

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

REBECCA SMITH, individually and
on behalf of all others similarly
situated,

Civil Action No. _ _ _ _ _

Plaintiffs.

CLASS ACTION

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, HEIDI WASHINGTON,
IN HER INDIVIDUAL CAPACITY,
SHAWN BREWER, IN HIS INDIVIDUAL
CAPACITY, AND CORIZON HEALTH,
INC., a Delaware Corporation,

Defendants.

CLASS ACTION COMPLAINT

COMES NOW the Plaintiffs, Rebecca Smith, individually and on behalf of
all others similarly situated, and for their causes of action against the
Defendant would allege as follows:

PRELIMINARY STATEMENT

1. The Plaintiff and the proposed class, as defined in Paragraphs 69 *et seq.*,
include those individuals currently and formerly housed at the Women's
Huron Valley Correctional Facility, a prison owned and operated by the
Michigan Department of Corrections. During the time of incarceration, the

Plaintiff and proposed prison class were entirely dependent on the Defendants to provide them with access to basic health care. However, they have been, and with regard to those still incarcerated, continue to be deprived of access to basic healthcare.

2. Plaintiff files this Class Action seeking damages on behalf of themselves and all others similarly situated due to the Defendant's deliberate indifference to their serious medical needs while they were incarcerated, in violation of the Eighth and Fourteenth Amendments to the United States Constitution and their prohibition against cruel and unusual punishment.
3. Plaintiff and all Class Members were exposed to *Sarcoptes scabiei* (hereafter "Scabies") caused by the spread of parasitic mites. Some members of the class were released from the prison and transmitted the mites to family and friends. Scabies is most easily transmitted by skin-to-skin contact, bedding, clothing and towels. Female mites burrow under the skin, lay their eggs at the end of the tunneled burrows, and larvae hatch two to three days after the eggs are laid. The mites cause intense itching, which facilitates re-infestation and skin eruptions that transfer the mites to new hosts.

4. Defendant operates the prison and therefore had direct control of the prisoners in its charge infected with scabies. The Defendant deliberately failed to adequately screen those entering its facility, respond to inmate requests for medical attention, treat those infested with the parasite, quarantine the infected individuals in its care, or to take any other precautions to prevent the spread of scabies outside the facility. This caused a foreseeable and preventable systematic outbreak which spread to the Plaintiff and all others similarly situated.

THE PARTIES

5. Plaintiff Rebecca Smith is a citizen of the State of Michigan and a resident of Washtenaw County, Michigan. She is an inmate who is housed in the Defendant's facility in Washtenaw County.
6. The Defendant, Michigan Department of Corrections is an entity within the State of Michigan. The facility at issue here is in Washtenaw County. The Defendant operates the Women's Huron Valley Facility, housing women prisoners sentenced to confinement by courts throughout the State. As such, it is therefore subject to suit under 42 U.S.C. § 1983.
7. Defendant Heidi Washington was the director of the Michigan Department of Corrections, at all relevant times complained of.
8. Defendant Shawn Brewer was the warden of the facility at issue

at all relevant times complained of.

9. Defendant Corizon is a correctional healthcare provider and is under contract to provide healthcare services at the facility at issue.

JURISDICTION AND VENUE

10. This action is brought pursuant to 42 U.S.C. § 1983 seeking to redress a deprivation of the Plaintiffs' rights by the Defendants acting under color of law, which rights are secured by the Eighth Amendment to the United States Constitution.
11. This complaint concerns the violation of civil rights, and this Court has jurisdiction pursuant to 28 U.S.C. Sec. 1331 and 1343.
12. Venue is proper in this District under 28 U.S.C. 1391 as the events giving rise to this action occurred in this district.
13. Defendant Corizon Health, Inc. (Corizon) is a corporation that does business in this State as a part of its systematic and continuous business operations, and has registered to do business within this State. It is the private health care contractor for the Michigan Department of Corrections; including the Women's Huron Valley Facility.

ALLEGATIONS OF FACT

14. As the allegations of this Complaint will demonstrate, the Defendants refused to provide the healthcare needed and requested by Plaintiff and

members of the class. The Defendants refused to provide access to doctors and necessary medicine to properly diagnose and treat the condition.

15. At all material times alleged in this complaint, the acts or omissions occurred under color of law, and the individual employees of the Defendants were acting within the scope and course of their respective employment.
16. The individual Defendants initiated and carried out the policies, practices and customs of the MDOC and are liable for their own acts and omissions.
17. In 2017 and early 2018, there was a scabies outbreak in the Defendant's over 2000 bed jail facility in Ypsilanti, MI. The outbreak spread through the facility which infested inmates. Those infested with the parasite develop a visible rash, which was made known to the Defendant by observation and by frequent complaints, grievances, and requests for medical treatment by the inmates.
18. The scabies infestation leads to relentless and unbearable itching, especially at night. The rash results in scales, blisters, bleeding, and open sores caused by scratching. The rash caused by scabies infestation is readily distinguishable from other skin maladies due to the appearance of track-like burrows in the skin, which are created when female mites tunnel under the surface of the skin. Due to the severity of the itching at

night, those infested with the parasite experience an inability to sleep until they have been treated and the infestation is in remission. The infestation results in permanent, visible scarring.

19. Plaintiff, Smith, was housed within Gladwin B, at the Huron Valley Women's Facility, in January, 2017. She started exhibiting symptoms of scabies infestation, including a visible and painful rash.
20. Ms. Smith requested medical treatment and complained about the Defendant ignoring her complaints and refusing to provide medical services. Ms. Smith complained to the facility staff and she filed grievances, all of which went unanswered and ignored by the Defendant.
21. Ms. Smith begged the Defendant for relief and treatment. It was not until February 2017 that she was given access to a doctor. Pursuant to the Defendant's official policy, custom, and practice of ignoring requests for medical attention, the Defendant denied that Smith had any medical issues despite her obvious distress and visible rash, and refused to allow her to obtain outside medical treatment.
22. Inmates began openly talking about the spread of the rash. The Defendant blamed the inmates on for the rash claiming it was caused by them cleaning their clothes in their cells.

23. On October 14, 2017, Plaintiff noticed red bumps developing on her right arm that resembled insect bites, which were accompanied by intense itching and a biting sensation.
24. On January 9, 2018, the bites continued to spread and the itching intensified. Plaintiff showed a nurse, who dismissed Plaintiffs report and merely advised that Plaintiff change her soap. Plaintiff informed the nurse that she had been using the same soap in the past without issue.
25. By February 23, 2018, Plaintiffs body was covered with the bites and rash, and she requested another sick call.
26. Plaintiff filed formal grievance due to the refusal of the Defendants to provide her access to medical treatment.
27. Because of the Defendant's deliberate indifference to the grievance filed by Plaintiff and others, new grievances were filed until the Defendant addressed the issue, all of which were ignored or discredited by the Defendant.
28. By April 6, 2018, the itching was unbearable and Plaintiff was unable to sleep. Her request for a sick call was ignored by the Defendants.
29. On June 18, 2018, Plaintiff was still unable to sleep and there was no response to her request for a sick call. Proper medical treatment was ever provided; which would have discovered that the rash was scabies and not due to the soap women were using or the cleaning agents the women were

using in their cells.

30. Plaintiff was physically, mentally, and emotionally tormented by the sensation of insects biting her and the inability to obtain any relief from the Defendants. She became physically ill from the stress.
31. Due to the Defendant's deliberate indifference to her medical needs and continued refusal to respond to Plaintiff's request for medical attention, Plaintiff experienced emotional distress and hopelessness.
32. Finally, in January 2019, the Defendant's facility was placed on lock down after a Flint doctor treated a former inmate. He came to the prison and tested skin scrapings to confirm the infestation was scabies.
33. Rather than provide proper medical care, the Defendants blamed the inmates for improperly cleaning their clothes in their cells. A simple internet check with the CDC would have led to the conclusion that the rash was caused by scabies.
34. On numerous occasions with many inmates including Plaintiff, saw a Nurse Practitioner employed by the Defendant who refused to acknowledge the obvious presence of scabies.
35. Upon information and belief the Defendants failed to properly train staff to address the obvious medical condition caused by scabies.
36. A cold shower is one of the few forms of temporary relief from the

intense itching caused by scabies. Plaintiff repeatedly requested a hot shower but the Defendant refused to allow her to do so, without any justification.

37. Plaintiff, and the proposed class, have permanent scarring, and are still recovering from the sores left from the parasites. They have been unable to return to work after their release due to the risk of spreading the mite to others, and have therefore incurred lost wages.
38. Defendant should have known of the infestation among the prisoner population, and the intensely contagious nature of it, the Defendant failed to take reasonable steps to mitigate the infestation, to quarantine inmates, or to treat those afflicted with a known scabies infestation. Defendants failed to properly test and or failed to properly diagnose the scabies infestation despite doing minimal testing.
39. The spread of the infestation was reasonably foreseeable and the Defendant failed to take reasonable steps to mitigate the infestation. As a direct and proximate result of the Defendant's acts and omissions, the Plaintiff and class members became infested.
40. By virtue of the scabies infestation, Plaintiff and the class members were forced to endure painful, itching rashes and sleeplessness while they were housed at the facility. After their release, they were forced to seek medical

attention and in some cases passed the scabies to others. They have incurred the costs of medical treatment, which is ongoing.

41. Plaintiff has experienced and continues to experience pain, suffering and emotional distress and humiliation from the scabies infestations within their bodies.
42. Plaintiff filed a grievance. Complying with the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) ("PLRA") and had exhausted her administrative remedies. Plaintiffs grievances were deliberately rejected by the Defendant, and she therefore had no ability to appeal any decision, none having been made by the Defendant.
43. Because the Defendant's conduct indefinitely delayed and nullified any administrative process, the administrative remedies required of the PLRA were unavailable to Plaintiff and other class members.
44. To the extent that administrative remedies remain unexhausted for those still housed at the facility, those Plaintiffs are entitled to injunctive relief while they continue to exhaust administrative grievance procedures.
45. The PLRA is inapplicable to those class members who are no longer confined in the Defendant's facility.

CAUSES OF ACTION

**COUNT I: DELIBERATE INDIFFERENCE TO PLAINTIFFS' SERIOUS
MEDICAL NEEDS IN VIOLATION OF PLAINTIFFS' RIGHTS
GUARANTEED BY THE EIGHTH AND FOURTEENTH
AMENDMENTS TO THE U.S. CONSTITUTION**

[42 U.S.C. § 1983]

46. The Defendant performs a traditional state: function of operating a prison, and the Defendant's employees performed governmental functions. The Defendant's officials therefore acted under color of law.
47. The Defendant's official policies and customs of ignoring and/or substantially delaying requests for medical treatment caused the violation of the Plaintiffs' constitutionally protected rights.
48. Plaintiff's infestation with scabies constituted a sufficiently serious medical need for treatment. Plaintiffs were confined under conditions posing a substantial risk of serious harm.
49. Due to the extremely contagious nature of scabies infestations, the failure to promptly diagnose and treat scabies posed an obvious and substantial risk of harm to other inmates.
50. Dozens of grievances and requests for medical attention were filed by Plaintiff and members of the class and submitted to prison officials, all of which were rejected or ignored. The officials knew there was a substantial risk of serious harm to Plaintiffs and members of the class, but failed to act.

51. Despite the numerous pleas for medical assistance, the Defendant did not even summon a medical professional to examine Plaintiff or members of the class.
52. Prison officials, including the Warden and Assistant Warden, the prison guards, and nursing staff, all had actual and/or constructive knowledge of a widespread scabies infestation spreading throughout the Defendant's facility. These officials had knowledge of the Plaintiffs' asserted serious needs, or were aware of the circumstances clearly indicating the existence of such needs, or subjectively perceived a risk of harm, but then disregarded it by failing to take reasonable measures to abate it.
53. Plaintiff's medical need was never diagnosed by a Defendant physician and outside medical treatment was never allowed.
54. The need to treat scabies is obvious even to a layperson. The condition visibly spread to more areas on the body of infested inmates. It is apparent that a delay in treating a scabies infestation would detrimentally exacerbate the medical problem.
55. The medical conditions of Plaintiff and members of the class worsened as a result of the Defendant's refusal to provide medical services.
56. Because of the Defendant's continued, deliberate indifference to Plaintiffs' medical needs, the inhumane conditions of confinement

constituted cruel and unusual punishment within the meaning of the Eighth Amendment.

57. The pattern and practice of ignoring all inmate complaints was the product of the policies and customs of the Defendant.
58. The prolonged deprivation of medical treatment was serious and addressed the specific, basic human need for medical treatment and access to medical treatment. The deprivation to Plaintiff and members of the class was sufficiently severe to constitute inhumane prison conditions.
59. The Defendant acted with malice when it retaliated and disciplined Plaintiff and class members for exercising their right to demand medical treatment.
60. As a result of the Defendants' actions, Plaintiffs were deprived of fundamental rights guaranteed by the United States Constitution, including the right to adequate medical care for their serious medical needs while in the custody of the state. The Defendant's actions described herein violated the Eighth Amendment's prohibition against cruel and unusual punishment, and the Fourteenth Amendment's guarantee of substantive due process.
61. As a direct and foreseeable result of the Defendant's violations of

Plaintiffs' rights, Plaintiffs have suffered and will continue to suffer physical injury and scarring, the nature of which is permanent.

COUNT II: VIOLATION OF PLAINTIFFS' RIGHTS TO DUE PROCESS FOR FAILURE TO PROTECT AND EXPOSURE TO STATE CREATED DANGER

62. Plaintiff and members of the class were involuntarily confined or restrained against their will pursuant to a governmental order or by the affirmative exercise of state power by the Defendant.
63. By virtue of the special relationship of the state-imposed custodial setting, the Defendant was under an affirmative obligation to spend its resources to protect Plaintiff and members of the class from harm.
64. The Defendant had exclusive control over the movement and placement of inmates in its custody. The Defendant knowingly and intentionally transferred infested inmates into the crowded cells of healthy inmates, placing them in close proximity to a dangerous contagion. Plaintiff and the class members had no ability to transfer away from infested inmates.
65. The Defendant's failure and refusal to treat the scabies infestation allowed it to spread to new hosts and caused the infestation to intensify and spread. The Defendant therefore was the primary cause of the dangers to which Plaintiff was exposed and increased the vulnerability of Plaintiffs to these dangers.

66. The Defendant, having created the danger confronting the Plaintiff, owed a corresponding duty to protect Plaintiff by isolating those infested with scabies and to immediately treat them.

67. The Defendant's failure and refusal to acknowledge or respond to the scabies infestation deprived Plaintiff and members of the class of their rights to due process, guaranteed by the Fourteenth Amendment to the U.S. Constitution.

COUNT III: FAILURE TO TRAIN
[42 U.S.C. § 1983]

68. The Defendant failed and refused to train its employees upon the proper methods and means to detect, prevent, and treat scabies infections within its facility. The incidents of infestation were prevalent, involving hundreds of inmates. The Defendant's refusal to acknowledge the infestation, when confronted with hundreds of medical requests and grievances, is indicative of a profound lack of understanding, and is evidence of a failure to train.

CLASS ACTION

69. Plaintiffs seek class certification of all claims pursuant to Rule 23. The Defendant has acted or refused to act on grounds that apply generally to the class, so that the claims for damages and for final injunctive relief is appropriate respecting the class as a whole.

70. The class is defined as all female inmates exposed to and infested with scabies, who are, who have been, or who in the future may become, housed at the Defendant's facility in Washtenaw County, MI; specifically, the Gladwin unit.
71. The number of persons whose rights have been similarly violated by the Defendant are too numerous to join in this action. The Plaintiff class members are readily identifiable using records maintained in the regular course of business by Defendant.
72. The questions of law described in this Complaint and the facts regarding them are common to all persons who were exposed and subsequently contracted scabies because of the acts of the Defendant.
73. One common question is whether the Defendant has a policy or practice of refusing to provide Plaintiffs with medical care and were deliberately indifferent to the serious risk of physical and mental suffering caused by the scabies. In some instances, retaliating against them when they seek outside medical care.
74. Another common question is whether the Defendant fails to train its employees adequately in regard to the medical needs of inmates infested with scabies, in deliberate indifference to the obvious need for such training, and whether it maintains its lack of training in deliberate

indifference to the serious medical needs of its inmates infested with scabies.

75. The claims of the Plaintiff are typical of claims of this class, as their claims arise from the same policies, practices, acts, and omissions as those of the Plaintiff class. The named Plaintiffs' claims are based on the same theory as the claims of the respective class.
76. Plaintiff has been injured as a result of the Defendant's actions addressed in this lawsuit in the same way as the other members of the proposed class.
77. The Plaintiff will fairly and adequately protect the interests of the class. The named Plaintiff does not have any interests antagonistic to the interests of the class.
78. By way of this lawsuit, the named Plaintiff, on behalf of the proposed class, seeks in part to enjoin and restrain the unlawful acts and omissions of the Defendant.
79. The prosecution of separate claims would create a risk of inconsistent adjudications among members of the proposed class, and might establish inconsistent standards of conduct up the Defendant.
80. Adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not

parties to the adjudication, and might substantially impair or impede their ability to protect their interests.

81. The interests of Plaintiff as a class representative are identical to the interest of each class member.

INJUNCTIVE RELIEF

82. The class members who are currently incarcerated have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and injunctive relief sought herein is their only means of securing adequate relief.
83. The class members are now suffering, and will continue to suffer, irreparable injury from Defendants' unlawful conduct as set forth herein, unless enjoined by this Court.
84. Plaintiff class members seek a permanent injunction enjoining the Defendant, its agents, employees, and all those acting in concert with the Defendant under color of state law, from continuing to violate the Eighth and Fourteenth Amendments of the U.S. Constitution and to immediately cease intimidating, threatening, and retaliating against inmates for demanding medical care for their serious medical needs and to immediately provide adequate oral and topical medication sufficient to fully treat all those diagnosed with scabies.

85. Plaintiff class members seek a permanent injunction requiring the Defendant to provide a full medical staff adequate to meet the needs of those infested with scabies and capable of dispensing medication and monitoring their treatment until completion.

DAMAGES

86. Plaintiff brings this suit for all damages recoverable by law including, without limitation, damages for personal injury, for pain and suffering caused in the past and future, for loss of enjoyment of life past and future, for lost wages, for impairment of the Plaintiffs capacity to earn income, and for all medical expenses which are reasonable and necessary and made necessary by the acts and omissions of the Defendant.

87. In addition, because of the reckless and intentional conduct of the Defendant, Plaintiff and each member of the class are entitled to punitive damages.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment as follows:

1. That process issue to the Defendant to plead or respond in the time provided by law;
2. That the Court determine, as soon as practicable, and consistent with the requirements of Fed. R. Civ. P. 23, by order that Plaintiffs proposed class

action may be maintained, and provide notice as may be appropriate pursuant to Rule 23;

3. That the Court upon final hearing declare and find that the defendant was deliberately indifferent to the health and safety of the Plaintiff class members;
4. That Plaintiff class members be awarded a judgment against the Defendant for all damages available under Tennessee and federal law as will fully compensate the Plaintiff class members for all injuries caused by the Defendant's actions and failure to act, as alleged herein;
5. That Plaintiff class members be awarded punitive damages for the Defendant's fraudulent, intentional, reckless, and malicious conduct;
6. That this Court find that the policies, practices, procedures, conditions and customs of the Defendants are violative of the rights of Plaintiff class members as secured by the Eighth and Fourteenth Amendments of the U.S. Constitution.
7. That Plaintiff class members be awarded the costs of bringing this suit, including reasonable attorney's fees and litigation expense pursuant to 42 U.S.C. § 1988 and applicable law;
8. That Plaintiffs and the other Members of the Class be awarded such general relief to which they may be entitled, at law or in equity.

Respectfully submitted,

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/s/Daniel Randazzo

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