

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

-----X
ROBERT HILTON, on behalf of himself and all others
similarly situated,

Plaintiff,

CLASS ACTION
COMPLAINT

AUG 17 2005
250. Pd
LAWRENCE K. BAERMAN, CLERK
ALBANY
Summons Iss'd.
(WL)

-against-

LESTER N. WRIGHT, M.D., M.P.H.,
Associate Commissioner/ Chief Medical Officer, for the
New York State Department of Correctional Services;
and the NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES,

JURY TRIAL DEMANDED

05 -CV- 1038

Defendants.

LEK / GJD

-----X

Plaintiff ROBERT HILTON, by his attorneys KOOB & MAGOOLAGHAN, hereby

alleges as follows:

PRELIMINARY STATEMENT

1. ROBERT HILTON, an inmate who suffers from Hepatitis C and has repeatedly been identified by treating physicians as a patient in need of combination antiviral therapy, commences this action on behalf of himself and other similarly situated inmates as a result of defendants' unlawful and abhorrent pattern and practice of refusing to provide treatment to those individuals known to be suffering from this potentially fatal disease. The action is commenced pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, and seeks to immediately remedy defendants' persistent violations of plaintiff ROBERT HILTON'S Eighth and Fourteenth Amendment rights and his rights to be free of arbitrary discrimination.

2. Treatment by combination antiviral therapy has consistently been refused to those inmates confined under the care and custody of the New York State Department of Correctional Services (“DOCS”) who suffer from Hepatitis C because of a DOCS’ Hepatitis C Protocol that unconstitutionally and irrationally requires any prisoner who has used drugs or alcohol at any time in their life to participate in a non-medical prison-run substance abuse treatment program prior to receiving Hepatitis C treatment.

3. Although attendance in and completion of the substance abuse program has no foundation in the medical treatment of Hepatitis C, defendants have imposed the requirement as a means of limiting the number of prisoners who receive the antiviral therapy in order to avoid the substantial expenses associated with the treatment. Thus, absent medical justification, defendants impose their unprecedented Hepatitis C Protocol on all prisoners with Hepatitis C, regardless of how advanced their illness has progressed, how much time has elapsed since the prisoner last used drugs or alcohol, regardless of whether the prisoner ever abused drugs or alcohol in a clinical sense, regardless of whether the prisoner had ever been found using drugs or alcohol while in prison, and regardless of whether the prisoner had ever participated in drug and alcohol treatment programs in the past.

4. Moreover, defendants’ impose their Hepatitis C Protocol on all prisoners with Hepatitis C despite the fact that the substance abuse program is not available to hundreds of patients in immediate need of treatment because only a very limited number of inmates can attend the program at one time. Thus, due to the backlog in applications for the program, even Hepatitis C patients who agree to attend the program, like Mr. HILTON, must nevertheless wait an extensive period of time before they even have the opportunity to comply with DOCS’ Hepatitis C Protocol. During the waiting period, all treatment is denied.

5. Furthermore, once an inmate finally becomes eligible to attend the substance abuse program, defendants' nevertheless deny their participation in the program if, by that time, there is a speculative possibility that the inmate might be released on parole before finishing the substance abuse program. Thus any Hepatitis C patient who has even the remotest possibility of release on parole within six months of the time they become eligible to attend the substance abuse program is categorically denied access to treatment for their Hepatitis C until such time as they are actually released from DOCS' custody.

6. Defendants' actions are contrary to law, contrary to sound medical practice, and contrary to the norms of a civilized society. As a result of defendants' conduct, plaintiff has suffered and will continue to suffer permanent physical harm, emotional distress and mental anguish, and an increased risk of death. Accordingly, plaintiff brings this action seeking compensatory and punitive damages, and declaratory and injunctive relief for defendants' violations of his Eighth and Fourteenth Amendment rights and his rights under the ADA and Section 504.

JURISDICTION AND VENUE

7. This action arises under the Eighth and Fourteenth Amendments to the United States Constitution, the ADA, Section 504, and under 42 U.S.C. §§ 1983 and 1988.

8. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

9. The acts complained of occurred in the Northern District of New York and venue is properly lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY DEMAND

10. Plaintiff demands trial by jury in this action.

THE PARTIES

11. Plaintiff ROBERT HILTON has been under DOCS' care and custody since August, 2004, and is and was at all relevant times confined at either the Washington Correctional Facility ("Washington"), located in Comstock, New York, or the Altona Correctional Facility ("Altona"), located in Altona, New York.

12. Defendant LESTER N. WRIGHT, M.D., M.P.H. is and was at all relevant times herein the Associate Commissioner and Chief Medical Officer for the New York State Department of Correctional Services ("DOCS") and as such he is and was responsible for the supervision and administration of the provision of medical services at the State's correctional facilities. Defendant WRIGHT is and was responsible for the development and implementation of medical policies and practices for prisoners in the custody of DOCS, including Mr. HILTON. Defendant WRIGHT is personally responsible for the development and implementation of the Hepatitis C treatment eligibility guidelines challenged in this case. Defendant WRIGHT is sued in his individual and official capacity.

13. Defendant NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES is the agency created by the State of New York for the purpose of operating prison facilities within New York State and is a "public entity" as that term is used in 42 U.S.C. § 12131(1). Upon information and belief, at all relevant times herein, DOCS received federal financial assistance for the operation of prison facilities within New York State, including the Washington and Altona facilities.

14. All defendants named herein acted under color of state law at all relevant times.

FACTUAL ALLEGATIONS

Progression and Treatment of Hepatitis C

15. Hepatitis C is a progressive viral disease that attacks the liver, often with fatal consequences.
16. About one fifth of individuals with chronic Hepatitis C eventually develop cirrhosis of the liver.
17. Because so many Hepatitis C patients develop cirrhosis of the liver, Hepatitis C is a leading cause of liver transplantation in the United States.
18. Treatment of chronic Hepatitis C is generally achieved through combination therapy (a combination of the drugs interferon and ribavirin).
19. Pegylated interferon, which is a type of interferon administered once per week, has achieved the highest response rates when combined with ribavirin and is currently recognized by a consensus of the medical community as the standard treatment for Hepatitis C.
20. The effectiveness of treatment for Hepatitis C is dependent on many factors. Where treatment is delayed, it becomes less effective because chronic Hepatitis C causes increased fibrosis, or scarring of liver tissue, and eventual cirrhosis of the liver.
21. If a patient develops liver cirrhosis, there is a substantial likelihood that antiviral therapy will be ineffective and the only alternative to a painful death will be liver transplantation.
22. In addition to making treatment ineffective, progression to cirrhosis or advanced fibrosis exposes patients to an increased risk of developing hepatocellular carcinoma, a cancer of the liver.
23. In light of the foregoing, any delay in providing treatment to individuals with chronic Hepatitis C exposes them to an elevated risk of serious physical harm, grave and substantial pain

and suffering, and death.

24. In light of the foregoing, it is well-accepted within the medical community that Hepatitis C should be diagnosed as soon as possible, and treated promptly where medically indicated.

Mr. HILTON's Medical Condition Prior to His Current Incarceration

25. Prior to Mr. HILTON's current incarceration, and in or around December, 1999, Mr. HILTON had a biopsy that revealed that he has Hepatitis C and that his liver disease by then had progressed to Grade 2 Stage 2 portal tract fibrosis.

26. The Grade 2 Stage 2 designation reflects the standard classification spectrum developed to grade the progress of liver deterioration, whereby incipient damage is classified as Grade 1, Stage 1 and pervasive inflammation and scarring, or cirrhosis, rates at Grade 4, Stage 4.

27. The moderate fibrosis and inflammation reflected in Mr. HILTON's December 1999 liver biopsy indicated a risk that his liver disease would progress to cirrhosis.

28. The December 1999 biopsy diagnosis, combined with other clinical indicators, led doctors at Bellevue Hospital to institute a course of antiviral treatment for Mr. HILTON in 2002.

29. At all times relevant to this complaint, it was universally accepted within the medical community that a continuous 48 week course of treatment combining pegylated interferon and ribavirin is necessary to completely treat Hepatitis C virus of the Type 1 genotype (the genotype of Mr. HILTON's Hepatitis C).

30. The antiviral treatment commenced at Bellevue in 2002 was interrupted after approximately 12 weeks of treatment after Mr. HILTON became homeless.

31. Mr. HILTON entered DOCS custody on or about August 18, 2004, and after being held in reception at Downstate Correctional Facility for two or three days, was confined at

Altona.

32. When Mr. HILTON entered DOCS custody, he underwent a physical examination and a battery of blood tests.

33. At Mr. HILTON's physical examinations at Downstate and Altona, he reported to the medical staff that he suffered from Hepatitis C and that his initial antiviral therapy, initiated at Bellevue Hospital, had been interrupted prior to completion.

34. Mr. HILTON additionally informed Altona medical staff that medical providers he consulted with at Metropolitan Hospital in New York City had, prior to his incarceration, recommended that his antiviral therapy be commenced again.

35. Medical records generated while Mr. HILTON was in the custody of the New York City Department of Correction revealed that, on May 8, 2004, Mr. HILTON had elevated liver function tests and had tested positive for Hepatitis C. Upon information and belief, these medical records accompanied Mr. HILTON when he entered DOCS custody and provided additional evidence of the need to institute antiviral therapy.

Denial of Treatment to Robert HILTON Due to DOCS' Hepatitis C Treatment Protocol

36. Despite Mr. HILTON's presenting symptoms in August, 2004, the Altona medical staff did not even begin to screen and evaluate Mr. HILTON for Hepatitis C treatment until on or about October 6, 2004. Once the screening and evaluation process was begun, it was not completed until March, 2005, seven months later, at which time Mr. HILTON was finally medically cleared for Hepatitis C treatment.

37. Under all accepted medical standards, it should take no longer than six weeks to evaluate an individual for Hepatitis C treatment.

38. Upon information and belief, the delay in screening Mr. HILTON for Hepatitis C

treatment upon his confinement in Altona was caused by the failure of DOCS and Dr. WRIGHT to provide a prompt system for evaluating individuals with Hepatitis for treatment.

39. Upon information and belief, DOCS and Dr. WRIGHT have intentionally failed to provide for the prompt testing and evaluation of individuals with Hepatitis C as a means to reduce the number of individuals who are treated by DOCS for Hepatitis C.

40. The delay between August 2004 and March, 2005, in medically clearing Mr. HILTON for Hepatitis C treatment upon his transfer from the custody of the New York City Department of Corrections to the New York State Department of Correctional Services constituted deliberate indifference to Mr. HILTON's serious and potentially fatal medical condition.

41. After Mr. HILTON was medically cleared for Hepatitis C treatment, and on or before March 23, 2005, the medical staff at Altona referred plaintiff for evaluation by a gastroenterologist.

42. On or about April 22, 2005, Mr. HILTON was sent to Coxsackie Correctional Facility to be examined by a gastroenterologist, who recommended that Mr. HILTON begin treatment with a combination of pegylated interferon and ribavirin. The gastroenterologist made no recommendation whatsoever that Mr. HILTON was required to attend a substance abuse program.

43. On or about May 2, 2005, medical providers at Altona completed a "Health Services Hepatitis C Form." On the form the providers entered various notations relating to Mr. HILTON's presentation, including information relating to laboratory measures of viral infection and liver function.

44. One space on the Health Services Hepatitis C Form which the Altona providers did

not complete, referred to enrollment in or completion of a prison-run substance abuse treatment program.

45. At the time the Health Services Hepatitis C Form was completed by the Altona providers, there had been no recommendation by any medical or other staff that Mr. HILTON enroll in or complete a prison-run substance abuse program as a condition of receiving the antiviral treatment recommended by the outside specialist.

46. On or about May 4, 2005, Mr. HILTON was cleared to receive Hepatitis C treatment by New York State Office of Mental Health personnel, and Mr. HILTON signed a Hepatitis C Treatment Consent Form, consenting to the initiation of combination antiviral therapy.

47. On or about May 4, 2005, all DOCS and outside medical staff who had individually evaluated Mr. HILTON for treatment with antiviral therapy uniformly had determined that he was both eligible to receive treatment and that it was medically appropriate for him to receive treatment.

48. Despite the foregoing, Mr. HILTON, who by May, 2005 had not used any illicit drugs for more than 13 years, was denied treatment for Hepatitis C because of the Hepatitis C Protocol that was developed and promulgated for DOCS by Dr. WRIGHT. Specifically, with callous and calculated disregard for Mr. HILTON's serious medical illness defendants, by decision rendered in May, 2005, denied him treatment for Hepatitis C until such time as he completed DOCS substance abuse program.

Defendants' Hepatitis C Protocol

49. The Hepatitis C protocol developed and/or utilized by Dr. WRIGHT and DOCS requires anyone who has ever admitted to using drugs or alcohol in the past to participate in a prison-run alcohol and substance abuse treatment program before receiving Hepatitis C

treatment.

50. There are two principal prison-run alcohol and substance abuse treatment programs: ASAT, which consists of daily classes over a period of six months; and RSAT, which is similar to ASAT but which requires participants to reside in a particular cell-block during the program.

51. Neither RSAT nor ASAT is supervised by medical staff, nor does either program require that instructors be accredited substance abuse counselors.

52. DOCS and Dr. WRIGHT have demonstrated a pattern and practice of applying the ASAT/RSAT requirement in a manner indicating defendants' disregard for reasoned and universally shared medical opinion regarding the treatment of Hepatitis C. Specifically, DOCS and Dr. WRIGHT have applied the ASAT/RSAT requirement, and denied treatment for Hepatitis C to patients until they have completed the substance abuse program:

- a. regardless of the stage at which the disease has progressed;
- b. regardless of whether the requirement contravenes the treatment recommendations of DOCS' own treating physicians and specialists;
- c. regardless of how much time has passed since the prisoner last used drugs;
- d. even upon prisoners who have not used drugs for more than a decade;
- e. regardless of whether a prisoner's past use of drugs or alcohol constituted "abuse" under clinical diagnostic criteria such as those enumerated in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, also known as the DSM-IV;
- f. regardless of whether the ASAT or RSAT programming is actually available in the correctional facility in which the prisoner is confined;
- g. regardless of whether the prisoner had previously completed a substance abuse treatment program, such as Alcoholics Anonymous, Narcotics Anonymous and the like,

even if the program completed was offered at and sanctioned by a DOCS' facility; and

h. regardless of whether DOCS actually has space available in its ASAT or RSAT programs to allow the prisoner to fulfill the requirement.

53. At the time Mr. HILTON was denied Hepatitis C treatment there was an extremely long waiting list to get into both ASAT and RSAT programs.

54. Upon information and belief prisoners, including those confined at Altona and Washington, continue to be denied access to substance abuse programs because the ASAT and RSAT programs remain subject to long waiting lists that include many prisoners seeking to participate in the programs to comply with recommendations made by programming and counseling staff.

55. Upon information and belief some correctional facilities had more than one thousand (1,000) prisoners on their ASAT/ RSAT waiting lists in 2004.

56. Upon information and belief, because of limited enrollment space, it could take several years before an inmate could become eligible to participate in a substance abuse program at some DOCS facilities.

57. The Hepatitis C protocol developed and/or utilized by Dr. WRIGHT and DOCS is applied irrationally and has no foundation in medical science.

58. There is no medical support for denying treatment for Hepatitis C to a patient who has admitted to drug or alcohol use in the past but who is not contemporaneously participating in a drug treatment program.

59. Informed medical judgment recognizes that even active drug users may be appropriate candidates for Hepatitis C treatment, whether they participate in drug abuse treatment programs or not.

Plaintiff's Attempt to Satisfy Defendants' Unconstitutional and Illegal Protocol

60. Defendants' May, 2005 callous determination to deny Mr. HILTON's treatment for his Hepatitis C until such time as he completed the ASAT/RSAT was without medical justification.

61. At the time that Altona medical staff recommended treatment for Mr. HILTON, he had not used any illicit drugs for more than a decade. In fact, in 1993, upon a previous commitment to DOCS custody, Mr. HILTON reported that he had last smoked marijuana and sniffed cocaine when he was a teenager.

62. Mr. HILTON spent much of the time since 1993 either in DOCS custody or under the supervision by the New York State Division of Parole. As a result, Mr. HILTON was periodically required to submit to drug tests, and those drug tests uniformly showed him to be drug free.

63. When Mr. HILTON returned to DOCS custody in August 2004, he denied any ongoing drug use or abuse, and there is no evidence to call this denial into question.

64. Nonetheless, after Mr. HILTON was informed that, to receive Hepatitis C medication, he had to participate in a prison-run substance abuse treatment program, he elected to comply with defendant WRIGHT's and DOCS policy in an effort to expedite his treatment.

65. Mr. HILTON elected to participate in a substance abuse program even though the requirement was wholly extraneous not only to the treatment indicated for his Hepatitis C but also, in light of his lengthy abstinence from drug use, to his overall health needs.

66. Mr. HILTON was placed on the wait list for participation in RSAT at Altona because of the high demand for participation in the program.

67. Upon information and belief, on or about May 10, 2005, Dr. WRIGHT informed

medical staff at Altona that Mr. HILTON's presence on the wait list for RSAT did not qualify him to receive medication for his Hepatitis C, because he was not actively enrolled in RSAT.

68. Thus despite Mr. HILTON's agreement to complete the ASAT/RSAT requirement, he was denied participation in same, and remained without medical care.

69. On or about May 16, 2005 Mr. HILTON was transferred to Washington. Upon his transfer Mr. HILTON filed a prison grievance demanding immediate antiviral therapy.

70. The Washington Inmate Grievance Resolution Committee, composed of two prisoners and two staffpersons, unanimously found that Mr. HILTON's grievance was warranted and that he should be provided with the antiviral therapy recommended by Mr. HILTON's treating physicians.

71. On or about June 8, 2005, the grievance committee's recommendation was rejected by Superintendent James Plescia of Washington, whose decision was upheld by the Central Office Review Committee upon Mr. HILTON's appeal.

72. The Central Office Review Committee rejected the recommendation of the Grievance Committee because the Hepatitis C protocol developed and/or utilized by Dr. WRIGHT and DOCS' prohibits the administration of antiviral therapy to Mr. HILTON until such time as he satisfies the ASAT/RSAT requirement set forth in the Hepatitis C Protocol.

73. While confined at Washington, counseling staff attempted to enroll Mr. HILTON in ASAT, the Washington facility's analogue to the RSAT programming for which he had been wait-listed at Altona.

74. On or about July 28, Mr. HILTON was informed that his application to enroll in ASAT was rejected because his parole eligibility date of November 2, 2005 would be reached prior to the conclusion of the six months of participation usually required of enrollees. Mr.

HILTON thus remains without treatment, and without access to treatment, as a direct result of defendants' Hepatitis C Protocol.

75. Mr. HILTON continues to be denied the antiviral treatment prescribed by a consultant, and sought by his doctors at Altona and Washington, because DOCS has predicated his eligibility for treatment on enrollment in unrelated, unnecessary, and, in fact, unavailable substance abuse programming.

76. As antiviral treatment continues to be denied on the basis of this Catch 22, Mr. HILTON's liver continues to deteriorate.

77. The refusal to treat Mr. HILTON is a result of defendants' policy and practice of deliberately disregarding the risk to prisoners' health caused by delays in treatment of Hepatitis C and defendants' deliberate disregard of the risk to categorically refusing to treat prisoners with Hepatitis C.

78. Upon information and belief, the policy, pattern and practice of defendants DOCS and WRIGHT of delaying the diagnosis of and treatment for Hepatitis C to any prisoner who has ever admitted to using drugs or alcohol in the past is unnecessarily and in contravention of good and accepted medical practice.

79. Upon information and belief, DOCS and WRIGHT have maintained their policy, pattern and practice regarding Hepatitis C for the purpose of avoiding the costs inherent in offering Hepatitis C treatment to prisoners in DOCS custody.

80. As a direct result of defendants' policy and practice, Mr. HILTON has been denied access to treatment for Hepatitis C.

81. As a direct result of defendants' policy and practice, Mr. HILTON has been denied medical treatment for a progressive, potentially fatal, liver disease.

82. Defendants' denial of medical care to Mr. HILTON results in serious physical harm to plaintiff, as well as an increased risk of death.

83. The refusal by defendants WRIGHT and DOCS to treat Mr. HILTON is not medically justified and evidences defendants' callous disregard to the threat presented to plaintiff's health by Hepatitis C.

84. Upon information and belief, defendants DOCS and Dr. WRIGHT have maintained their policy and practice of discrimination in the face of substantial risk of serious physical harm to Mr. HILTON and other similarly situated prisoners.

85. Upon information and belief, the policy and practice of DOCS and WRIGHT bears no rational relationship to any legitimate governmental interest and/or is motivated by ill will or animus toward prisoners with a past history of drug or alcohol use, including Mr. HILTON.

86. By imposing the ASAT/RSAT requirement blindly on all past drug and alcohol users, defendants DOCS and WRIGHT have demonstrated that they regard all persons who have ever used drugs, including Mr. HILTON, to have a physical or mental impairment that substantially limits one or more of the major life activities of such individuals.

87. Accordingly, under the policy imposed and applied by defendants DOCS and WRIGHT, all past drug or alcohol users, including Mr. HILTON, are regarded by defendants as having a disability under the ADA and Section 504. See 29 U.S.C. § 705(20)(B)(iii); 42 U.S.C. § 12102 (2)(C).

88. In addition, defendants' policy discriminates against prisoners on the basis of prior drug use and/or abuse, which discrimination is separately prohibited by the ADA and Section 504.

89. By imposing the ASAT/RSAT requirement upon all prisoners who have ever

admitted to using drugs or alcohol, defendants have discriminated against such prisoners, including Mr. HILTON, on the basis of their perception that such prisoners have a disability and on the basis of their prior drug use or abuse.

90. Defendants' conduct in refusing treatment of Mr. HILTON's Hepatitis C evidences defendants' deliberate indifference to plaintiff's serious medical needs and defendants' cruel and unusual treatment in violation of the Eighth Amendment to the United States Constitution.

91. As a result of defendants' deliberate indifference, Mr. HILTON has experienced an increased risk of death, extreme pain and suffering, and emotional distress.

92. Plaintiff has exhausted his administrative remedies, to the extent they were made available to him.

CLASS ACTION ALLEGATIONS

93. Plaintiff brings this action on his own behalf and, pursuant to Rule 23(b)(1), Rule 23(b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all prisoners with Hepatitis C who must now or in the future meet defendants' ASAT/RSAT requirement to obtain treatment.

- a. The exact size of the class is unknown to plaintiff but upon information and belief more than 8,500 male inmates and more than 700 female inmates are infected with Hepatitis C. Upon information and belief, less than 2% of these prisoners receive antiviral therapy, though it is likely that at least 20% of prisoners with Hepatitis C are deemed medically appropriate candidates for treatment. Accordingly, plaintiff conservatively estimates that the size of the class is larger than 1500 prisoners.
- b. The conditions, practices and omissions that form the basis of this

complaint are common to all members and the relief sought – voiding defendant DOCS and WRIGHT’s categorical ASAT/RSAT requirement – will apply to the entire class.

- c. The claims of plaintiff are typical of the claims of the entire class.
- d. The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the defendants.
- e. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests.
- f. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class as a whole.
- g. There are questions of law and fact common to the members of the class, including defendants’ violations of the Constitution of the United States, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, based on their failure to provide prisoners with Hepatitis C antiviral therapy necessary to treat their disease.
- h. The questions of law and fact common to the members of the class predominate over questions affecting individual class members.
- I. Proceeding as a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

- j. The named plaintiff is capable of fairly and adequately representing the class and protecting its interests. Koob & Magoolaghan, counsel for plaintiff, is a private civil rights law firm experienced in prisoners' civil rights litigation that, through prior litigation has secured court-ordered institutional reform within several DOCS-operated prisons. Koob & Magoolaghan also has recently secured Hepatitis C treatment for individual DOCS prisoners through federal and state court litigation.

FIRST CAUSE OF ACTION

94. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraphs numbered 1 through 93.

95. Defendant WRIGHT's past and continuing failure to provide plaintiff ROBERT HILTON with adequate treatment for Hepatitis C during his period of confinement in DOCS custody demonstrates deliberate indifference to and/or willful neglect of plaintiff's serious medical needs constituting cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

96. As a result of defendant's violation of plaintiff's constitutional rights, plaintiff has suffered severe pain and suffering, including unnecessary pain and discomfort, a deterioration of his health, loss of future earnings, permanent disability, and mental and emotional distress, and accordingly plaintiff is entitled to compensatory damages against defendant WRIGHT in an amount to be determined at trial, punitive damages in an amount to be determined at trial, and appropriate injunctive and declaratory relief against defendants WRIGHT, including but not limited to the provision of treatment with pegylated interferon combination therapy.

SECOND CAUSE OF ACTION

97. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraphs numbered 1 through 96.

98. Defendants WRIGHT and DOCS's past and continuing failure to provide plaintiff ROBERT HILTON with adequate treatment for Hepatitis C during his period of confinement in DOCS custody discriminates against qualified individuals with disabilities, including Plaintiff ROBERT HILTON, in violation of the Americans With Disabilities Act, 42 U.S.C. § 12132.

99. As a result of defendants' violation of plaintiff's constitutional rights, plaintiff has suffered severe pain and suffering, including unnecessary pain and discomfort, a deterioration of his health, loss of future earnings, permanent disability, and mental and emotional distress, and accordingly plaintiff is entitled to compensatory damages against defendant WRIGHT in an amount to be determined at trial, punitive damages in an amount to be determined at trial, and appropriate injunctive and declaratory relief against defendants WRIGHT and DOCS, including but not limited to the provision of treatment with pegylated interferon combination therapy.

THIRD CAUSE OF ACTION

100. Plaintiff repeats and realleges as if fully set forth herein the allegations contained in paragraphs numbered 1 through 99.

101. Defendants WRIGHT and DOCS's past and continuing failure to provide plaintiff ROBERT HILTON with adequate treatment for Hepatitis C during his period of confinement in DOCS custody discriminates against qualified individuals with disabilities, including Plaintiff ROBERT HILTON, in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

102. As a result of defendants' violation of plaintiff's constitutional rights, plaintiff has

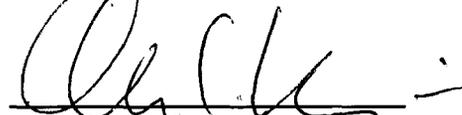
suffered severe pain and suffering, including unnecessary pain and discomfort, a deterioration of his health, loss of future earnings, permanent disability, and mental and emotional distress, and accordingly plaintiff is entitled to compensatory damages against defendant WRIGHT in an amount to be determined at trial, punitive damages in an amount to be determined at trial, and appropriate injunctive and declaratory relief against defendants WRIGHT and DOCS, including but not limited to the provision of treatment with pegylated interferon combination therapy.

WHEREFORE, plaintiff respectfully request judgment be entered against defendants and that this Court enter an Order:

- (A) granting plaintiff's request for certification of this action as a class action;
- (B) awarding compensatory damages in an amount to be determined at trial;
- (C) awarding punitive damages against defendants in an amount to be determined at trial;
- (D) awarding appropriate injunctive relief, including that defendants WRIGHT and DOCS treat plaintiff with pegylated interferon and ribavirin;
- (E) declaring unconstitutional the policy and practice of denying Mr. HILTON access to treatment for his Hepatitis C;
- (F) declaring unconstitutional defendants' policy and practice of predicating eligibility for Hepatitis C treatment on enrollment in substance abuse programming;
- (G) awarding reasonable attorneys' fees, costs, and disbursements under 29 U.S.C. § 794a, 42 U.S.C. § 12205; and 42 U.S.C. § 1988; and
- (H) directing such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action.

Dated: New York, New York
August 16, 2005

KOOB & MAGOOLAGHAN

A handwritten signature in black ink, appearing to read 'Alex Reinert', written over a horizontal line.

By: Alexander A. Reinert (Bar No. 512944)

Keith M. Donoghue (Bar No. 513215)

Elizabeth L. Koob (Bar No. 506158)

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