibit 3, Audit by Moore & Associates, March 14, 2003 ("Audit"). Given the size of St. Clair's population and the fact that the prison houses some of the most chronically ill patients in the ADOC system (e.g., cancer and dialysis patients), this number of hours is grossly insufficient to provide adequate medical care. Exhibit 2, Puisis Decl. There is also a severe shortage in nursing staff, particularly Registered Nurses ("RN's"). See Exhibit 3,

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<sup>1</sup> The Plaintiffs are requesting the medical records of all St. Clair inmates who died during the past year (as well as the medical records of the named Plaintiffs and others). Once Dr. Puisis has the opportunity to review those medical records, he will be in a better position to testify at a preliminary injunction hearing regarding the causes of the recent deaths and the adequacy of the medical treatment provided to the inmates by the Defendants.

<sup>2</sup> Based on a May 20, 2003, interview with one of the named Plaintiffs, Plaintiffs' counsel believe that there may be a new physician who has recently begun working at St. Clair. Counsel do not, however, have any further information, such as the qualifications of this doctor or the number of hours he is assigned to the prison.

Audit. As a result, inmates with chronic, life-threatening diseases such as diabetes, hypertension, cardio-pulmonary disease, and liver disease, are denied necessary care, and inmates with emergency conditions go untreated.

According to Dr. Puisis, St. Clair must immediately hire at least one full-time primary care doctor (specializing in Family Practice or Internal Medicine), one additional part-time doctor, certified nurse practitioner, or physician assistant, and additional qualified nurses – particularly RN's. *See* Exhibit 2, Puisis Decl.

### **B. Inmates Face Dangerous Barriers in Accessing Care**

There are numerous unreasonable barriers that prevent seriously ill inmates from accessing care at St. Clair. Access to care means that, in a timely manner, a patient is examined by a licensed clinician with training sufficient to evaluate the condition of the patient, be given a professional clinical judgment, and receive care that is ordered for his serious medical needs. *See* Exhibit 2, Puisis Decl.

Inmates at St. Clair obtain medical care by two primary methods: they either sign up for "sick call," in which case they should be seen by medical staff the following day, or, in case of an emergency, they go directly to the infirmary. Sick call is typically staffed by Licensed Practical Nurses ("LPN's"), who are not qualified by education or training to properly assess patients. *Id.* As a result, inmates who may need to be seen by a doctor are at risk for medical triaging errors, which may be life threatening. *Id.* This problem is compounded by the fact that there is not a full-time doctor to whom the nursing staff can refer the sickest inmates. *Id.*

Plaintiff Anthony Cable's case exemplifies the serious consequences that result when an inmate is denied access to medical care. Mr. Cable was bitten by a spider and,

because he is allergic to insect bites, went to the infirmary seeking emergency medical treatment. Exhibit 4, Declaration of Anthony Cable ("Cable Decl."). Although the doctor was present at the prison that day, the nurses refused to let him see her. *Id.* Instead they told him to "sign up for sick call." *Id.* Although Mr. Cable did indeed sign up for sick call, his name did not appear on the sick call list on the following day. *Id.* After he began developing flu-like symptoms, a correctional officer intervened on Mr. Cable's behalf by calling the infirmary to see if the medical staff would treat him. *Id.* They refused. *Id.* It was only after Mr. Cable's trade school instructors intervened on his behalf that the prison doctor finally saw him -- two days after he first sought treatment. *Id.* By that time, he had to be taken to a free world hospital for emergency medical treatment, including surgery. *Id.* He remained hospitalized for three days and was treated for sepsis, a potentially life-threatening infection. Exhibit 2, Puisis Decl. Mr. Cable then developed a secondary staphylococcus infection, which required an additional eight-day hospitalization. *Id.* He is still suffering from unexplained abscesses on his body and an unexplained weight loss of thirty pounds. *See* Exhibit 4, Cable Decl. Had the nurses properly evaluated Mr. Cable's condition and referred him to a doctor in a timely manner instead of ignoring his repeated pleas for treatment, Mr. Cable may not have suffered the serious medical complications of sepsis and staphylococcus.

Another serious barrier to medical care is the deficient operation of the "chronic care clinics." A "chronic care clinic" is a medical service rendered to inmates with chronic illnesses in which routine medical appointments are provided to monitor the inmate's illness and provide routine treatment. Exhibit 2, Puisis Decl. At St. Clair, nurses, not doctors, staff the chronic care clinics. But nurses should not be primarily

managing chronic disease patients; these patients should be managed by a physician. *Id.* Inmate Jerry Baker, who died last week, apparently suffered from Chronic Obstructive Pulmonary Disease; he was allegedly enrolled in a cardio-pulmonary chronic care clinic. *See Exhibit 5, Birmingham News* article dated May 17, 2003. Despite this fact, Mr. Baker was not assessed by a physician to determine why he had lost forty pounds over the past year. *See Exhibit 1, Graham Decl.* According to Dr. Puisis, such a dramatic weight loss by a person suffering from a lung disease suggests a serious medical condition, including possible cancer, diabetes, or hyperthyroidism. *Exhibit 2, Puisis Decl.* Mr. Baker should have had a thorough medical evaluation, including laboratory, radiological, and other testing as medically indicated. *Id.* The lack of qualified medical staff and the failure to conduct evaluative testing is a likely cause for the Defendants' failure to adequately diagnose and treat Mr. Baker's serious illness. *Id.*

Similarly, kidney dialysis patients are almost never examined by the nephrologist (kidney specialist) who visits the prison on a routine basis. *See Exhibit 6, Declaration of Frank Lee ("Lee Decl.")*. Although the nephrologist reviews the patient's charts on a monthly basis, he never examines the inmates. *See id.* Even when patients specifically request to see the doctor, there is no guarantee of an actual examination. *See id.* Inmate Frank Lee, who has been on dialysis for seven years, recently developed flu-like symptoms (chills and throwing up) after the insertion of a subclavian catheter. *See id.* Mr. Lee's requests to see the doctor were ignored. *See id.*

Likewise, treatment for cancer patients is unreasonably delayed. Plaintiff Darrell Mullins suffers from testicular cancer that has metastasized in his lymph nodes. *Exhibit 7, Declaration of Darrell Mullins ("Mullins Decl.")*. Although a CT scan showed the

metastasis on January 30, 2003, Mr. Mullins did not begin receiving chemotherapy treatments until April 29, 2003, nearly three months later. *Id.* According to Dr. Puiasis, this is an unreasonable delay and could negatively affect Mr. Mullins' prognosis.

Exhibit, 2, Puiasis Decl.

Either as a result of the physician shortage or as a method of saving money, some inmates are denied specialty off-site medical consultations. For example, Plaintiff Roosevelt Youngblood, who is 61 years old, is confined to a wheelchair because he has "trouble walking." Exhibit 8, Declaration of Roosevelt Youngblood ("Youngblood Decl."). He was told last November that a scan showed he had a blockage in his leg and needed surgery. *Id.* Although the exact diagnosis of Mr. Youngblood's condition is not yet apparent, he could be suffering from an arterial blockage, which is life-threatening, or from nerve impingement, which can be disabling. Exhibit 2, Puiasis Decl. Mr. Youngblood needs an immediate evaluation by a surgeon; he could be at imminent risk of death. *Id.*

**C. Inmates Are Denied Prescribed Medications And Necessary Medical Supplies**

One of the most outrageous and egregious problems at St. Clair is the Defendants' failure to dispense prescribed medications. On March 13, 2003, the part-time prison doctor, Dr. Tingley, prescribed several medications for Mr. Baker, the inmate who died last week, including Advair and Atrovent. Exhibit 1, Graham Decl. *At the time of his death, Mr. Baker had not received his prescribed medications in almost two months.* See *id.* While the cause of Mr. Baker's death is not yet clear, failure to give him his prescribed medications could very well have contributed to his death and is medically and ethically wrong. Exhibit 2, Puiasis Decl.

Likewise, Plaintiff Tony Dexter, who suffers from high blood pressure and has been taking medication for this condition for eleven years, *has not received his medication since April 21, 2003, a period of one month.* Exhibit 9, Declaration of Tony Dexter (“Dexter Decl.”). The failure to provide Mr. Dexter’s medication to him places him at risk for a stroke or other complication of high blood pressure. Exhibit 2, Puisse Decl. Inmate Anthony Cable was prescribed antibiotics for two weeks following his surgery for the spider bite reaction; he stopped receiving antibiotics after only one week. Exhibit 4, Cable Decl.

Inmates who suffer pain as a result of their illnesses are cruelly denied pain medication. Mr. Mullins, for example, underwent surgery to remove one of his testicles in January 2003. Exhibit 7, Mullins Decl. Despite his severe, unrelenting pain, his pain medication was discontinued one week after surgery. *Id.* Mr. Mullins begged for pain medication, but the nurses refused to give him any. *Id.* It was only after the Plaintiffs’ lawyers intervened on his behalf that he finally received it. *Id.* Likewise, inmate Johnny Defries, who is 63 years old, suffers from shingles, a viral infection of nerves that causes extreme pain during the acute infectious process and often for weeks thereafter. Exhibit 10, Declaration of Johnny Defries (“Defries Decl.”); Exhibit 2, Puisse Decl. Although immediate treatment with antiviral medication can reduce the severity and duration of an attack, pain medication is almost always prescribed because of the attendant pain. Exhibit 2, Puisse Decl. Mr. Defries lay in his bed for ten days begging for help before he was finally moved to the infirmary and provided medication. Exhibit 10, Defries Decl. Mr. Defries continues to suffer pain from the shingles, but he is not provided appropriate

pain medication. *Id.* The unnecessary failure to manage a patient's pain with appropriate medication is nothing short of cruel and inhumane.

Even inmates who receive their medications are at risk of injury or death. In a recent independent audit of the medical care provided at St. Clair, the auditor found that many vials of medication were expired, including Ampicillin, Cogentin, Atropine, Epinephrine, and Lidocaine. Exhibit 3, Audit. Epinephrine is used to treat cardiac arrest; the provision of expired Epinephrine in a cardiac emergency could lead to unnecessary death.

In addition to their failure to dispense prescribed medication, the Defendants fail to provide medically necessary supplies. Plaintiff James Freeman uses a colostomy bag to collect his bodily waste. Exhibit 11, Declaration of James Freeman ("Freeman Decl."). Rather than provide him with a fresh colostomy bag and wafer (which attaches the bag to Mr. Freeman's body) on daily basis, he and the other inmates with colostomies have been forced to use the same bag over and over for up to one and a half months. *See id.* Mr. Freeman and the other inmates are forced to wash their bags out in the sinks in their cells, without disinfectants or gloves. *Id.* In addition to the obvious cruelty in subjecting these men to such an ordeal, the practice poses a risk of infection to themselves and other inmates from the exposure to feces. Exhibit 2, Puisse Decl.

In sum, St. Clair inmates with serious medical needs are at imminent risk of serious harm and even death due to the grossly inadequate medical care being provided at the prison. If the Court does not step in and order some immediate measures, more death and serious medical events will occur. The Plaintiffs request that the Court order the Defendants to immediately:

- (a) hire a full-time primary care physician;
- (b) hire additional qualified nursing staff;
- (c) provide all prescribed medications and necessary medical supplies; and
- (d) provide all necessary off-site medical specialty consultations.

## II. THE REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION ARE SATISFIED

Four prerequisites must be established for the issuance of a preliminary injunction: 1) a substantial likelihood of success on the merits; 2) irreparable injury in the absence of preliminary relief; 3) the threatened injury to the movant must outweigh the harm the preliminary injunction would inflict on the non-movant; and 4) the preliminary injunction will not disserve the public interest. *See Nnadi v. Richter*, 976 F.2d 682, 690 (11th Cir. 1992). The Plaintiffs satisfy all four requirements.

### A. There Is a Substantial Likelihood that the Plaintiffs Will Prevail on the Merits of Their Claims

The Defendants' failure to provide adequate medical care to inmates at St. Clair subjects the Plaintiffs and the putative class to substantial risks of serious harm, and even death, in violation of the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. 97 (1976). To show an Eighth Amendment violation for the failure to provide adequate medical care, a plaintiff must satisfy both an objective and a subjective inquiry. *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). First, a plaintiff must set forth evidence of an objectively serious medical need. *Id.* Second, a plaintiff must prove that prison officials acted with an attitude of "deliberate indifference" to that serious medical need. *Id.*

"[A] serious medical need is considered 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would

easily recognize the necessity for a doctor's attention.” *Id.* (quoting *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir.1994)). The medical need must be one that, if left unattended, poses a substantial risk of serious harm. *Farrow v. West*, 320 F.3d at 1243; *see also id.* at n.14 (listing Eleventh Circuit decisions recognizing “serious medical needs,” including asthma, a broken foot, a weak and painful leg, and a bleeding cut over an eye); *id.* at 1244-45 (recognizing that the need for dentures, in combination with pain and weight loss, constitutes a serious medical need). Here, there can be no doubt that the Plaintiffs, who suffer from numerous serious illnesses and diseases, including cancer, lung disease, hemophilia, Hepatitis C, and staphylococcus infection, have “serious medical needs” sufficient to satisfy the objective requirement of the Eighth Amendment.

The Plaintiffs also easily meet the Eighth Amendment’s subjective requirement. “[A]n official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate.” *Lancaster v. Monroe County*, 116 F. 3d 1419, 1425 (11th Cir. 1997). “Even where medical care is ultimately provided, a prison official may nonetheless act with deliberate indifference by delaying the treatment of serious medical needs, even for a period of hours, though the reason for the delay and the nature of the medical need is relevant in determining what type of delay is constitutionally intolerable.” *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). “In institutional level challenges to prison health care ..., systemic deficiencies can provide the basis for a finding of deliberate indifference. Deliberate indifference to inmates’ health needs may be shown, for example, by proving that there are ‘such systemic and gross deficiencies in staffing, facilities, equipment, or

procedures that the inmate population is effectively denied access to adequate medical care.” *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (quotation omitted).

Here, the Defendants are well aware of the Plaintiffs’ serious medical needs, yet choose to ignore them. Every one of the named Plaintiffs has filed complaints and grievances with Naphcare staff, yet have been virtually ignored. Only a few weeks before he died, Plaintiff Jerry Baker submitted numerous grievances to the medical staff regarding their failure to give him his prescribed medications and their failure to fix his dentures. Tragically, his complaints were likewise ignored. Exhibit 12, Naphcare Complaint and Grievance Forms. In addition to their written grievances, all of the Plaintiffs have repeatedly sought medical care and verbally complained to medical and DOC staff about their medical problems. *See, e.g.*, Exhibits 4, 6, 7, 8, 9, 10, 11, and 13. (Inmate Declarations). Moreover, the Defendants are well aware that there are “gross deficiencies in staffing, facilities, equipment, or procedures [such] that the inmate population is effectively denied access to adequate medical care.” *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991). *See* Exhibit 3, Audit.

Given that the grossly inadequate medical care provided to St. Clair inmates poses substantial risks of serious harm to the Plaintiffs and that the Defendants are deliberately indifferent to these risks, the Plaintiffs are likely to prevail on the merits in this case. *See Maynor v. Morgan Co.*, 147 F.Supp.2d 1185, 1186 (N.D. Ala 2001) (finding deliberate indifference and granting a preliminary injunction where “[t]he known medical needs of inmates go largely unattended: prescribed medications for serious illnesses are not made available for those inmates who cannot afford them; there is a dangerous delay between

Defendants' awareness of the serious medical needs of inmates and the response, if any, to such needs").

**B. The Plaintiffs are Suffering Irreparable Harm**

The Plaintiffs are clearly suffering irreparable harm. As a result of the Defendants' failure to provide minimally adequate medical care, the Plaintiffs have suffered and continue to suffer death, serious physical harm, and terrible pain, and are at substantial risk of such harm in the future. *See Maynor v. Morgan Co.*, 147 F.Supp.2d at 1189 (finding irreparable harm and granting preliminary injunction where inmates showed that they suffered harm from, among other unconstitutional conditions of confinement, the denial of adequate medical care).

**C. The Balance of Harm Clearly Weighs in the Plaintiffs' Favor**

The current, ongoing harm and substantial risk of future harm to the Plaintiffs far outweighs any harm the Defendants might suffer from a preliminary injunction. The relief that the Plaintiffs seek at this preliminary stage is that which the Defendants are constitutionally obligated to provide anyway: (1) adequate medical staff; (2) reasonable access to medical care; (3) the provision of prescribed medications and medical supplies; and (4) access to necessary off-site medical specialists.

**D. Granting a Preliminary Injunction Would Not Disserve the Public Interest**

Plaintiffs seek a preliminary injunction to protect their rights under the Eighth Amendment to the United States Constitution. As a general matter, the "protection of constitutional rights is of the highest public interest." *Connor v. Palm Beach City, FL*, 1996 WL 438779, at \*17 (S.D. Fla. 1996); *see also Maynor v. Morgan Co.*, 147 F.Supp.2d at 1189 ("The public interest will not be disserved by the granting of a

Preliminary Injunction” requiring, among other things, immediate improvements in the provision of medical care at a county jail).

**E. The Requirement That a Bond Be Posted Should Be Waived**

The Plaintiffs respectfully request the Court waive the bond requirement contained in Federal Rule of Civil Procedure 65(c), given the strength of the case, the Plaintiffs’ indigency, and the strong public interest involved. *See Molton Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and “the strong public interest involved”); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because Plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

**III. THE PLAINTIFFS REQUEST IMMEDIATE, LIMITED DISCOVERY FOLLOWED BY A HEARING**

Because of the urgency of the situation at St. Clair, the Plaintiffs respectfully request the Court to order the Defendants to immediately provide limited discovery. Following the receipt of that discovery, the Plaintiffs request that an emergency hearing be held to allow the Plaintiffs to present evidence in support of their preliminary injunction motion. The Plaintiffs request that the following discovery be made available for inspection and copying by no later than June 6 (two weeks from today):

1. The medical records of the eleven named Plaintiffs;
2. The medical records of several additional inmates, including Charles Bennett, Frank Lee, Noah Watkins, and Tommy Gillentine;

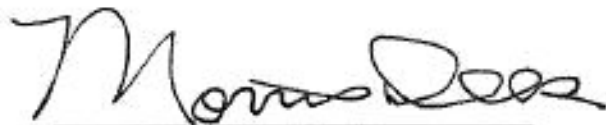
3. The medical records (including hospice records) of every St. Clair inmate who has died during the preceding twelve months (including inmates who died after being transferred to a free world hospital);

4. The medical records of every St. Clair inmate who was taken to a free world hospital for treatment (including emergency room treatment) during the preceding twelve months;

Upon receipt of the above-described discovery, the Plaintiffs request an opportunity for their expert, Dr. Michael Puisis, to tour the medical facilities at St. Clair, review certain documents that are maintained at the facility (such as Medication Administration Records, sick call logs, etc.), and meet with designated inmates, including the named Plaintiffs. Following Dr. Puisis's on-site visit, the Plaintiffs respectfully request that a hearing be scheduled to allow the Plaintiffs to present evidence and testimony on behalf of this motion. If the discovery is provided by June 6 and the on-site visit conducted shortly thereafter, the Plaintiffs request that the hearing be held as soon thereafter as the Court's schedule permits.

A proposed order is attached.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of foregoing document on the 23 of May, 2003, by facsimile and first-class mail, postage prepaid, on the following persons at the addresses listed below:

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