

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

TRACY COPELAND,)	
AMADO PARRA, and)	
ARCHIE GREEN,)	
individually and on behalf)	
of a Class of persons)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	
JULIE L. JONES, in her)	Jury Trial Demand
official capacity as Secretary of the)	
Florida Department Corrections; and)	
CORIZON, LLC, an out of state)	
corporation registered and doing business)	
in Florida,)	
)	
Defendants.)	
)	

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

Preliminary Statement

1. The Florida Department of Corrections and its medical contractor Corizon, LLC have a policy, practice, and custom of not providing needed surgeries to incarcerated people who suffer from painful hernias, except in emergency circumstances. A hernia is a condition wherein the abdominal wall weakens or tears, causing other internal tissues (such as intestines) to be forced through it. Hernias can be extremely painful and debilitating, and if left untreated, can lead to infection, bowel obstruction, and even death. Despite the fact that surgical repair is the only way to prevent those negative outcomes, Defendants have a policy of refusing to provide {07114853;1}

hernia surgeries, except in emergency circumstances, for the purpose of reducing costs and increasing profits. This policy prohibits medical staff from exercising medical judgment and has resulted in the denial of surgeries to dozens, if not hundreds of hernia patients, leaving them in severe pain, unable to participate in normal activities, and at risk for serious complications. This policy and practice causes the wanton infliction of pain and amounts to deliberate indifference to the serious medical needs of those incarcerated in the FDOC system, in violation of the Eighth Amendment to the United States Constitution.

Jurisdiction and Venue

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the Plaintiffs by the Constitution and laws of the United States.

4. Plaintiffs' claims for relief are predicated, in part, upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and § 1391(c), as Defendants do business in this judicial district and division, and many of the events or omissions giving rise to the claims occurred in this judicial district and division.

6. Plaintiffs seek a preliminary and permanent injunction pursuant to Rule 65, Federal Rules of Civil Procedure.

Parties

7. Plaintiff Tracy Copeland is incarcerated in the FDOC system, and was at all relevant times. He suffers from a painful hernia, a surgeon has recommended surgery, and he has not received it.

8. Plaintiff Amado Parra is incarcerated in the FDOC system, and was at all relevant times. He suffers from a painful hernia but has not been seen by a surgeon.

9. Plaintiff Archie Green is incarcerated in the FDOC system, and was at all relevant times. He suffers from a painful hernia but has not been seen by a surgeon.

10. Defendant Julie L. Jones is the Secretary of the Florida Department of Corrections (FDOC). As such, she is responsible for the overall operation of the FDOC, including the operation of prison facilities. Defendant Jones has a non-delegable duty to provide constitutionally adequate medical care to all persons in her custody. She is sued in her official capacity for injunctive and declaratory relief. Defendant Jones may be referred to herein as the Florida Department of Corrections or FDOC.

11. Defendant Corizon, LLC (Corizon) is an out-of-state corporation, registered and doing business in Florida. Since approximately September or October 2013 (depending on the facility), Corizon has contracted with the FDOC to provide medical and mental health care services to all persons confined in the majority of FDOC prisons. Corizon has and enforces the corporate policy and custom regarding hernias described herein. Upon information and belief, all medical professionals (including doctors and nurses) at the relevant institutions have been

employed by Corizon since September or October 2013, and were acting within the scope of their employment. Defendant Corizon is sued for injunctive and declaratory relief, and damages.

12. Defendants are responsible for the operation of Utilization Management (UM), the body at the FDOC that approves or denies certain medical care.

13. The actions of the Defendants and their agents were performed under color of state law and constitute state action.

General Factual Allegations

Hernias

14. A hernia occurs when an organ or other tissue is forced through a weak spot in the abdominal wall. An inguinal hernia occurs when contents of the abdomen—including intestines and fat—bulge through a tear or weakness in the groin area (where the lower abdomen meets the inner thigh). The tissue may recede back into the abdomen and then bulge out again, depending on the patient's position and activity.

15. Inguinal hernias are the most common type of hernia. In men, inguinal hernias can cause internal tissue to be forced into the scrotum, pressing on the testicles and causing severe pain.

16. Groin hernias (i.e., inguinal and femoral hernias) are very common—the prevalence of groin hernias has been estimated to be between 5 and 10 percent in the United States, with inguinal hernias accounting for the vast majority. The estimated lifetime risk of developing a groin hernia is about 25 percent in men.

17. Inguinal hernias cause severe pain, which typically worsens with activity or exertion. Routine and necessary activities such as walking, running, lifting, coughing, urinating,

defecating, and even sitting up can cause the tissue to bulge out of the abdominal wall, causing intense and excruciating pain. Hernias can be so painful that they prevent people from engaging in any activities, forcing patients to be bedridden. Other symptoms of inguinal hernias include weakness, feelings of heaviness, burning, tearing, or aching in the groin; or a swollen or enlarged scrotum. If left untreated, a hernia can lead to serious complications, including the intestines becoming trapped in the scrotum or the abdominal wall, which can lead to bowel obstructions, tissue necrosis, sepsis, the excision of intestines, and even death.

18. There is no connection between the size of the hernia and the amount of pain it produces. That is, smaller hernias can be just as painful, or more so, than larger hernias.

19. A hernia wherein the bulging tissue can be pushed back into place is a *reducible* hernia. Many times, however, the bulging tissue will become trapped and cannot be pushed back into place—this is a *non-reducible* or *incarcerated* hernia. Reducible hernias can be just as painful (or more so) than non-reducible hernias. Many hernias are reducible at times and non-reducible at others. A reducible hernia can become permanently non-reducible and incarcerated at any time.

20. A prisoner with a hernia who is expected to walk and stand in straight lines on the prison compound cannot simply lie down on the ground to push his intestines back into place whenever the hernia bulges out of his abdominal wall.

21. If an incarcerated hernia is untreated, it can become *strangulated*, meaning the blood supply to the bulging tissue is cut off, causing the tissue to die. This is an emergency situation requiring immediate surgery. Failure to treat a strangulated hernia can lead to severe infection, intestinal obstruction, the excision of intestines, and death.

22. A hernia is typically diagnosed with a physical exam and patient history. Imaging tests (such as an X-ray, CT scan, or ultrasound) may be helpful, but these scans may not detect an abnormality, especially if the bulging tissue is receded into the abdomen during the scan. Thus, a negative scan does not mean that no hernia is present.

23. The only treatment for an inguinal hernia is surgical repair. Without surgery, the tear or weakness in the abdominal wall will never heal, and the patient will continuously suffer from intense pain, discomfort, and limited activity; as well as the risk of infection, intestinal obstruction, and death. The risk of developing complications increases as more time elapses without treatment.

24. Thus, the proper treatment for a hernia begins with referral to a surgeon for a surgical consultation. The generally accepted medical practice for a patient with a hernia is to perform surgery if the patient is symptomatic; that is, experiencing pain, an inability to walk, an inability to work or engage in other normal life activities, or other symptoms.

25. A “hernia belt,” truss, jock strap, or other binding options are not treatment for hernias. They are often unhelpful, do nothing to treat the condition, and can actually be harmful.

26. The medical standard of care for a patient with a symptomatic hernia is surgical repair as soon as possible after detection. Basing the decision to perform surgery on whether the hernia is reducible, irrespective of other symptoms, falls far below accepted medical practice and the standard of care.

27. Surgery to repair inguinal hernias is one of the most common surgeries performed in the United States. It is a relatively simple procedure. More than 1 million abdominal wall

hernia repairs are performed each year in the United States, with inguinal hernia repairs constituting nearly 770,000 of these cases.

28. The classification of a surgery as “elective” has no bearing on whether the condition it will alleviate is a serious medical need. Any procedure that is not an emergency can be classified as elective; this does not mean that failure to perform it will not result in severe pain and other serious complications.

FDOC and Corizon’s Unlawful Policy of Denying Hernia Surgeries

29. People incarcerated within the FDOC system are completely dependent upon Defendants to provide them with medical care. Prisoners are not free to seek their own care, even if they can pay for it.

30. In general, the delivery of medical care within the FDOC is supposed to work in the following manner. If a prisoner has a medical issue, he can access sick call, where he usually sees a nurse. The nurse can refer the prisoner for an appointment with the institution physician. If the physician believes a consult with a specialist is needed, the physician can request a consultation. That request is forwarded to Utilization Management (UM) in Tallahassee, which is controlled by Defendants. UM can either approve or deny the request. If the request is approved, the prisoner is sent to the specialist. Then the process repeats itself: If the specialist feels a certain procedure is needed, the specialist submits a consult report to UM requesting the procedure. If approved, the procedure is scheduled at some point in the future.

31. UM is in effect the “gatekeeper” and makes the final determination whether medical care will be provided. UM’s decision is often made by someone who is not a specialist

in the area at issue, and usually without ever seeing the patient or first consulting with the prison physician.

32. Rather than making decisions based on medical judgment, however, Defendants make health care decisions based on costs, in a way that prevents medical professionals from exercising medical judgment in deciding what treatment to provide and when it should be provided. That decision-making is illustrated by Defendants' approach to patients with hernias. Specifically, Defendants have a policy, practice, and custom of not providing hernia surgeries to prisoners except in emergency circumstances. One facet of this policy is that Defendants do not provide surgery if the hernia has been reducible at any time, no matter what symptoms (including pain), the patient is experiencing. The "emergency circumstances" exception is narrow and allows surgery only in life-threatening situations, with no regard for the pain or debilitation that the patient is experiencing.

33. Thus, when someone presents with a painful hernia, one of several things happen: The institution physician refuses to submit a consult request for the patient to see a general surgeon for surgical evaluation. Or, the institution physician submits the request, which is then denied by UM. Or, the consult request is granted, but after the surgeon recommends surgery, the surgery is denied by UM. All of these actions are taken pursuant to Defendants' policy.

34. To make matters worse, every time a patient is seen at sick call, he or she is charged a \$5 copayment, regardless of whether treatment is eventually provided.

35. Defendants have enforced this policy, practice, and custom despite knowing that failing to provide these surgeries will lead to prisoners being left in excruciating pain, limited in

their activities, and at risk for serious complications or death. Defendants have acted with deliberate indifference to the serious medical needs of people incarcerated in the FDOC system.

Allegations Regarding Named Plaintiffs

Plaintiff Tracy Copeland

36. Plaintiff Tracy Copeland is incarcerated in the FDOC system, and was at all relevant times. He suffers from a left inguinal hernia that causes him extreme pain. The hernia has descended into his scrotum and is pressing on his testicles, causing terrible pain. He is in pain for the majority of his waking hours, and the pain at its worst is an 8 or 9 out of 10. Sometimes the pain gets so bad that he cannot eat. The portion in his scrotum is roughly the size of a golf ball, and the portion in his abdomen is roughly the size of a tennis ball. He constantly feels like his insides are falling out of his body. The hernia is constantly bulging out while standing. He cannot work out, move about easily, go outside to recreation, or lift anything. He has been reduced to lying in his bunk most of the day. Despite multiple recommendations from a surgeon, Defendants have refused to provide Mr. Copeland with surgery.

37. Mr. Copeland began presenting to the medical department with a left inguinal hernia as early as August 2013, where it was noted in the objective findings that the hernia was descending into his scrotum.

38. In October 2013, Mr. Copeland saw Dr. Osvaldo Contarini, a surgeon at Jacksonville Memorial Hospital. The visit happened at Reception and Medical Center, an FDOC facility in Lake Butler, Florida. Dr. Contarini told Mr. Copeland that it was clear he needed surgery, and recommended that Mr. Copeland receive hernia surgery. Dr. Contarini wrote “Schedule for LIH [left inguinal hernia] repair” on the Consultant’s Report to UM, and a note

was made in his medical records that the surgery was to be scheduled. However, in November 2013, that surgery was denied by UM pursuant to Defendants' policy.

39. When Mr. Copeland was seen by medical staff on November 27, 2013, his hernia was not reducible, and was still descending into his scrotum.

40. In December 2013, Mr. Copeland submitted an informal grievance complaining about his lack of hernia surgery. It was denied. He appealed that denial, noting that he was (and is) in constant pain, and needed surgery. It was again denied in January 2014. He appealed that denial to the Defendant Secretary in February, and it was denied in March 2014. In March 2014, Mr. Copeland again saw the medical staff complaining of extreme pain from his hernia. It was again noted that it was nonreducible.

41. In November 2014, Plaintiff Copeland saw Dr. Contarini again. He *again* recommended surgery, writing "LIH [left inguinal hernia] repair needed ASAP." In December 2014, this recommendation was denied by UM.

42. In February 2015, Dr. Noel, a physician at Lake Correctional Institution, submitted a consultation request for Mr. Copeland to have another surgical consult. A February 27, 2015 visit with Dr. Mesa confirmed that the hernia was descended into his scrotum and was not reducible when standing. The surgical consult was eventually cancelled.

43. In March 2015, Mr. Copeland saw Dr. Mesa again. He again confirmed that he was in extreme pain and informed her that the hernia belt was not doing anything for him. Nothing was done for him.

44. To this date, Mr. Copeland has been in nearly constant severe pain, and has been unable to engage in normal daily life activities. He cannot stand or walk for very long, and

cannot exercise, run, or lift anything. He still has not received the surgery that was twice recommended.

Plaintiff Amado Parra

45. Plaintiff Amado Parra is incarcerated in the FDOC system, and was at all relevant times. He suffers from a left inguinal hernia the size of a baseball, which is descending into his scrotum. It causes him constant severe pain, nausea, dizziness, headaches, leg cramps, and lower back pain. The hernia is always bulging out except when he lays down flat and maneuvers it back in, but it takes him a long time to do so. The pain is a 9 on a scale of 1 to 10. He cannot work, exercise, or bend over. He has been reduced to lying in his bed most of the day. When walking around the prison compound, he is forced to physically hold in the hernia with his hand.

46. Defendants have only provided Ibuprofen for Mr. Parra's pain, which is ineffective and is harmful to his liver. Mr. Parra already suffers from the liver disease Hepatitis C, and thus cannot take Ibuprofen for the long term. Surgery is the only thing that will relieve his pain.

47. Mr. Parra's hernia first occurred in January 2012. He immediately began complaining to institutional medical staff about the pain and difficulties it was causing him.

48. In January 2013, he immediately reported his painful hernia to Dr. Wilma Padro. In 2013, he also saw medical providers once in March, twice in April, once in October, and twice in November. At each of these appointments he complained of his severe pain and swelling from his hernia, but no treatment was provided.

49. At the March 25, 2013 appointment, the provider noted a hernia that was approximately 2 inches around, which was reducible but continued to bulge out on its own.

Incredibly, the provider recommended that Mr. Parra use a moist cold pack on the area, which would do nothing to treat the hernia. At the April 1st appointment, he complained that he was experiencing severe pain on a daily basis. At the April 15th appointment, he reported 10 out of 10 pain that was radiating to his testicles. The provider noted, “Left inguinal area visibly large and firm bulge noted.”

50. At the October 23, 2013 appointment, Mr. Parra complained that his hernia had ruptured. The nurse examined him and said that it looked bad, and that she would recommend follow-up with the doctor. At the November 5, 2013 appointment, Dr. V. Machado-Pellot told Mr. Parra that the FDOC had stopped performing hernia surgeries, and that surgery would only be performed in emergency situations, such as when the hernia was irreversibly strangulated and began to turn black and blue. She told him that if that happened, he could lose a few feet of his intestines.

51. In December 2013, frustrated with his complete lack of treatment, Mr. Parra filed a formal grievance requesting surgical evaluation. He fully explained that he had been suffering in pain for a year and that he had accessed sick call 8 times. The grievance was denied by Dr. Machado-Pellot, stating: “You were evaluated on 11/5/13, it was explained to you during your visit that your hernia is reducible and there is no justification to submit a consult for a specialist referral at this time.” On December 17, 2013, Mr. Parra appealed this decision to the Secretary, who denied it in February 2014.

52. Also in December 2013, after he received the first denial of his formal grievance, Mr. Parra initiated another round of grievances concerning his lack of surgical evaluation. They were denied at all levels. In his appeal to the Secretary, Mr. Parra specifically noted the

absurdity of making him wait in pain and only providing surgery on an emergency basis. The Secretary denied his appeal in April 2014.

53. Since then, Mr. Parra has continued to suffer in pain. The pain has gotten so bad that he suffered from nausea, dizziness, and fainting spells.

54. In September 2014, Mr. Parra filed an informal grievance saying that his elastic waistband was not keeping his hernia in place, and that he was having constant pain and stomach cramps. The response simply told him to access sick call. He dutifully submitted a sick call request, stating, “I am having intense pain in the abdomen area due to a hernia. It is causing me nausea, dizziness, and low blood pressure.” However, at his sick call appointment on September 26, he was told that he would not be receiving surgery.

55. In October 2014, Mr. Parra again filed a formal grievance complaining about this lack of hernia surgery. It was denied. He appealed to the Secretary, who denied it in December 2014. Frustrated at the complete lack of regard for his extreme pain and refusal to provide the one thing that would relieve it, Mr. Parra submitted a response to the Secretary’s denial, stating in part, “I assume you are telling me that the health care staff working for the (FDOC) possess exceptional mental power to determine the exact degree of pain and suffering caused by a protrusion of a body organ through a rupture on the abdominal wall.” The Secretary responded in January 2015, saying that the grievance process should not be used for correspondence.

56. In November 2014, Mr. Parra was seen by medical staff, again complaining of pain and informing the providers that his jock strap was not working to alleviate the pain or keep his hernia in place. It was noted that he had a 5 x 7 cm left inguinal hernia. The provider noted that he should be referred for surgery at some point in the future.

57. In January 2015, Mr. Parra was seen by medical staff, complaining of his painful hernia. Still in pain in February 2015, Mr. Parra visited sick call to renew his pain medications. Mr. Parra has seen medical providers every few months, each time complaining about the pain, and each time he is told that there is nothing that could be done for him. One time he was told that his hernia was not big enough for surgery to be provided. Another time he was told by the Chief Health Officer that even if the doctor put in a request to see a surgeon, and even if it was approved, Tallahassee would not approve of him seeing a surgeon.

58. Mr. Parra used to work on the inside grounds, doing yard work. He cannot do that job any more, and is forced to be a houseman, cleaning up in the dorm. If he received his surgery, he would be able to work on the inside grounds again.

59. Mr. Parra has still not been referred to a surgeon for a surgical consult, nor has he received hernia surgery. He continues to suffer from terrible pain and debilitation, and remains at risk of further complications, infection, and death.

Plaintiff Archie Green

60. Plaintiff Archie Green is incarcerated in the FDOC system and was at all material times. He suffers from a right inguinal hernia that causes him extreme pain and debilitation. It causes him pain every day that reaches a 7 or 8 out of 10. The hernia is about the size of a golf ball, and is constantly bulging out, except when he lies flat on his back. He cannot exercise (which he used to do every day), go outside to recreation, or lift anything. The hernia causes him to be constipated and hurts badly when he uses the bathroom. He has not seen a surgeon, despite requests from physicians that he see one.

61. Mr. Green's hernia first appeared in April 2013 when he was working on the farm squad at Northwest Florida Reception Center (NWFRC), an FDOC prison facility. He was pulling something when he suddenly felt a terrible tear in his abdomen.

62. In May 2013, Mr. Green presented to sick call with a painful hernia. The nurse wrote that the plan was to refer Mr. Green to the doctor "this WEEK." (emphasis in original). In June, Mr. Green saw Dr. Skidmore, who decided that Mr. Green needed a surgical consult. She told him that he met all the criteria for surgery. She submitted a consult request form, noting that the hernia was approximately 8 cm in diameter and that Mr. Green was experiencing 8 of out 10 pain. UM denied this surgical consult request in July.

63. But Mr. Green was not told of this decision. In August 2013, Mr. Green filed a request asking how much longer it would be until he got his surgery, and noting that he remained in a lot of pain. In September he was finally told that his surgery was denied. He immediately filed a grievance asking to be reevaluated. It was denied.

64. On October 8, 2013, still in extreme pain, he accessed sick call. It was noted that the hernia was reducible but at times difficult to reduce. On October 14, the doctor denied surgery, writing that Mr. Green did not qualify for further surgical intervention. Plaintiff Green immediately filed a formal grievance in October requesting further treatment. It was denied in November 2013. Mr. Green continued to access sick call, complaining about his lack of treatment and severe pain, but he was told by the nurse that he would not be receiving surgery. Mr. Green appealed the denial of his grievance to the Secretary, but that appeal was finally denied in January 2014.

65. Despite this, Mr. Green continued to attempt to receive treatment. He saw medical staff on January 16, 2014, complaining of pain and requesting surgery. In February 2014, he complained of hernia pain to medical staff.

66. In June 2014, Mr. Green saw Dr. Mesa, and presented with a hernia. He informed her of the severe pain it was causing him. Rather than provide him with actual treatment, Dr. Mesa simply instructed him to wear a hernia belt and did not refer him for a surgical consult.

67. On January 12 and 26, 2015, Mr. Green submitted separate sick call requests, again complaining of hernia pain. He noted that his hernia belt had been taken away.

68. On February 3, 2015, Mr. Green submitted a sick call request seeking renewal of his passes and medication, noting that he was “in a lot of pain from hernia[,] it getting unbearable[,] please help.” No help was provided.

69. On February 12, 2015, Mr. Green was again seen by Dr. Mesa and complained about his severe hernia pain. She noted an “obvious protrusion” when he was standing. Despite the fact that Mr. Green told her that the hernia belt actually caused him more pain, she simply instructed him to wear a hernia belt. She did not refer him for a surgical evaluation.

70. In February 2015, Mr. Green submitted a sick call request seeking a renewal of pain medications, noting that they were not helping with his hernia pain. In March 2015, Mr. Green submitted a sick call request, seeking renewal of his pain medications because of the severe pain caused by his hernia. The only medications he has been given is Ibuprofen, which he cannot take because he has Hepatitis C, which has compromised his liver. Ibuprofen can be toxic to someone with liver problems.

71. Despite complaining of severe debilitating pain for over two years and a physician's recommendation that he receive a surgical consult, Mr. Green has still not seen a surgeon or received surgery. He continues to suffer from extreme pain and debilitation, as well as an increased risk of further complications, infection, and death.

72. All Plaintiffs have exhausted all available administrative remedies.

Other Examples of Defendants' Failure to Provide Hernia Surgeries

73. Because of Defendants' policy, practice, and custom of not providing medically needed hernia surgeries, numerous people incarcerated in the FDOC system have not received surgery and have been left in extreme pain and at risk for severe complications. Several examples follow.

Patients Who Were Recommended for Surgery But Did Not Receive It

74. Some patients have been seen by a surgeon for a surgical consultation. Despite the fact that the surgeon recommended surgery, Defendants refused to allow the surgeries to occur. Some examples follow.

Daniel Papineau

75. Daniel Papineau is incarcerated in the FDOC system, and was at all relevant times. He suffers from three ventral hernias which cause him constant excruciating pain and constipation. One hernia is the size of a football, one is the size of a grapefruit, and one is the size of a hand ball. Mr. Papineau is in constant extreme pain that ranks an 8 on a scale of 10. The pain sometimes brings him to tears. He cannot defecate without pain, and he must physically hold his stomach in with his hands when he does so. His pain is so bad that he can rarely even sit up or get out of bed. The hernias are causing him to have bowel issues and he

must take a stool softener to allow stool to pass safely through his intestines. He cannot walk or exercise like he used to, or do anything that requires activity.

76. A ventral hernia is the same as an inguinal hernia, but located higher in the abdomen. Ventral hernias are frequently the result of incisional hernias, which is when internal tissue bulges through a previous incision.

77. In June 2012, Mr. Papineau had a series of abdominal surgeries. As a result of those surgeries, he developed three ventral hernias in his abdominal area. He reported them as soon as he could after they emerged, in July 2012.

78. In January 2013, Dr. M. Hernandez, the Chief Health Officer for Cross City Correctional Institution, examined Mr. Papineau and diagnosed two large hernias. Dr. Hernandez decided that Mr. Papineau needed a surgical evaluation, and submitted a request for one. The evaluation did not happen until April, when Mr. Papineau saw Dr. Contarini, a surgeon, who recommended surgery pending clearance by a cardiologist. Mr. Papineau even signed a form consenting to the surgery. A cardiologist, Dr. Salman, cleared Mr. Papineau for hernia repair surgery in June 2013. In July, Dr. Contarini again recommended surgery, and the request was submitted to UM. In August the surgery was denied, stating, "Per Physician Advisor—Request does not meet criteria."

79. In August 2013, Mr. Papineau was seen by Dr. M. De La Cerna. Dr. De La Cerna disagreed with UM's decision not to approve surgery and submitted another request for surgical consult. It was denied in September.

80. In September 2013, Plaintiff Papineau filed a grievance requesting surgery. It was denied. He appealed to the Secretary, who upheld the denial and again refused to allow Mr. Papineau to have his needed surgery.

81. In November 2013, Dr. Gonzalez noted in the medical records that Mr. Papineau needed a surgical consult. Still nothing happened, and in January 2014 yet another surgical consult was requested by Dr. Quinones, a doctor at Reception and Medical Center (RMC), the FDOC hospital/prison facility in Lake Butler, Florida. That request was yet again denied by UM despite Dr. Contarini's multiple recommendations.

82. In May and June of 2014, Mr. Papineau saw two separate providers who both noted that he had painful hernias, and that Mr. Papineau was unable to walk very much because of them. In June, Mr. Papineau saw Dr. Tosado, who noted all of Mr. Papineau's hernia complaints. She again recommended a surgical consult. The consult was denied in July 2014.

83. Mr. Papineau has still not received his recommended hernia surgery. He continues to suffer from terrible pain and debilitation, and remains at risk of hernia strangulation, infection, and death.

Gary Johnson

84. Gary Johnson is incarcerated in the FDOC system, and was at all relevant times. He suffers from an inguinal hernia that causes him extreme pain and debilitation. The hernia is the size of a baseball (and has gotten bigger over time), and has descended into his scrotum and is pressing on his testicles. It constantly bulges out when standing, and only reduces when he lies down flat. He is in constant pain when standing, with the pain typically being an 8 out of 10. He is also in pain many times when sitting or lying down, and the pain is so bad sometimes that

it keeps him up at night. The hernia causes him nausea, constipation, and pain when using the bathroom, such that he must take laxatives. He cannot run, exercise, lift, climb to a top bunk, or walk long distances. Sometimes he must sit down if he's been standing in the chow line for too long.

85. The hernia first appeared several years ago. Over the years, he has visited sick call numerous times complaining of all the above symptoms, but no treatment was provided to him other than a hernia belt, which does nothing for him. He also filed several grievances requesting further treatment, which were all denied.

86. In August 2014, he was transferred to Cross City Correctional Institution, where he continued to voice complaints about his condition. At some point in the first few months of 2015, he saw an institutional physician, who recognized that he needed surgery, and referred Mr. Johnson for a surgical consult. That consult was approved, and Mr. Johnson saw Dr. Contarini, the surgeon, in approximately May 2015. Dr. Contarini recommended that Mr. Johnson have surgery, and told Mr. Johnson that it would be scheduled shortly.

87. However, when Mr. Johnson returned to Cross City, he was told that his surgery had been disapproved by Tallahassee, and was cancelled. The doctor informed him that he wanted for Mr. Johnson to have the surgery, but that Defendants would only provide surgery if the hernia was life-threatening.

88. To date, Mr. Johnson has still not received the surgery that was recommended, and remains in severe pain, unable to engage in normal activities, and at risk for serious complications.

Jerry Haliburton

89. Jerry Haliburton is incarcerated in the FDOC system, and was at all relevant times. He suffered from bilateral inguinal hernias that caused him extreme pain and debilitation, until his attorney intervened on his behalf. The hernias had descended into his scrotum, were pushing on his testicle, and produced 10 out of 10 pain. One of the hernias was the size of the cantaloupe. The pain was so bad that he was reduced to lying in bed most of the time. The pain would cause him to vomit, and defecating was extremely painful.

90. In July 2013, Mr. Haliburton saw Dr. Contarini at RMC. Dr. Contarini diagnosed bilateral hernias, recommended surgery, and noted that the hernias were “hard to reduce.” The surgery was scheduled, and Mr. Haliburton had a pre-surgery checkup with Dr. Aviles on September 18, 2013. Dr. Aviles noted that the plan was “BIH [bilateral inguinal hernia] repair.”

91. That surgery, however, did not happen. In September 2013, Corizon took over the provision of medical care at the institution where Mr. Haliburton was housed. In December 2013, Plaintiff Haliburton presented with such severe hernia pain that it was recommended that he stay in the infirmary. Another consult request was submitted marked “urgent.” That request was denied in January 2014 by Dr. Lafontant.

92. Mr. Haliburton continued to experience pain and difficulties. In November 2014, he accessed sick call because his hernia was making it difficult to urinate and defecate. In December 2014, a nurse recommended that the physician follow up with Mr. Haliburton for his hernia pain and difficulties.

93. In February 2015, Mr. Haliburton reported to the doctor that the hernia pain was so bad, it was causing him to vomit. The doctor ignored those reports, and merely reported that

the hernia was reducible. In March, Mr. Haliburton again accessed sick call because of his tremendous pain.

94. In April 2015, Mr. Haliburton filed a grievance stating that he had been approved for surgery, but that it was cancelled. He stated, "This pain is killing me I need help." The grievance was denied, stating that the denial of surgery had already been discussed with him. He appealed the denial, stating that no one had ever explained to him that his surgery had been denied, and again requested surgery. That appeal was denied in May 2015, stating that in part, "You will continue to be followed in your chronic clinic and have the option of declaring a medical emergency if necessary."

95. Mr. Haliburton is on close custody. Whenever he is taken from his cell it is in leg irons, waist chains, handcuffs and a black box. Even under normal circumstances and without a need for hernia surgery, it is very difficult to walk any distance. Mr. Haliburton has had difficulty meeting with his attorneys, because he cannot walk down the hall due to his severe pain. Defendants' failure to provide him with hernia surgery is affecting Mr. Haliburton's access to courts at a most critical time.

96. At some point, Mr. Haliburton's attorney intervened on his behalf, contacting the Secretary's office and requesting that Mr. Haliburton receive the proper treatment. Finally, Mr. Haliburton received his necessary surgery in July 2015, after suffering in extreme pain for over two years.

Raymond Senterfitt

97. Raymond Senterfitt is incarcerated in the FDOC system, and was at all relevant times. He suffered from a painful inguinal hernia until his attorneys intervened to demand treatment.

98. On or about December 27, 2012, Mr. Senterfitt was pushing a food cart when he felt a sharp pain in his right inguinal area. He was in so much pain that he declared a medical emergency. He was seen by Dr. J. Aviles, and diagnosed with a right inguinal hernia.

99. Over the course of the next thirteen months, Mr. Senterfitt suffered excruciating pain due to his hernia and was often bed-ridden and had difficulty completing basic daily tasks like walking and using the restroom. He was unable to work in food service despite the desire for doing so. He utilized sick call protocol on numerous occasions, in an attempt to gain relief from his pain, to no avail.

100. In February 2013, a physician approved a surgical consultation for Mr. Senterfitt to see a surgeon. In March, Mr. Senterfitt saw the surgeon, who recommended and scheduled surgery. However, Dr. Steven Harris, the Physician Advisor for UM, denied Mr. Senterfitt's surgery. Mr. Senterfitt tried again in June 2013, accessing sick call for the hernia that was causing him intense pain, and requesting surgery. During this visit, he was told by a doctor at Union CI that "Tallahassee" would not approve his surgery "unless he is dying." His appeal to the Secretary was denied.

101. Mr. Senterfitt filed multiple unsuccessful grievances over a period of months that described his intense pain, declining health, and his immediate need for corrective surgery. On October 23, 2013, in a grievance to the head medical staff member at Union Correctional Institution, Mr. Senterfitt again begged to have a surgery consult because he was in constant pain

and expressed his fears that he would lose the ability to walk if his hernia remained untreated. On October 29, 2013, a nurse told him that he would need to “lawyer up” if he wanted surgery.

102. In November 2013, Mr. Senterfitt wrote a grievance to Dr. Aviles to express his frustration regarding his pain and the lack of response from UCI medical staff. The response to this grievance and nearly all others ignored his concerns and contained the same standard language, “you have the option of addressing this issue through sick call procedures.”

103. In January 2014, Mr. Senterfitt saw Dr. Lafontant. Rather than examine Mr. Senterfitt’s condition, he simply stated there was nothing he could do and recommended that he use Ibuprofen and “work out” to remedy his condition. Mr. Senterfitt filed yet another grievance, explaining that his hernia was “three times worse than before” and that he was having trouble using the restroom, as a result of the hernia. Dr. Lafontant denied the request.

104. Three months later, Mr. Senterfitt again presented with intense pain that he rated as a nine out of ten and complained that his intestines were “dropping out.” His hands were shaking from the intense pain but medical staff simply advised him to “relax and take deep breaths.”

105. In November 2014, Mr. Senterfitt had a medical emergency wherein the hernia would not recede into his abdomen. Surgery was again requested, and again denied in December 2014.

106. Mr. Senterfitt was forced to retain counsel, who sent a letter in December 2014 demanding that surgery be provided. On January 6, 2015, in response to the letter, Corizon doctors examined Mr. Senterfitt. On January 13, 2015, the surgery was approved. The surgery

was performed on February 10, 2015, after being forced to suffer in excruciating pain for over two years, and only after counsel intervened.

Patients Who Have Not Received a Surgical Consultation

107. Defendants have refused to allow many patients to be seen by a surgeon for a surgical consult, despite the clear need to do so. Many of them have been recommended for consultations by institutional physicians, which have then been denied by UM. Some examples follow.

Darius Wilcox

108. Darius Wilcox is incarcerated in the FDOC system and was at all relevant times. He suffers from a left inguinal hernia that has descended into his scrotum. The tissue bulge does not stay in his abdomen and continuously pushes out, mostly when he tries to move. It causes him severe pain, most of the time a 7 or 8 out of 10. He cannot walk, move, cough, or defecate without severe pain. He has been reduced to lying in his bed all day.

109. In July 2013, Mr. Wilcox utilized sick call to seek relief for his hernia pain. He told Florida State Prison nurse L. Wilkerson that he had a hernia and was in pain. No treatment was provided to him at that time.

110. On August 29, 2013, Mr. Wilcox submitted inmate request forms, requesting treatment for his severe hernia pain. He inquired as to why he had not yet been referred to a doctor, and complained that his hernia had descended into his scrotum. On August 30, 2013, Mr. Wilcox filed another grievance seeking treatment for his hernia. His grievance was denied on September 10, 2013, stating that his hernia was “reducible” and “does not appear strangulated.”

111. On September 23, 2013, Mr. Wilcox utilized sick call to again attempt to get treatment for his hernia. No surgery was provided. Rather, Dr. Hoang noted in his medical records: "I/M [inmate] wants right away surgery. Tallahassee: when hernia is reducible →(NO) surgery."

112. At some point Dr. Hoang told him that normally he would have referred Mr. Wilcox to a surgeon, but Corizon—who was just taking over responsibility for medical care—had a new policy that would not allow Mr. Wilcox to be referred to a surgeon. When Mr. Wilcox attempted to ask questions about this new policy, Dr. Hoang told him to get out, and called in a prison guard to escort Mr. Wilcox out.

113. On September 27, 2013, Mr. Wilcox filed a grievance explaining the severity of his hernia. He explained that his prescribed health passes do not help remedy his hernia pain. It was denied in October 2013. Mr. Wilcox appealed that decision to the Secretary, requesting treatment and an explanation for medical staff's continued indifference to his medical needs. Mr. Wilcox detailed sharp, debilitating pain throughout his stomach and intestines, as well as difficulty defecating. He received no response.

114. After more than five months, Mr. Wilcox filed another appeal to the Secretary requesting a response to his October 29, 2013 appeal. On April 15, 2014, his request was denied.

115. He has not sought medical treatment for his hernia since then, because he has been threatened by medical and security staff with retaliation if he continued to complain.

116. Mr. Wilcox is on close custody. Whenever he is taken from his cell it is in leg irons, waist chains, handcuffs and a black box. Even under normal circumstances and without a need for hernia surgery, it is very difficult to walk any distance. Mr. Wilcox has several times

been unable to attend important legal visits with his lawyer, because he cannot walk down the hall due to his severe pain. Defendants' failure to provide him with hernia surgery is affecting Mr. Wilcox's access to courts at a most critical time.

117. Mr. Wilcox has still not received his surgery, and continues to suffer from severe pain and debilitation, and remains at risk of infection, bowel obstruction, and death.

Cires Gomes

118. Cires Gomes is incarcerated in the FDOC system and was at all material times. He suffers from a right inguinal hernia that has descended into his scrotum and causes him extreme pain and debilitation. This hernia is the size of a baseball, and hurts constantly, every day. At its worst, the pain is an 8 on a scale of 10. He cannot urinate or defecate without great pain. The hernia is almost always bulging out, and he must lie down flat to try to manipulate it back into place, although that is difficult. As soon as he sits up, it bulges out again. He cannot exercise, and is losing his appetite because he experiences stomach pain and vomiting after eating.

119. The hernia first appeared in 2012 when Mr. Gomes was incarcerated at Hamilton Correctional Institution. Mr. Gomes complained to medical staff but he was told that he would not be receiving surgery. In July 2013, Mr. Gomes saw institutional physician Dr. Feliz and was diagnosed with a right inguinal hernia. Dr. Feliz told him that surgery was needed, but nothing was done for him at that time. When he complained of his symptoms again in September 2013, he was told to access sick call.

120. In October 2013, Mr. Gomes filed a grievance asking to see a doctor about his hernia. It was denied. On October 30, he accessed sick call and again complained about his

hernia pain, and requested surgery. It was not provided. In November 2013, he filed another informal grievance asking for a doctor's appointment about his hernia. It was again denied. Over the next several months, he continuously suffered and complained about his severe hernia pain, but was not provided with adequate treatment.

121. In November 2014, he again accessed sick call for his hernia pain. The provider noted that the hernia was at times reducible. He again saw the medical staff in January 2015 because of his hernia pain. In February 2015, he filed a sick call request, again asking for surgery. He did not receive surgery.

122. On February 20, 2015, Mr. Gomes declared a medical emergency, saying that was in "excruciating pain" from his hernia, but ARNP Lowery wrote that there was no indication that surgery was needed. On February 25, 2015, Gomes saw Dr. Vilchez, who noted that he had a "baseball size" hernia that had gotten worse over the past three years. Dr. Vilchez told Mr. Gomes that he needs surgery, and wrote that he planned to get a surgical consult.

123. The next day, Mr. Gomes filed a grievance again requesting surgery. The grievance was denied. Staff noted on the denial that they recognized that this was frustrating, but medical staff at the institution did not get to decide who gets surgery. Mr. Gomes appealed that denial, reiterating that he could not eat, urinate, or defecate without great pain. The appeal was returned without action on April 9, 2015.

124. On April 20, 2015, he was seen in urgent care for hernia pain and because he could not push the hernia bulge back into place. The next day he was seen by medical staff, and the provider wrote, "does not meet criteria for surgery."

125. Mr. Gomes has still not been referred to a surgeon for a surgical consult, nor has he received hernia surgery. He continues to suffer from terrible pain and debilitation, and remains at risk of strangulation, infection, and death.

Billy Wilson

126. Billy Wilson is incarcerated in the FDOC system and was at all relevant times. He currently suffers from three hernias: a right inguinal hernia the size of a handball, one in the middle of his abdomen running 8 or 9 inches from the bottom of his sternum, and a third umbilical hernia in the middle of his stomach. A fourth hernia in his left inguinal area is also starting to emerge. They cause him tremendous pain and debilitation every single day. The pain reaches an 8 or 9 on a scale of 10, and is always at least a 5. The hernias continuously bulge out, even when sitting, and he constantly has to manipulate them back in. He walks with difficulty, and when he does he must constantly hold his inguinal area to keep the hernia from bulging out.

127. In December 2012, he reported the problem at sick call. In December 2013, he saw Dr. Ho in the medical department, again complaining about his hernia. Over the next year, Mr. Wilson continued to complain to medical staff about his hernia symptoms. In September 2014, he had a medical appointment with a nurse, reporting 7 out of 10 pain, diarrhea, decreased appetite, and nausea. At a subsequent appointment that month with Dr. Ho, Mr. Wilson again complained of pain, blood in his stool and urine, and weight loss. Dr. Ho noted that he had multiple scars bulging with hernia masses, but refused to order a surgical consult. In fact, Dr. Ho told him that he would have to live with his condition for the rest of his sentence.

128. In November 2014, Mr. Wilson filed an informal grievance requesting hernia surgery, stating, "I am perforated in three places with my guts poking out of me... I need surgery!" The grievance was denied. Mr. Wilson appealed it, noting "I'm in pain every waking hour of the day." His appeal was denied.

129. In December 2014, Mr. Wilson had another medical appointment where he requested surgery. The nurse refused to refer Mr. Wilson to a doctor for surgery, ignoring his complaints of severe pain.

130. In April 2015, Mr. Wilson accessed sick call where he again reported constant 8 out of 10 pain, nausea, and pain after eating. In May it was noted that the bulging of the hernia was frequent and had to be manipulated back in often. Mr. Wilson again complained of severe hernia pain at a June 2015 medical appointment.

131. Mr. Wilson has still not seen a surgeon or received surgery. He continues to suffer from extreme pain and debilitation, and increased risk of further complications, infection, and death.

Daniel Ozella

132. Daniel Ozella is incarcerated in the FDOC system, and was at all relevant times. He suffers from a painful umbilical hernia. It is located to the side of his navel, and is always bulged out. He can push it back in, but it immediately pops back out again. He has to physically hold it in when having a bowel movement to lessen the pain and avoid a feeling that his insides are going to explode. He cannot do the exercises he used to do, such as pushups or pull-ups, and has trouble climbing to the top bunk.

133. The hernia first appeared in 2012. By the summer of 2013, it had gotten worse, and Mr. Ozella mentioned it at a routine physical. He was told that he would have to access sick call to discuss the issue.

134. In June 2014, Mr. Ozella went to sick call and told the nurse he had a painful hernia. He also asked for a low bunk pass. Nothing happened following that sick call encounter.

135. In September 2014, he submitted a sick call request, asking to see a doctor about his hernia. In October, Dr. Noel diagnosed him with an umbilical hernia. But no treatment was provided. So, also in October, Mr. Ozella submitted a formal grievance explaining his diagnosis and asking about the low bunk pass he had requested months earlier. It was denied without explanation, merely reciting that he had been examined by a physician who had denied his low bunk pass.

136. Still in pain, Mr. Ozella filed a formal grievance in March 2015 seeking referral to a hernia specialist for a surgical evaluation. In the grievance he preemptively stated that he had already visited sick call to no avail. Nonetheless, the grievance was denied, advising him to utilize sick call. The denial also noted that he was scheduled to see a physician soon in the chronic illness clinic. That clinic (which Mr. Ozella pointed out in his appeal) is for a cardiovascular condition that has nothing to do with his hernia.

137. Mr. Ozella appealed to the Secretary on March 21, and on March 31 he was unexpectedly called out to see Dr. Mesa, a Corizon physician. He showed her his hernia and showed how he could push the bulge in and out of his abdominal wall. The nurse recognized it as an umbilical hernia, but Dr. Mesa disregarded it, claiming it was only an “outie.” Dr. Mesa refused to do anything for Mr. Ozella. His appeal to the Secretary was denied in April 2015.

138. Mr. Ozella has still not been referred to a surgeon for a surgical consult, nor has he received hernia surgery. He continues to suffer from pain and debilitation, and remains at risk of strangulation, infection, and death.

Bobby Roberts

139. Bobby Roberts is incarcerated in the FDOC system and was at all relevant times. He suffers from a painful right inguinal hernia that causes him intense pain every day, and makes it difficult to walk, eat, and talk.

140. He first reported the hernia to medical staff in May 2012, where the doctor assessed him with a hernia.

141. By September 2012, when Mr. Roberts was again seen by medical staff for the painful hernia, it was the size of a golf ball. In November 2013, Mr. Roberts was reporting at least 7 out of 10 pain at sick call. When he saw Dr. Profet that month, Mr. Roberts reported how he was always in severe pain, and that at times he couldn't walk, talk, or eat. He begged to be referred to a specialist. Dr. Profet became angry and told him something to the effect of, You're the inmate and I'm the doctor, I don't work for you, I work for the ones who provide my paychecks. Dr. Profet did not refer Mr. Roberts for a surgical consultation.

142. In February 2014, Mr. Roberts again reported to sick call with intense pain. Dr. Mayo assessed him with a right inguinal hernia, but refused to refer him for a surgical consultation. Mr. Roberts reported to sick call numerous times, including in February, March, and April. At his April 2014 appointment, it was noted in his chart that surgery was denied.

143. In April 2014, Mr. Roberts filed a formal grievance seeking hernia surgery. It was denied. He appealed to the Secretary, and it was denied on July 8, 2014.

144. Mr. Roberts continued to submit sick call requests, and saw Dr. Allen on May 5, 2014, complaining of severe pain. Dr. Allen merely told him to declare a medical emergency if the pain didn't subside.

145. In June 2014, Mr. Roberts filed another formal grievance seeking hernia surgery. It was denied. He appealed to the Secretary, and it was denied on August 7, 2014. In April, 2014, he filed another grievance, seeking to correct the name of the doctor he wrote in the previous set of grievances. It was returned without processing.

146. Mr. Roberts has still not seen a surgeon for a surgical consultation or received surgery, and continues to suffer from severe pain and debilitation, and remains at risk of infection, bowel obstruction, and death.

Larry Hollingsworth

147. Larry Hollingsworth is incarcerated in the FDOC system, and was at all relevant times. He suffered from a painful inguinal hernia until his attorneys intervened to demand treatment.

148. His hernia first appeared in August 2008. It was the size of a baseball and continuously caused him severe pain. Mr. Hollingsworth continued to complain to medical staff and file grievances about this issue, but nothing was done for him. In 2010, he was transferred to Lake Correctional Institution, at which point his hernia was the size of a baseball.

149. Institutional physicians submitted four separate requests for surgical consultations, but all four were denied by UM.

150. Finally, Mr. Hollingsworth's attorney sent a demand letter in August 2013, demanding that Mr. Hollingsworth receive a surgical consultation, and eventual surgery. Within

three weeks, Mr. Hollingsworth saw a surgeon, who recommended surgery, and it was performed several weeks later.

Jonathan Plotnick

151. Jonathan Plotnick, another person incarcerated in the FDOC system, had a similar experience. In May 2013, he was diagnosed with an inguinal hernia that was causing him extreme pain. He began to write grievances in which he requested more relief for his painful hernias. All of his requests were denied. All grievance appeals were denied.

152. In August of 2013, Dr. Ta told Mr. Plotnick that he indeed needed surgery but that he could not grant the surgery because of the State's money shortage issues.

153. Mr. Plotnick filed multiple unsuccessful grievances over a period of months that expressed his intense pain, declining health, and his immediate need for corrective surgery. On December 20, 2013, in a grievance Mr. Plotnick again begged to have a surgery consult because he was in constant pain and could not "do anything at all ... no exercise, walking, laps, or anything." Defendant Corizon's attorney was also requested in December 2013 to intercede on behalf of the Mr. Plotnick to arrange for hernia surgery, all to no avail.

154. Mr. Plotnick continued to file grievances requesting a surgical consult, which were all denied.

155. In July 2014, Mr. Plotnick was forced to file suit against the FDOC, Corizon, and Dr. Virginia Mesa. He requested a preliminary injunction ordering Corizon and the FDOC to provide him with a surgical consult, and then surgery. An evidentiary hearing was held on September 9, 2014. At the conclusion of the hearing, Corizon's representative finally agreed to

have Mr. Plotnick seen by a surgeon. Mr. Plotnick saw a surgeon, who recommended surgery, and it was performed shortly thereafter.

156. Mr. Plotnick settled his case against Corizon, FDOC, and Dr. Mesa for substantial damages and attorneys' fees.

Bradley Hurley

157. Bradley Hurley was incarcerated in the FDOC system at all relevant times, and was recently released. He suffers from a painful inguinal hernia. Sometimes the pain reaches levels he would describe as 8 or 9 out of 10. When he arrived in FDOC custody in July 2012, he informed medical staff of his hernia. On October 15, 2012, he was seen by Dr. Medina, who diagnosed the hernia and prescribed Ibuprofen. Dr. Medina informed Mr. Hurley that he would not be recommended for any type of corrective surgery or treatment for his hernia.

158. On October 24, 2012, Mr. Hurley filed a formal grievance asking to be referred to a specialist for his hernia. It was denied, stating he did not meet medical criteria to be sent to a specialist.

159. In December 2012, Mr. Hurley accessed sick call complaining of "emergency pain." His hernia had ruptured on the job and was causing him extreme pain and discomfort. On December 12, he saw Dr. Dieguez, who diagnosed Mr. Hurley with a hernia the size of a plum and requested surgery "ASAP." However, on January 24, 2013, Mr. Hurley was informed by Dr. Medina that his surgery had been denied by Tallahassee. Dr. Dieguez attempted to reschedule Mr. Hurley's surgery and summoned him to the medical department on March 25. But Mr. Hurley was later told that Dr. Dieguez had been transferred to another institution.

160. In March 2014, Mr. Hurley was still experiencing extreme pain and filed a formal grievance, again requesting to be seen by a hernia specialist. It was denied, noting that the nurse had diagnosed him with a reducible hernia. Mr. Hurley filed another formal grievance, which was also denied, telling him to access sick call.

161. In June 2014, Mr. Hurley saw Dr. Heller, who stated that he would not be given surgery on the prison's dime. Mr. Hurley filed a grievance about this, and filed an addendum to clarify it. It was denied, noting that the hernia was "easily reducible." Mr. Hurley appealed to the Secretary, which was denied in August 2014.

162. Mr. Hurley was released in April 2015. Defendants never referred him to a surgeon or provided him with surgery.

Corizon's History of Providing Inadequate Medical Care

163. The FDOC has contracted with Corizon to provide all medical and mental health care in roughly 58 out of approximately 72 of the FDOC's prison facilities. This includes all of FDOC Regions I and II, and several prisons in Region III. Corizon assumed responsibility for providing care in these prisons in approximately September or October 2013.

164. Under the contract, Corizon is paid a fixed per-inmate price multiplied by the average number of inmates in the facilities Corizon serves. Corizon received approximately \$229 million per year, or roughly \$1.14 billion over five years. All costs of providing health care are borne by Corizon. Moreover, Corizon must pay the FDOC \$250 per inmate every time it transports an inmate over 50 miles round trip for medical services, with some exceptions.

165. Thus, Corizon has a financial incentive to avoid providing medical care and treatment, especially when that care involves sending prisoners to outside specialists.

166. Almost immediately after Corizon took over medical care, the quality of care began to rapidly deteriorate. In January 2014, less than four months after Corizon took over, the monthly inmate death count, excluding homicides and natural causes, reached a 10-year high of 36. Inmate deaths for the first seven months of 2014 totaled 206, also a 10-year high when compared to the first seven months of the last 15 years, and an 18.4% increase from the first seven months of 2012.

167. In the first 8 months of 2014, Corizon and Wexford (the other private medical contractor for the remaining FDOC facilities) sent 1,009 inmates to outside hospitals. At that pace, the number of inmates referred to hospitals would drop 47% from 2012, the last full year that the FDOC provided health care without a private contractor.

168. In September 2014—only one year after Corizon took over medical care—then-FDOC Secretary Michael Crews sent a letter to Corizon threatening to withhold payment and delete facilities from Corizon’s contract if improvements were not made to the level of health care being provided to FDOC prisoners. The letter stated that Corizon’s “level of care continues to fall below the contractually required standard.” Specifically, Crews identified failures in patient care issues, utilization management, and communication.

169. For a six month audit period ending in August 2014, Corizon’s medical staff at Reception and Medical Center—the FDOC’s only hospital facility—received a grade of zero for failing to place inmates with physical and mental impairments in settings that would adequately provide for their health care needs.

170. In another review conducted at the Union Correctional Institution from January 2014 to July 2014, it was found that nursing staff failed to document patient visits, medical records were mismanaged and most inmates were not given periodic screenings.

171. Corizon was fined \$67,500 by the FDOC in May 2015 for failing a series of performance audits conducted over the past year. A review noted that physicians were only performing rounds 15 percent of the time they were scheduled to do so

172. To this day, Corizon continues to be the primary health care provider despite the Defendant Secretary's knowledge that Corizon is failing to provide known needed medical care, thereby causing prisoners to suffer needlessly in pain and with greater risk of dying.

Class Action Allegations

173. Pursuant to Federal Rule of Civil Procedure 23(b)(2), Plaintiffs seek to certify a class of all current and future prisoners in FDOC custody who have presented, or will present, with a symptomatic hernia to prison staff. This class seeks only declaratory and injunctive relief. Pursuant to Rule 23(b)(3), Plaintiffs seek to certify a class of all past and current prisoners in FDOC custody (through the date of a settlement or judgment) who have presented with a symptomatic hernia to prison staff. This class seeks damages, as well as declaratory and injunctive relief.

174. For both the 23(b)(2) and 23(b)(3) class, Plaintiffs seek to further certify two sub-classes:

- a. *The Surgery Recommendation Sub-Class:* This sub-class consists of all class members who have received, or will in the future receive, a recommendation from a surgeon that they receive surgery.

b. *The No Consult Sub-Class:* This sub-class consists of all class members who have not seen a surgeon, or will be denied a visit to a surgeon in the future, for a surgical consultation.

175. Upon information and belief, Defendants have the ability to identify all such similarly situated class members, through medical and other records in Defendants' possession.

176. The requirements of Rule 23(a) are satisfied:

a. *Numerosity.* The class is so numerous that joinder of all members is impracticable. Plaintiffs have thus far identified approximately 6 members of the "Surgery Recommendation" Sub-Class and approximately 21 members of the "No Consult" Sub-Class, for a total of approximately 27 class members known at this time. Plaintiffs are aware of at least 41 other FDOC prisoners who, upon information and belief, have painful hernias and would be class members, for a total of 62. Given that there are roughly 100,000 prisoners in FDOC custody, and that the prevalence of hernias in the United States has been estimated at 5-10%, there could be as many as 5,000 to 10,000 class members. Medical and other records currently in Defendants' possession can be used to identify the as yet unknown class members.

b. *Commonality.* There are questions of law or fact common to the class, including but not limited to whether Defendants' policy of not providing hernia surgeries except in emergency situations, for the purpose of decreasing costs and increasing profits, constitutes deliberate indifference to the serious medical needs of the class members in violation of the Eighth Amendment.

c. *Typicality.* The claims or defenses of the class representatives are typical of the claims or defenses of the class. The class representatives have painful hernias that have gone untreated by Defendants, and have suffered (and continue to suffer) from the same pain, debilitation, and other substantial risks of serious harm that the class members have suffered.

d. *Adequacy.* The class representatives and class counsel will fairly and adequately protect the interests of the class. The class representatives are committed to obtaining declaratory and injunctive relief, which will benefit themselves as well as the class by ending Defendants' unconstitutional policy. The class representatives are also committed to fairly administering any damages award or settlement. Their interests are consistent with and not antagonistic to the interests of the class. They have a strong personal interest in the outcome of this action and have no conflicts with members of the class. They are represented by experienced counsel who specialize in civil rights and class action litigation on behalf of prisoners.

177. The requirements of Rule 23(b)(2) are satisfied, as the party opposing the class has acted or refused 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. Defendants have applied the same policy—refusing to provide hernia surgery except in emergency situations—to all class members as a whole. Injunctive relief will therefore end the policy for all class members, allowing them to receive proper medical evaluation and treatment.

178. The requirements of Rule 23(b)(3) are satisfied, as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The interests of members of the Plaintiff Class in individually controlling the prosecution of a separate action is low in that most members of the Plaintiff Class would be unable individually to prosecute any action at all. Most members of the Plaintiff Class will not be able to find counsel to represent them. It is therefore desirable to concentrate all litigation in one forum. The alternative would be individual cases for each and every prisoner seeking similar relief. Accordingly, it will promote judicial efficiency to resolve the common questions of law and fact in one forum, in one lawsuit, rather than in multiple lawsuits in multiple courts.

CAUSE OF ACTION

42 U.S.C. § 1983 **All Defendants' Violations of the Eighth Amendment**

179. All Defendants, including Defendants' policymakers for medical care, know about and enforce the policies described herein. All Defendants, including Defendants' policymakers for medical care, know of Plaintiffs' serious medical needs (including their severe pain, debilitation, and increased risk of serious complications), yet Defendants have intentionally failed to provide and have intentionally delayed treatment that will address those serious medical needs, knowing that their actions have resulted, and will continue to result, in Plaintiffs' continued suffering. Thus, Defendants have caused the wanton infliction of pain upon FDOC prisoners, and have exhibited deliberate indifference to the serious medical needs of Plaintiffs and the Plaintiff Class, in violation of the Eighth Amendment.

180. By denying Plaintiffs their medically needed hernia surgeries, Defendants have imposed punishment far in excess of that authorized by law, contrary to the Eighth Amendment.

181. Defendants' denial of Plaintiffs' medically needed hernia surgeries violates all standards of decency, contrary to the Eighth Amendment.

182. All Defendants' actions and "treatment" with respect to Plaintiffs' hernias is medical care so cursory as to amount to no medical care at all.

183. Plaintiffs who have not received surgery have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following relief:

A. An order certifying this case as a class action, with the class defined under Rule 23(b)(2) (seeking only declaratory and injunctive relief) as all current and future prisoners in FDOC custody who have presented, or will present, with a symptomatic hernia to prison staff, and under Rule 23(b)(3) (seeking damages as well as declaratory and injunctive relief) as all past and current prisoners in FDOC custody (through the date of a settlement or judgment) who have presented with a symptomatic hernia to prison staff.

B. An order certifying two sub-classes: The Surgery Recommendation Sub-Class, consisting of all class members who have received, or will receive, a recommendation from a surgeon that they receive surgery to repair their hernia, and the No Consult Sub-Class, consisting of all class members who have not seen a surgeon, or will be denied a visit to a surgeon, for a surgical consultation.

C. A judgment declaring that the Defendants have exhibited deliberate indifference to the serious medical needs of Plaintiffs and the Plaintiff Class and have violated Plaintiffs' and the Plaintiff Class's right to be free from Cruel and Unusual Punishment, as secured by the Eighth and Fourteenth Amendments to the Constitution;

D. A preliminary and permanent injunction requiring Defendants to immediately provide hernia surgery to all FDOC prisoners who have been recommended for surgery; and, for those prisoners with hernias who have not seen a surgeon, to immediately send all such prisoners to an independent surgeon for a surgical consultation, and to abide by the surgeon's recommendation;

E. An award of nominal, compensatory and punitive damages against Defendant Corizon, and nominal damages against Defendant Jones;

F. An award of Plaintiffs' attorneys' fees, expenses and costs of suit; and

G. Such other relief as the Court may deem equitable and just under the circumstances.

Jury Demand

Plaintiffs demand trial by jury on all issues which are triable by a jury.

Respectfully submitted,

Randall C. Berg, Jr., Esq.
Fla. Bar No. 0318371
E-mail: *RBerg@FloridaJusticeInstitute.org*
Dante P. Trevisani, Esq.
Florida Bar No. 72912
E-mail: *DTrevisani@FloridaJusticeInstitute.org*

Florida Justice Institute, Inc.
100 S.E. 2nd Street

3750 Miami Tower
Miami, Florida 33131-2309
305-358-2081
305-358-0910 (FAX)

By: *s/Randall C. Berg, Jr.*
Randall C. Berg, Jr., Esq.

s/Dante P. Trevisani
Dante P. Trevisani, Esq.

Attorneys for the Plaintiffs

Certificate of Service

I HEREBY CERTIFY that on September 16, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: *s/Randall C. Berg, Jr.*
Randall C. Berg, Jr., Esq.

Service List

By Email

Jennifer A. Parker, Esq.
General Counsel, Florida Department of Corrections
parker.jennifer@mail.dc.state.fl.us
Dorothy Ridgway, Esq.

Assistant General Counsel, Florida Department of Corrections
Ridgway.dorothy@mail.dc.state.fl.us
Counsel for Defendant Jones

Gregg A. Toomey, Esq.
gat@thetoomeylawfirm.com
Counsel for Defendant Corizon