

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**NICHOLAS FRAZIER, *ET AL.***

**PLAINTIFFS**

**v.**

**Case No. 4:20-cv-00434-KGB**

**WENDY KELLEY, *ET AL.***

**DEFENDANTS**

**MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT  
AS TO WELLPATH**

Comes now Separate Defendant, Wellpath, LLC, (herein "Defendant"), by and through its counsel, Hardin, Jesson & Terry, PLC, and for its Motion to Dismiss Plaintiffs' Class Action Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.2, states:

1. Plaintiffs are individuals incarcerated at Arkansas Department of Correction ("DOC") facilities. Separate Defendant Wellpath, LLC provides healthcare services to inmates in DOC facilities.

2. Plaintiffs' Class Action Complaint asserts three causes of action: (1) a cruel and unusual punishment claim under the Eighth Amendment alleging deliberate indifference to a serious medical need; (2) a habeas corpus claim under the Eighth Amendment; and (3) an Americans with Disabilities (ADA) claim alleging failure to make reasonable accommodations in regards to provision of supplies and social distancing measures.

3. Plaintiffs' Complaint against Wellpath fails to state a claim upon which relief can be granted and should be dismissed as a matter of law.

4. Wellpath is entitled to immunity pursuant to the Arkansas Emergency Services Act (Ark. Code Ann. § 12-75-101 *et seq.*) and Executive Orders 20-03 and 20-34. Wellpath is an

“Emergency Responder” and the actions that form the basis of Plaintiffs’ claims were taken “in the course of providing COVID-19 related emergency management functions during this public health emergency.” *See* Executive Order 20-34, attached hereto as Exhibit A and incorporated herein by reference.

5. Wellpath is not a proper party to Plaintiffs Eighth Amendment habeas corpus claim or Plaintiffs’ ADA claim. Wellpath is not a state agent and does not have custody over Plaintiffs, which are requirements for a proper habeas corpus claim. Similarly, Wellpath is not a “covered entity” as to Plaintiffs’ claim for violation of the ADA.

6. Based upon the foregoing, Plaintiffs claims against Wellpath, LLC should be dismissed.

7. A Brief in Support is being filed with this Motion and is incorporated herein by reference.

WHEREFORE, Separate Defendant Wellpath, LLC prays that its Motion to Dismiss be granted, Plaintiffs’ claims against it be dismissed and for all other just and proper relief to which it may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kynda Almefty, one of the attorneys for the Separate Defendant Wellpath, LLC herein, do hereby certify that a true and correct copy of the above and foregoing pleading was filed electronically with the clerk through the CM/ECF system on February 4, 2021, which will electronically notify all counsel of record.