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and on behalf of a class of similarly situated persons

13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 * * * * *

17 IN RE: HCV PRISON LITIGATION

Case No: 3:19-cv-00577-MMD-CLB

18 This document relates to:

AMENDED CLASS ACTION COMPLAINT

19 **ALL ACTIONS**
20

21 **AMENDED CLASS ACTION COMPLAINT**
22

23 1. Plaintiffs Marty Scott Fitzgerald, Elizabeth Carley, Donald Savage, Howard White,
24 Carl Olsen, Scott Bedard, Stephen Ciolino and Mitchell Fields (“Plaintiffs”), on behalf of
25 themselves and others similarly situated, bring this class action lawsuit pursuant to the Court’s
26 Order (ECF No. 1). Plaintiffs seek declaratory and injunctive relief, and to certify a class seeking
27 the same, from the State of Nevada’s practice of withholding or delaying curative treatment to
28

1 inmates with chronic Hepatitis C Virus (“HCV”) without medical justification. This curative
2 treatment is commonly referred to as direct-acting antiviral treatment (“DAA”).

3 2. After the consolidation of this litigation on October 9, 2019, and less than three
4 weeks prior to the date set for the filing of this pleading and the hearing that was set in this matter,
5 the Nevada Department of Corrections amended its medical policies to purportedly expand access
6 to curative HCV treatment. **Exhibit 1**, Medical Directive 219, Eff. Nov. 15, 2019. This appears to
7 be some progress as the revised Medical Directive 219 (“MD 219”) now requires HCV testing for
8 all inmates during the intake process and seems to provide access to HCV treatment without some
9 of the previous barriers that existed. However, the new MD 219 only represents theoretical
10 improvement. There is not a medical justification for delaying curative treatment, through the
11 various priority categories established in MD 219, as the medical standard of care is to provide
12 this curative treatment to individuals in any of the three listed categories.

13 3. HCV is a widespread contagious liver disease and Defendants are aware that
14 withholding or delaying curative DAA treatment can lead to irreversible liver damage, prolonged
15 suffering, and death.

16 **JURISDICTION AND VENUE**

17 4. Plaintiffs bring this action under 42 U.S.C. § 1983, the Eighth and Fourteenth
18 Amendments to the United States Constitution, the Americans with Disabilities Act of 1990, 42
19 U.S.C. §§ 12101, et seq, and the Equal Protection Clause of the Fourteenth Amendments to the
20 U.S. Constitution via 42 U.S.C. § 1983.

21 5. Jurisdiction is proper under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

22 6. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2), because the events that gave
23 rise to this cause of action—the formulation and execution of the versions of MD 219—occurred
24 in Nevada and the Defendants reside in Nevada.

25 7. Plaintiffs seek a preliminary and permanent injunction pursuant to Federal Rule of
26 Civil Procedure 65.

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PLAINTIFFS

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2 1. Plaintiff Elizabeth Carley is currently incarcerated at the Florence McClure
3 Women’s Correctional Center Facility in Las Vegas, Nevada, where medical care is administered
4 by Defendants. Ms. Carley is in the legal custody and control of NDOC and has been diagnosed
5 with chronic HCV. Defendants have repeatedly and continuously denied or withheld DAA
6 treatment for her, even though she was and continues to be a candidate for DAA treatment under
7 the medical standard of care.

8 2. Plaintiff Marty Fitzgerald is currently incarcerated under sentence at the High
9 Desert State Prison in Indian Springs, Nevada where medical care is administered by Defendants.
10 He is in the legal custody and control of Nevada Department of Corrections (“NDOC”) and has
11 been diagnosed with chronic HCV. Defendants have repeatedly and continuously denied or
12 withheld DAA treatment from him, even though he was and continues to be a candidate for DAA
13 treatment under the medical standard of care.

14 3. Plaintiff Howard White is currently incarcerated at the Northern Nevada
15 Correctional Center in Carson City, Nevada where medical care is administered by Defendants.
16 He is in the legal custody and control of NDOC and has been diagnosed with chronic HCV.
17 Defendants have repeatedly and continuously denied or withheld DAA treatment from him, even
18 though he was and continues to be a candidate for DAA treatment under the medical standard of
19 care.

20 4. Plaintiff Stephen Ciolino is currently incarcerated at the High Desert State Prison
21 in Indian Springs, Nevada where medical care is administered by Defendants. He is in the legal
22 custody and control of NDOC and has been diagnosed with chronic HCV. Defendants have
23 repeatedly and continuously denied or withheld DAA treatment from him, even though he was and
24 continues to be a candidate for DAA treatment under the medical standard of care.

25 5. Plaintiff Carl Olsen is currently incarcerated at the Lovelock Correctional Center
26 in Lovelock, Nevada where medical care is administered by Defendants. He is in the legal custody
27 and control of NDOC and has been diagnosed with chronic HCV. Defendants have repeatedly and
28

1 continuously denied or withheld DAA treatment from him, even though he was and continues to
2 be a candidate for DAA treatment under the medical standard of care.

3 6. Plaintiff Mitchell Fields is currently incarcerated at the Lovelock Correctional
4 Center in Lovelock, Nevada where medical care is administered by Defendants. He is in the legal
5 custody and control of NDOC and has been diagnosed with chronic HCV. Defendants have
6 repeatedly and continuously denied or withheld DAA treatment from him, even though he was and
7 continues to be a candidate for DAA treatment under the medical standard of care.

8 7. Plaintiff Scott Bedard is currently incarcerated at the Lovelock Correctional Center
9 in Lovelock, Nevada where medical care is administered by Defendants. He is in the legal custody
10 and control of NDOC and has been diagnosed with chronic HCV. Defendants have repeatedly and
11 continuously denied or withheld DAA treatment from him, even though he was and continues to
12 be a candidate for DAA treatment under the medical standard of care.

13 8. Plaintiff Don Savage is currently incarcerated at the Northern Nevada Correctional
14 Center in Carson City, Nevada where medical care is administered by Defendants. He is in the
15 legal custody and control of NDOC and has been diagnosed with chronic HCV. Defendants have
16 repeatedly and continuously denied or withheld DAA treatment from him, even though he was and
17 continues to be a candidate for DAA treatment under the medical standard of care.

18 9. Plaintiffs have exhausted all available administrative remedies.

19 **DEFENDANTS**

20 10. The State of Nevada ex rel. Nevada Department of Corrections operates the
21 correctional facilities where all of the Plaintiffs are currently located. The Nevada Department of
22 Corrections is an executive agency within the Nevada government.

23 11. Nevada Department of Corrections Director Charles Daniels was appointed by
24 Governor Sisolak on December 2, 2019 and is sued in his official capacity. In this role, he has
25 oversight and authority over all aspects of the management and governance of NDOC. He has
26 overall responsibility for NDOC budget and for ensuring the delivery of necessary medical care
27 for the serious medical needs of all individuals held in NDOC's correctional facilities and
28 contracted correctional facilities. He has participated in decision-making regarding NDOC's

1 chronic HCV policy, communicated with medical professionals and others regarding NDOC's
2 chronic HCV policy, and has been involved in creating the policy and policies that withhold DAA
3 treatment based on non-medical considerations. At all relevant times with respect to the actions
4 alleged herein, Defendant Daniels has acted and will continue to act under color of state law.

5 12. Former Nevada Department of Corrections Acting Director Harold Wickham is
6 sued in his official capacity. In that role, which he held for parts of 2019, he has oversight and
7 authority over all aspects of the management and governance of NDOC. He has overall
8 responsibility for NDOC budget and for ensuring the delivery of necessary medical care for the
9 serious medical needs of all individuals held in NDOC's correctional facilities and contracted
10 correctional facilities. He has participated in decision-making regarding NDOC's chronic HCV
11 policy, communicated with medical professionals and others regarding NDOC's chronic HCV
12 policy, and has been involved in creating the policy and policies that withhold DAA treatment
13 based on non-medical considerations. At all relevant times with respect to the actions alleged
14 herein, Defendant Wickham has acted and will continue to act under color of state law.

15 13. Former Nevada Department of Corrections Director James Dzurenda is sued in his
16 official capacity. In that role, which he held until 2019, he had oversight and authority over all
17 aspects of the management and governance of NDOC. He had overall responsibility for NDOC
18 budget and for ensuring the delivery of necessary medical care for the serious medical needs of all
19 individuals held in NDOC's correctional facilities and contracted correctional facilities. He
20 participated in decision-making regarding NDOC's chronic HCV policy, communicated with
21 medical professionals and others regarding NDOC's chronic HCV policy, and was involved in
22 creating the policy and policies that withhold DAA treatment based on non-medical
23 considerations. At all relevant times with respect to the actions alleged herein, Defendant Dzurenda
24 has acted and will continue to act under color of state law.

25 14. Defendants Romeo Aranas, M.D. and Michael Minev, M.D. are sued in their
26 official capacities as the respective current and former Medical Directors for NDOC respectively.
27 In these roles, they had oversight and authority over the delivery of necessary medical care for the
28 serious medical needs of all individuals held in NDOC's correctional facilities and contracted

1 correctional facilities. They participated in developing the policy or practice that withholds or
2 delays DAAs from hundreds of inmates and has proactively or constructively denied inmates
3 access to DAAs under that policy. Defendant Minev directly signed and dated the current version
4 of MD 219. They participated in decisionmaking regarding NDOC's chronic HCV policy,
5 communicated with medical professionals and others regarding NDOC's chronic HCV policy, and
6 were closely involved in creating the policy that withholds or delays DAA treatment based on non-
7 medical considerations. At all relevant times with respect to the actions alleged herein, they acted
8 and will continue to act under color of state law.

9 15. The Defendants have statutory authority to implement the relief sought in this
10 Complaint.

11 **GENERAL ALLEGATIONS**

12 16. Hepatitis C is a blood-borne infectious disease, which is transmitted through
13 exposure to infected blood.

14 17. Hepatitis C is a growing public health crisis both in Nevada and throughout the
15 United States. Approximately 1% of the population are living with HCV active in their bodies and
16 the true prevalence is likely to be even higher. More than 20,000 people in the United States die
17 each year due to liver disease caused by HCV, making it the deadliest infectious disease in our
18 nation. Approximately 85% of individuals with HCV will develop chronic infection, which is
19 typically characterized as a Hepatitis C infection that lasts longer than six months.

20 18. Chronic HCV is a disease that damages the liver, with the potential to affect
21 multiple other organs and bodily functions. The CDC reports approximately 40% of all those with
22 chronic HCV will develop cirrhosis. For those with advanced fibrosis and cirrhosis, there is a 1-
23 5% annual risk of hepatocellular carcinoma and a 3-6% annual risk of hepatic decompensation,
24 for which the risk of death in the following year is 15-20% as well as HCV being the leading cause
25 for liver transplant in the US.

26 19. Individuals infected with chronic HCV suffer from a range of hepatic (affecting the
27 liver) and extrahepatic (affecting other organ systems) symptoms.

28

1 20. A common hepatic manifestation of chronic HCV infection is fibrosis, the
2 formation of scar tissue in the liver. This scarring of the liver ranges from mild to severe, with the
3 most severe form of fibrosis being cirrhosis. As cirrhosis progresses, more scar tissue forms,
4 making it difficult for the liver to function.

5 21. Advanced scarring of the liver is associated with an increased risk of cancer.
6 Cirrhosis is associated with increased rates of liver transplants and increased risk of death.

7 22. Once individuals develop advanced liver disease they often require undergo cancer
8 screening at regular intervals for the rest of their lives even after they are cured of their chronic
9 HCV infection.

10 23. A significant number of persons with chronic HCV who have no signs of fibrosis
11 or mild fibrosis will still progress to cirrhosis in the absence of DAA treatment.

12 24. Currently, there is no way to predict which newly infected patients will develop
13 advanced liver disease.

14 25. Liver damage is only one potentially significant consequence of chronic HCV
15 infection.

16 26. Chronic HCV may have extrahepatic manifestations that affect other organ
17 systems.

18 27. Chronic HCV infection is associated with myocardial infarction, diabetes,
19 decreased cognitive function, fatigue, joint pain, depression, sore muscles, arthritis, various
20 cancers, decreased kidney function, certain types of rashes, and autoimmune disease. These
21 extrahepatic manifestations, among others, can occur irrespective of the amount of fibrosis in the
22 liver.

23 28. Delay in treatment can cause irreversible damage to the liver and other vital organs.
24 Because of the many benefits associated with successful HCV treatment, clinicians following the
25 standard of care treat chronic HCV patients with antiviral therapy with the goal of achieving
26 Sustained Virologic Response (SVR), preferably early in the course of their chronic HCV infection
27 before the development of severe liver disease and other complications. SVR status means that the
28 virus becomes virtually undetectable in a patient and is considered to be a de facto cure of the

1 infection. See *U.S. Dep't of Veterans Affairs, FAQs about Sustained Virologic Response to*
2 *Treatment for Hepatitis C* (2015), available at [https://www.hepatitis.va.gov/pdf/sustained-](https://www.hepatitis.va.gov/pdf/sustained-virological-response.pdf)
3 [virological-response.pdf](https://www.hepatitis.va.gov/pdf/sustained-virological-response.pdf).

4 29. Liver damage and scarring related to chronic HCV infection (“fibrosis”) is
5 measured in a variety of methods. In addition to the physical exam and history, medical
6 professionals following the standard of care use a combination of other blood tests and imaging to
7 determine the stage of liver damage caused by HCV.

8 30. Metavir Fibrosis Score (“fibrosis score”) measures the degree of inflammation
9 (activity grade A0 to A3) and the degree of fibrosis (Fibrosis State F0 to F4). A score of F0
10 represents no fibrosis (no scarring), F1 is portal fibrosis without septa formation (minimal
11 scarring), F2 is portal fibrosis with few septa (intermediate scarring), F3 is numerous septa without
12 cirrhosis (severe scarring), and F4 is cirrhosis. A parallel scale of measurement is known as “Ishak
13 Stage,” named after one of the pathologists who developed it, and it quantifies fibrosis on an
14 ascending scale of 0-6.

15 31. Metavir Scores can be estimated using noninvasive serological testing as well as
16 transient elastography. Liver biopsy is no longer considered the standard of care for staging liver
17 disease. Beyond the limitations of the individual modalities of disease staging, it is important to
18 understand that the progression of liver disease is not linear and therefore it is difficult to predict
19 an individual’s progression through the stages of liver damage over time.

20 32. Blood tests can provide an “APRI score” determined from a ratio derived from the
21 level of an enzyme in the blood (AST) compared to the AST levels of healthy persons and the
22 number of platelets in the infected person’s blood. “APRI” is an acronym for “AST to Platelet
23 Ratio Index.” The APRI score provides an imprecise measure of fibrosis or cirrhosis. Generally,
24 the lower the APRI score (in the scientific literature a cutoff of less than 0.5 is often used), the
25 greater the negative predictive value (and ability to rule out cirrhosis), and the higher the value
26 (the scientific literature often uses a measurement of greater than 1.5), the greater the positive
27 predictive value (and ability to rule in cirrhosis); midrange values are less accurate and less helpful.
28

1 33. Chronic HCV constitutes a serious medical need, regardless of the stage of fibrosis
2 or disease severity. Defendants' policies or practices deny necessary and standard medical care for
3 chronic HCV, causing serious bodily and mental harm, as well as creating immediate and
4 substantial risks to the health of Plaintiffs and those similarly situated, including irreparable health
5 risks and harm.

6 STANDARD OF CARE FOR CHRONIC HCV

7 34. DAA Treatment is the standard of care for chronic HCV.

8 35. The American Association for the Study of Liver Diseases (AASLD) and the
9 Infectious Diseases Society of America (IDSA) jointly publish treatment guidelines that establish
10 the national standard of care for HCV treatment.

11 36. The AASLD and IDSA recommend treatment for all patients with chronic HCV
12 infection—regardless of fibrosis score—except for those with a short life expectancy that cannot
13 be saved by DAA treatment, liver transplantation, or another directed therapy. See AASLD/IDSA,
14 HCV Guidance: Recommendations for Testing, Managing, and Treating Hepatitis C (updated May
15 24, 2018), available at [https://www.hcvguidelines.org/sites/default/files/full-](https://www.hcvguidelines.org/sites/default/files/full-guidancepdf/HCVGuidance_May_24_2018b.pdf)
16 [guidancepdf/HCVGuidance_May_24_2018b.pdf](https://www.hcvguidelines.org/sites/default/files/full-guidancepdf/HCVGuidance_May_24_2018b.pdf).

17 37. The Centers for Medicare and Medicaid Services (CMS), the federal agency that
18 administers Medicaid, has emphasized the importance of access to DAAs for Medicaid
19 beneficiaries. On November 15, 2015, CMS issued guidance (CMS Notice), advising state
20 Medicaid agencies to include DAAs in their coverage of outpatient prescription drugs and warning
21 against impermissible restrictions. Ctrs. for Medicare & Medicaid Servs., Assuring Medicaid
22 Beneficiaries Access to Hepatitis C (HCV) Drugs (Nov. 5, 2015),
23 [https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/PrescriptionDrug](https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/PrescriptionDrugs/Downloads/Rx-Releases/State-Releases/state-rel-172.pdf)
24 [s/Downloads/Rx-Releases/State-Releases/state-rel-172.pdf](https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/PrescriptionDrugs/Downloads/Rx-Releases/State-Releases/state-rel-172.pdf). Addressing itself to the Medicaid Act,
25 the CMS Notice observed “some states are restricting access to DAA HCV drugs contrary to the
26 statutory requirements in section 1927 of the Act by imposing conditions for coverage that may
27 unreasonably restrict access to these drugs.” The CMS Notice cited as examples of these improper
28

1 limitations the requirement of a minimum fibrosis score, drug or alcohol abstinence, and that
2 DAAs be prescribed by specialists.

3 38. The CDC endorses the use of these effective medications to reduce HCV infection
4 and transmission rates, thereby enhancing public health and lowering treatment costs to the state
5 in the long run. Medicare and the U.S. Department of Veterans Affairs also utilize coverage criteria
6 consistent with the standard of care, as per AASLD/IDSA guidelines.

7 39. Withholding treatment can also increase psychological stressors including anxiety,
8 illness uncertainty (the inability to determine the meaning of illness-related events), and depressive
9 symptoms. With treatment, patients who are cured of chronic HCV report an improvement in their
10 mental well-being.

11 40. Defendants have failed to provide DAA treatment to Plaintiffs and similarly
12 situated inmates and continue to fail to provide DAA treatment to Plaintiffs and similarly situated
13 inmates. Indeed, it has been NDOC's policy and practice to deny DAA treatment to all but a select
14 few inmates in violation of the standard of care.

15 **MEDICAL DIRECTIVE 219**

16 41. NDOC has justified its refusal to provide DAA treatment to Plaintiff and similarly
17 situated inmates, and has required medical personnel to ignore their independent judgment and
18 deny treatment based on MD 219, which purports to reflect NDOC's Hepatitis C treatment policy.

19 42. The version of MD 219 enacted on May 17, 2017, **Exhibit 2**, did not establish
20 automatic Hepatitis C testing for all inmates. Only "[i]nmate patients who have tested positive for
21 Hepatitis C and have displayed constitutional signs and symptoms may be candidates for
22 treatment." *Id.*

23 43. The 2017 version of MD 219 excluded any inmate patient who had an APRI score
24 lower than 2.0 or 1.5 "if there are other findings suggestive of fibrosis/cirrhosis." *Id.* There was no
25 medical justification to support this exclusion from DAA Treatment.

26 44. Between 2017 and 2019, the NDOC is believed to have adjusted the exclusionary
27 APRI scores but did not meaningfully revise its policies or procedures.

28

1 45. In November 2019, the NDOC abolished the use of APRI scores as a strictly
2 exclusionary criteria, but instead established a set of priority levels that are likely to be used to
3 function in an identical fashion to the replaced exclusionary criteria. **Exhibit 1.** The 2019 version
4 of MD 219 acknowledges that “all patients with chronic HCV may benefit from treatment, certain
5 patients are at high risk for disease progression and qualify for more urgent administration of
6 treatment.” *Id.* The three priority levels that were established are:

7 a. Priority Level 1 – High Priority for Treatment – Advanced hepatic fibrosis:
8 APRI > 2.0, Metavir or Batts/Ludwig stage 3 or 4 on liver biopsy, cirrhosis; Liver
9 transplant recipients; HCC; Comorbid conditions associated with HCV;
10 Immunosuppressant medication; and/or Continuity of Care.

11 b. Priority Level 2 – Immediate Priority for Treatment – Evidence for
12 progressive fibrosis: APRI score > 0.70, stage 2 fibrosis on liver biopsy; Comorbid Medical
13 conditions; Diabetes melitus; and/or Chronic kidney disease

14 c. Priority Level 3 – Low Priority for Treatment – Stage 0 to Stage 1 fibrosis
15 on liver biopsy; APRI < 1; All other cases of HCV infection meeting the eligibility criteria
16 for treatment.

17 46. There is no medical justification for delaying DAA treatment to individuals in any
18 of the Priority Levels. There is not a shortage of DAA treatment drugs nor medical professionals
19 as the treatment is typically administered through oral pills.

20 **NAMED PLAINTIFF ALLEGATIONS**

21 **A. Elizabeth Carley**

22 47. Plaintiff Elizabeth Carley is 42 years old, and entered NDOC custody in 2012, with
23 a maximum release date of January 13, 2027. Ms. Carley is currently incarcerated at the Florence
24 McClure Women’s Correctional Center Facility in Las Vegas, Nevada.

25 48. Ms. Carley was diagnosed with chronic HCV in or around 2014.

26 49. Defendants have denied Ms. Carley needed medical treatment for HCV.

27 50. Ms. Carley was admitted to a Hepatitis C clinic to monitor her liver enzyme levels,
28 but her levels are not regularly monitored.

1 51. Ms. Carley has experienced chronic conditions associated with HCV, including
2 liver fibrosis, cirrhosis of the liver, jaundice, fatigue, and abdominal pain.

3 52. During the time period that the Defendants continue to withhold treatment, Ms.
4 Carley's chronic HCV may progress, further scarring her liver, further impairing liver function,
5 and putting her at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

6 53. Ms. Carley has sought treatment for her chronic HCV on many occasions by filing
7 grievances. Each time, however, prison officials informed her that her enzymes were too low to
8 allow for treatment under NDOC's policies.

9 54. Relevant to the instant action, Ms. Carley filed a grievance on July 22, 2016.

10 55. Ms. Carley has exhausted her administrative grievances.

11 56. No medical reason existed or exists to deny Ms. Carley DAA Treatment.

12 57. Defendants, by their policy or practice, have forced the refusal to treat Ms. Carley
13 with DAAs constituting deliberate indifference to her serious medical needs and discrimination
14 under the ADA and a violation of her equal protection rights.

15 **B. Marty Fitzgerald**

16 58. Marty Fitzgerald is 48 years old and entered NDOC custody in 2002. He is currently
17 incarcerated in High Desert State Prison and serving a determinate sentence with a maximum
18 release date of October 16, 2023.

19 59. Mr. Fitzgerald was diagnosed with chronic HCV prior to 2015.

20 60. Defendants have denied Mr. Fitzgerald needed medical treatment for HCV.

21 61. Mr. Fitzgerald has experienced chronic conditions associated with chronic HCV,
22 including, liver fibrosis, abdominal pain, and nausea.

23 62. Mr. Fitzgerald's chronic HCV also causes him great stress and worry. It is
24 extremely difficult for him to know that the disease may be progressively scarring his liver, that
25 curative treatment is available, but the Defendants refuse to treat him.

26 63. During the time period that the Defendants continue to withhold treatment, Mr.
27 Fitzgerald's chronic HCV may progress, further scarring his liver, impairing liver function, and
28 putting him at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

1 64. Mr. Fitzgerald has sought treatment for his chronic HCV on many occasions by
2 filing grievances. Relevant to this action, Mr. Fitzgerald filed a grievance in or around March 2017.

3 65. Mr. Fitzgerald has exhausted his administrative grievances.

4 66. No medical reason existed or exists to deny Mr. Fitzgerald DAA Treatment.

5 67. Defendants, by their policy or practice, have forced the refusal to treat Mr. West
6 with DAAs constituting deliberate indifference to his serious medical needs and discrimination
7 under the ADA and a violation of his equal protection rights.

8 **C. Howard White**

9 68. Plaintiff Howard White is 74 years old and entered NDOC custody in 1997.

10 69. Mr. White is serving a life sentence, and is currently incarcerated at the Northern
11 Nevada Correctional Center in Carson City, Nevada.

12 70. Mr. White was diagnosed with chronic HCV in or around March 1997 while out of
13 custody.

14 71. In or around December 1997, when Mr. White entered the custody of NDOC, he
15 was retested for HCV.

16 72. Defendants have denied Mr. White needed medical treatment for HCV.

17 73. Mr. White has experienced chronic conditions associated with chronic HCV,
18 including Type 2 diabetes, liver pain, fatigue, joint pain, and jaundice.

19 74. During the time period that the Defendants continue to withhold treatment, Mr.
20 White's chronic HCV may progress, further scarring his liver, impairing liver function, and putting
21 him at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

22 75. Mr. White filed a grievance on January 1, 2016.

23 76. Mr. White has exhausted his administrative grievance.

24 77. No medical reason existed or exists to deny Mr. White DAA Treatment.

25 78. Defendants, by their policy or practice, have forced the refusal to treat Mr. White
26 with DAAs constituting deliberate indifference to his serious medical needs and discrimination
27 under the ADA and a violation of his equal protection rights.

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1 **D. Stephen Ciolino**

2 79. Plaintiff Stephen Ciolino is 50 years old and entered NDOC custody in 2005.

3 80. Mr. Ciolino is serving a life sentence, and is currently incarcerated at the High
4 Desert State Prison in Indian Springs, Nevada.

5 81. Mr. Ciolino was diagnosed with chronic HCV and has been denied DAA treatment
6 since at least 2018.

7 82. Defendants have denied Mr. Ciolino needed medical treatment for HCV.

8 83. Mr. Ciolino has experienced chronic conditions associated with chronic HCV,
9 including persistent fatigue, abdominal pain, and nausea.

10 84. During the time period that the Defendants continue to withhold treatment, Mr.
11 Ciolino's chronic HCV may progress, further scarring his liver, impairing liver function, and
12 putting him at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

13 85. Mr. Ciolino has grieved the denial of medical treatment for his chronic HCV
14 multiple times since his diagnosis in 2005. Most recently, Mr. Ciolino filed a grievance on
15 December 8, 2018.

16 86. Mr. Ciolino has exhausted his administrative grievance.

17 87. No medical reason existed or exists to deny Mr. Ciolino DAA Treatment.

18 88. Defendants, by their policy or practice, have forced the refusal to treat Mr. Ciolino
19 with DAAs constituting deliberate indifference to his serious medical needs and discrimination
20 under the ADA and a violation of his equal protection rights.

21 **E. Carl Olsen**

22 89. Plaintiff Carl Olsen is 69 years old and entered NDOC custody in 1990.

23 90. Mr. Olsen is serving a life sentence, and is currently incarcerated at the Lovelock
24 Correctional Center in Lovelock, Nevada.

25 91. Mr. Olsen was diagnosed with chronic HCV and has been denied DAA treatment
26 since at least 2017.

27 92. Defendants have denied Mr. Olsen needed medical treatment for HCV.

28

1 93. Mr. Olsen has experienced chronic conditions associated with chronic HCV,
2 including fatigue, nausea, and joint pain. Mr. Olsen's chronic HCV also causes him great stress
3 and worry. It is extremely difficult for him to know that the disease may be progressively scarring
4 his liver, that curative treatment is available, but the Defendants refuse to treat him.

5 94. During the time period that the Defendants continue to withhold treatment, Mr.
6 Olsen's chronic HCV may progress, further scarring his liver, impairing liver function, and putting
7 him at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

8 95. Mr. Olsen filed a grievance on September 28, 2017.

9 96. Mr. Olsen has exhausted his administrative grievance.

10 97. No medical reason existed or exists to deny Mr. Olsen DAA Treatment.

11 98. Defendants, by their policy or practice, have forced the refusal to treat Mr. Olsen
12 with DAAs constituting deliberate indifference to his serious medical needs and discrimination
13 under the ADA and a violation of his equal protection rights.

14 **F. Don Savage**

15 99. Plaintiff Don Savage is 51 years old and entered NDOC custody in 2017.

16 100. Mr. Savage has a maximum release date of December 2, 2021, and is currently
17 incarcerated at the Northern Nevada Correctional Center in Carson City.

18 101. Mr. Savage was diagnosed with chronic HCV and has been denied DAA treatment
19 since at least 2015.

20 102. Defendants have denied Mr. Savage needed medical treatment for HCV.

21 103. Mr. Savage has experienced chronic conditions associated with chronic HCV,
22 including loss of weight and muscle mass and persistent fatigue. Mr. Savage's chronic HCV also
23 causes him great stress and worry. It is extremely difficult for him to know that the disease may
24 be progressively scarring his liver, that curative treatment is available, but the Defendants refuse
25 to treat him.

26 104. During the time period that the Defendants continue to withhold treatment, Mr.
27 Savage's chronic HCV may progress, further scarring his liver, impairing liver function, and
28 putting him at increasing risk of cirrhosis, liver disease, excruciating pain, and death.

1 105. Mr. Savage filed a grievance on February 24, 2015.

2 106. Mr. Savage has exhausted his administrative grievance.

3 107. No medical reason existed or exists to deny Mr. Savage DAA Treatment.

4 108. Defendants, by their policy or practice, have forced the refusal to treat Mr. Savage
5 with DAAs constituting deliberate indifference to his serious medical needs and discrimination
6 under the ADA and a violation of his equal protection rights.

7 **G. Scott Bedard**

8 109. Plaintiff Scott Bedard is 53 years old and entered NDOC custody in 1997.

9 110. Mr. Bedard is serving a life sentence, and is currently incarcerated at the Lovelock
10 Correctional Center in Lovelock, Nevada.

11 111. Mr. Bedard was diagnosed with chronic HCV since at least 2017.

12 112. Defendants initially denied DAA treatment to Mr. Benard in 2017 but ultimately
13 approved and provided Mr. Bedard with DAA treatment as of November 2019.

14 113. The delayed approval of DAA treatment has led to chronic conditions for Mr.
15 Bedard associated with chronic HCV, including Type 2 diabetes and hypothyroidism.

16 114. Mr. Bedard filed a grievance on November 30, 2017.

17 115. Mr. Bedard has exhausted his administrative grievance.

18 116. Defendants, by their policy or practice, have forced the delay of treatment to Mr.
19 Bedard with DAAs constituting deliberate indifference to his serious medical needs and
20 discrimination under the ADA and a violation of his equal protection rights.

21 **H. Mitchell Fields**

22 117. Plaintiff Mitchell Fields is 58 years old and entered NDOC custody in 1993.

23 118. Mr. Bedard is serving a life sentence, and is currently incarcerated at the Lovelock
24 Correctional Center in Lovelock, Nevada with a scheduled release date of January 3, 2020.

25 119. Mr. Fields was diagnosed with chronic HCV and has been denied treatment since
26 at least 2015.

27 120. Defendants have denied Mr. Fields needed medical treatment for HCV.

28 //

1 2018 and expects the total inmate population to increase each year. National estimates
2 suggest that approximately one third of incarcerated individuals have HCV.

3 b. *Commonality*: There are questions of law or fact common to the class,
4 including but not limited to: 1) whether HCV is a serious medical need; 2) whether
5 Defendants' policy and practice of not providing HCV treatment constitutes deliberate
6 indifference to serious medical needs in violation of the Eight Amendment; 3) whether
7 Defendants have knowingly failed to provide the necessary staging of HCV patients in
8 accordance with the prevailing standard of care, including the pretreatment testing to
9 determine the severity of the disease; 4) whether Defendants have knowingly employed
10 policies and practices that unjustifiably delay or deny treatment for HCV; 5) whether
11 Defendants have permitted cost considerations to improperly interfere with the treatment
12 of HCV; 6) whether HCV is a disability under the ADA; 7) whether medical services in
13 prison are a program or service under the ADA; and 8) whether Defendants have
14 discriminated against NDOC inmates with HCV on the basis of their disability by
15 categorically denying them medical treatment, while providing treatment for other diseases
16 and conditions such as HIV.

17 c. *Typicality*: The claims or defenses of the class representatives are typical of
18 the claims or defenses of the class. The class representatives have been diagnosed with
19 chronic HCV but have been refused treatment, and suffer from the same kind of
20 complications and substantial risk of serious harm that the class members suffer from.

21 d. *Adequacy*: The class representatives and class counsel will fairly and
22 adequately protect the interests of the class. The class representatives are committed to
23 obtaining declaratory relief that will benefit themselves as well as the class by ending
24 Defendants' unconstitutional policy and practice. Their interests are consistent with and
25 not antagonistic to the interests of the class. They have a strong personal interest in the
26 outcome of this case and have no conflicts with class members. They are represented by
27 experienced counsel.
28

1 130. The requirements of Rule 23(b)(2) are satisfied, as the party opposing the class has
2 acted and refused to act on grounds generally applicable to the class so that final declaratory relief
3 would be appropriate to the class as a whole.

4 **CAUSES OF ACTION**

5
6 ***First Cause of Action***
(Declaratory and Injunctive Relief - Eighth and Fourteenth Amendments to the U.S.
7 **Constitution via 42 U.S.C. § 1983)**

8 131. Plaintiffs incorporate the foregoing paragraphs as if set forth fully contained herein.

9 132. Defendants' acts and omissions in their respective official capacities have failed to
10 provide adequate medical care according to the clearly established medical standard of care. This
11 deviation from the standard of care constitutes deliberate indifference to the serious medical needs
12 of Plaintiffs and other similarly situated inmates infected with chronic HCV, thereby establishing
13 a violation of U.S. Const. amend. VIII and XIV, for which 42 U.S.C. § 1983 provides declaratory,
14 equitable, mandamus, and legal remedies.

15 133. Defendants know of and enforce the policies and practices described above. They
16 know of Plaintiffs' and the Plaintiff Class's serious medical needs, but intentionally refuse to
17 provide treatment addressing those needs. Defendants know that failure to treat those serious
18 medical needs has harmed Plaintiffs and the Plaintiff Class and continues to place them at
19 substantial risk of serious harm.

20 134. Defendants' conscious disregard of the risks facing Plaintiffs and the Plaintiff Class
21 violates all standards of decency and constitutes deliberate indifference to serious medical need.

22 ***Second Cause of Action***
23 **(Declaratory and Injunctive Relief - Americans with Disabilities Act, 42 U.S.C. §§ 12131,**
et seq.)

24 135. Plaintiffs incorporate the foregoing paragraphs as if set forth fully contained herein.

25 136. The Americans with Disabilities Act (ADA) and its subsequent amendments
26 prohibit public entities from discriminating against persons with disabilities in their programs,
27 services, and activities. 42 U.S.C. §§ 12131–12134.

28 //

1 137. The ADA defines “public entity” as any state or local government or “any
2 department, agency . . . or other instrumentality” of a state or local government. 42 U.S.C. §
3 12131(1)(A), (B).

4 138. NDOC is a “public entity” as defined by the ADA. NDOC has legal custody of
5 hundreds of individuals that have been diagnosed with chronic HCV.

6 139. The individual Defendants are responsible for NDOC’s policies and practices and
7 are authorized representatives of NDOC.

8 140. Plaintiffs each have a disability within the meaning of the ADA. An infection with
9 a potentially deadly communicable virus constitutes a physical or mental impairment that
10 substantially limits several major life activities, including but not limited to eating and toileting.

11 141. Each of the Plaintiffs are regarded by Defendants as having a disability because
12 they have been subjected to the Defendants’ chronic HCV policies or practices because they are
13 infected with chronic HCV.

14 142. The Defendants have policies or practices to address the entire range of serious
15 medical conditions that arise for individuals that are within NDOC’s legal custody. In no other
16 similar set of circumstances to an individual living with chronic HCV does NDOC maintain
17 policies or practices that depart from the medical standard of care on the basis of non-medical
18 considerations, as alleged herein.

19 143. Plaintiffs are excluded from appropriate medical treatment by reason of their
20 disability. Defendants discriminate against Plaintiffs on the basis of their disabilities by denying
21 or withholding medically necessary treatment for reasons unrelated to the standard of care, as
22 described throughout this Complaint. Defendants have singled out individuals infected with
23 chronic Hepatitis C to be subjected to policies and practices unrelated to the medical standard of
24 care in a manner distinct from Defendants’ policies or practices for individuals with other medical
25 needs.

26 //

27 //

28 //

Third Cause of Action

(Declaratory and Injunctive Relief - Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution via 42 U.S.C. § 1983)

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2
3 144. To state an Equal Protection Claim, Plaintiffs must demonstrate that defendants
4 “acted with an intent or purpose to discriminate against the plaintiff based upon membership in a
5 protected class,” or that Defendants purposefully treated them differently than similarly situated
6 individuals without any rational basis for the disparate treatment. *Lee v. City of Los Angeles*, 250
7 F.3d 668, 686 (9th Cir. 2001).

8 145. Defendants discriminate against Plaintiffs on the basis of their HCV status by
9 denying or withholding medically necessary treatment for reasons unrelated to the standard of
10 care, as described throughout this Complaint. Defendants have singled out individuals infected
11 with chronic Hepatitis C to be subjected to policies and practices unrelated to the medical standard
12 of care in a manner distinct from Defendants’ policies or practices for individuals with other
13 medical needs, including individuals with other infectious diseases.

14 146. Defendants discriminate against Plaintiffs on the basis of their HCV status by
15 denying or withholding medically necessary treatment for reasons unrelated to the standard of
16 care, including the requirement that Plaintiff sign an “agreement” that is not related to the standard
17 of care and would result in the denial of appropriate care. Defendants have singled out individuals
18 infected with chronic Hepatitis C to be subjected to policies and practices unrelated to the medical
19 standard of care in a manner distinct from Defendants’ policies or practices for individuals with
20 other medical needs, including individuals with other infectious diseases.

21 147. Defendants’ acts and omissions in their respective official capacities have
22 established a violation of U.S. Const. amend. XIV, for which 42 U.S.C. § 1983 provides
23 declaratory, equitable, mandamus, and legal remedies.

24 148. Defendants know of and enforce the policies and practices described above. They
25 know of Plaintiffs’ and the Plaintiff Class’s serious medical needs, but intentionally refuse to
26 provide treatment addressing those needs and thereby treat Plaintiffs’ medical needs as different
27 from other similarly situated inmates.
28

1 149. The fact that Defendants treat Plaintiffs differently from other inmates has no
2 rational basis, and is not reasonably related to the valid goal of maintaining order and discipline
3 among the inmates.

4 150. Defendants know that their treatment of Plaintiffs has harmed them and the Plaintiff
5 Class and continues to place them at substantial risk of serious harm.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray that the Court issue the following relief:

8 A. A declaratory judgment that Defendants’ policy or practice of denying,
9 withholding, or prioritizing DAA treatment for the Plaintiffs and putative class
10 members violates the Eighth Amendment and constitutes deliberate indifference to
11 the serious medical needs of Plaintiffs and putative class members;

12 B. A declaratory judgment that Defendants’ policy or practice of denying,
13 withholding, or prioritizing DAA treatment for the Plaintiffs and putative class
14 members violates the Americans with Disabilities Act and constitutes deliberate
15 indifference to the serious medical needs of Plaintiffs and putative class members;

16 C. An injunction ordering Defendants to: (i) formulate and implement an HCV
17 treatment policy that meets the current standard of medical care, including in
18 identifying and monitoring persons with HCV; (ii) treat Plaintiffs and members of
19 the Class with appropriate DAAs; (iii) provide Plaintiffs and members of the Class
20 an appropriate and accurate assessment of their level of fibrosis or cirrhosis,
21 counseling on drug interactions, and ongoing medical care for complications and
22 symptoms of chronic HCV; and (iv) include in any future contract with any entity
23 to which it delegates its responsibility to provide for the medical needs of class
24 members a provision that requires medical treatment consistent with the Court’s
25 Order;

26 D. Declaratory and injunctive relief preventing Defendants from discriminating
27 against Plaintiffs and members of the Class, and/or treating them differently than
28 other similarly-situated inmates, based on their HCV status;

- 1 E. Any further appropriate injunctions necessary to prevent future violations of
2 Plaintiffs' and the Class's rights;
- 3 F. Certify that this action be maintained as a class action with a class definition as set
4 forth herein, or alternately as a class action with two or more subclasses as may be
5 appropriate;
- 6 G. Certify Named Plaintiffs identified herein as class representatives and Plaintiffs'
7 undersigned counsel as class counsel;
- 8 H. An order enjoining Defendants from taking any action to interfere with Named
9 Plaintiffs' rights to maintain this action, or from retaliating in any way against
10 Named Plaintiffs for bringing this action;
- 11 I. An order retaining jurisdiction over this matter to ensure that the terms of any
12 injunction are fully implemented;
- 13 J. Award Named Plaintiffs compensatory and punitive damages;
- 14 K. Award Plaintiffs' reasonable attorney's fees, costs, and litigation expenses;
- 15 L. Any and all such further relief as the Court may deem appropriate;

16 Dated December 9, 2019.

17 McDONALD CARANO LLP

18
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26 *Attorneys for Marty Scott Fitzgerald, Elizabeth*
27 *Carley, Donald Savage, Howard White, Carl*
28 *Olsen, Scott Bedard, Stephen Ciolino and*
Mitchell Fields, individually and on behalf of a
class of similarly situated persons

CERTIFICATE OF SERVICE

1 I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and
2 that on this date, I served the within **AMENDED CLASS ACTION COMPLAINT** on the parties
3 in said case by electronically filing via the Court’s e-filing system. The participants in this case
4 are registered e-filing users and that service will be accomplished by e-filing to the following e-
5 filing participants:
6

7 Aaron D. Ford, Esq.
8 Douglas Rands, Esq.
9 Charles Odgers, Esq.
10 Jared Frost, Esq.
11 Nevada Attorney General’s Office
12 100 N. Carson Street
13 Carson City, NV 89701

14 In addition, a true and correct copy was mailed to the party below via U.S. Mail addressed as
15 follows:

16 Budd Reese, #80466
17 Ely State Prison
18 P.O. Box 1989
19 Ely, NV 89301

20 Donald M. Savage, #1004487
21 Northern Nevada Correctional Center
22 P.O. Box 7000
23 Carson City, NV 89702

24 Howard Lee White, #24575
25 Northern Nevada Correctional Center
26 P.O. Box 7000
27 Carson City, NV 89702

28 Carl Henry Olsen, #31147
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

Scott H. Bedard, #67540
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Northern Nevada Correctional Center
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Carson City, NV 89702

Dated: December 9, 2019

 /s/ Jill Nelson
Jill Nelson

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