

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

CAREY HIXSON, )  
)  
Plaintiff, )

v. )

CAFN: 5:17cv00032

BRYAN HUTCHESON and )  
STEVEN SHORTELL, )  
in their individual capacities )  
and in their official capacities )  
as operators of )  
Harrisonburg-Rockingham )  
Regional Jail, )

DR. MORAN, in his individual )  
capacity, )

JOHN DOES, nurses and )  
employees of )  
Southern Health Partners, Inc., )

And )

SOUTHERN HEALTH )  
PARTNERS, INC., )

Defendants. )

**JURY TRIAL DEMANDED**

## COMPLAINT FOR MONETARY DAMAGES

Plaintiff, Carey Hixson, files this Complaint pursuant to 42 U.S.C. § 1983 as the statutory vehicle to vindicate his rights under the Eighth and Fourteenth Amendment of the U.S. Constitution, the Americans with Disabilities Act, and the Rehabilitation Act, and pursuant to the Constitution and laws of the State of Virginia.

### INTRODUCTION

When it comes to treating inmates who have medically diagnosed (and life-threatening) illnesses, the staff Harrisonburg-Rockingham Regional Jail are simply inhumane. For example, Plaintiff, Mr. Hixson, is a medically diagnosed diabetic. And at the time he entered HRRJ, medical staff knew that Mr. Hixson was diabetic because he told them, and HRRJ staff verified Mr. Hixson's status as a diabetic through medical records. Despite this knowledge, Dr. Moran never – not once – provided Mr. Hixson with medically ordered and required insulin, or prescribed medication to help control Mr. Hixson's serious diabetes. As a result, Mr. Hixson suffered excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision, ringing in his ears, on top of his vital organs slowly depreciating in functionality – Dr. Moran knew all this because Mr. Hixson told Moran about his experience. In a desperate measure to assuage the

negative effects of his untreated diabetes while at HRRJ, *Hixson would run in place furiously in his cell for 15 to 30 minutes at a times trying to lower his blood sugar levels because he didn't receive his medication.*

In fact, for months, staff monitored Mr. Hixson's fasting blood sugar levels by drawing his blood in the morning – and despite Moran seeing that Mr. Hixson suffered from escalating, skyrocketing blood sugar levels in the continuous, debilitating range of **160 to 407**, Dr. Moran refused to provide Mr. Hixson with insulin or prescribe medication to control Mr. Hixson's medically diagnosed problem. Making matters way worse, Moran threatened Mr. Hixson with solitary confinement if he continued to complain about not receiving his insulin or prescribed medication to treat his medically diagnosed health condition: diabetes.

While Mr. Hixson was incarcerated at Harrisonburg-Rockingham Regional Jail ("HRRJ"), Defendants showed deliberate indifference to Mr. Hixson's diagnosed and serious medical need for his prescribed insulin and other medication which Plaintiff had been taking to treat his medically diagnosed, serious diabetes. Defendants Hutcheson and Shortell failed to ensure minimum medical care to treat Mr. Hixson's diabetes, an indisputably protected disability, and actually discriminated against Mr. Hixson by punishing him by threatening

to place him and placing him in solitary confinement when he requested minimum medical care to treat his disability. By refusing to treat Mr. Hixson's known, serious medical condition, Defendants breached all duties of care owed to Mr. Hixson regarding his health and wellbeing and utterly neglected Mr. Hixson's safety. By failing to provide insulin to Mr. Hixson or medication for Mr. Hixson's chronic diabetic illness, Southern Health Partners and Dr. Moran also breached medical service contracts intended to benefit the inmates of Harrisonburg-Rockingham Regional Jail – in this case, Mr. Hixson.

### **JURISDICTION AND VENUE**

1.

Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343(a)(4), under 42 U.S.C. § 1983, and on the supplemental jurisdiction of this Court to adjudicate claims arising under state law pursuant to 28 U.S.C. § 1367(a). Venue is proper under 28 U.S.C. § 1391(b) and L.R. 2 (b) because (1) a substantial part of the events and omissions giving rise to Mr. Hixson's claims occurred within this District and Division and (2) Defendants reside and transact business in this District and Division.

## ADMINISTRATIVE EXHAUSTION

2.

Mr. Hixson is not incarcerated and thus does not have to show that administrative remedies related to his claims have been exhausted. See Cofield v. Bowser, 247 F. App'x 413, 414 (4th Cir. 2007) (reasoning, “[b]ecause Cofield was not a prisoner when he filed his complaint, the PLRA exhaustion requirement is not applicable to his § 1983 action”).

## PARTIES

### **A. Corey Hixson, Plaintiff**

3.

Plaintiff Mr. Hixson is aged 53, and currently not incarcerated. The facts pertaining to his claims are outlined in the Fact Section and Counts below.

### **B. Dr. Moran, Defendant**

4.

Defendant Dr. Moran, at all times relevant, was the medical doctor at Harrisonburg-Rockingham Regional Jail (“HRRJ”) who had the obligation to ensure that Mr. Hixson received insulin and/or prescribed medication to treat Mr. Hixson’s serious diabetes. Moran knew Mr. Hixson required insulin or prescribed medication to treat his diabetes because: (i) Moran reviewed Mr.

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Hixson's medical records, which indicated that Mr. Hixson was a diabetic at all relevant times and as a result, required insulin or prescribed medication to treat his diabetes; and (ii) Moran reviewed Mr. Hixson's fasting blood sugar readings and initialed that he had reviewed the readings, and thus knew that Mr. Hixson's blood sugar readings was considered high and dangerous, medically speaking.

Moran never prescribed Mr. Hixson medication to treat his diabetes or ensured that Mr. Hixson received insulin to treat his diabetes, by for example, requiring that an order be placed for said insulin. In fact, Dr. Moran instructed Southern Health Partners medical staff that no medication was to be given to Mr. Hixson, no matter how high his blood sugar levels rose. Mr. Hixson suffered excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision, and ringing in his ears for months as a result, and his bodily organs deteriorated.

At all times relevant to this Complaint, Moran was responsible for ensuring that he knew all controlling law within the Fourth Circuit regarding deliberate indifference to medical needs, breaching medical service contracts intended to benefit inmates, breaching assumed duties of care, and complete neglect of inmate safety, including the Fourth Circuit Court of Appeals' case law

with respect to under-medicating inmates and flat-out denying demonstrably required prescription medication to inmates under Moran's care and custody. At all times relevant to this Complaint, Moran was acting under the color of state and federal laws, and Moran was responsible for knowing and acting in accordance with all policies, procedures, orders, special orders, general orders, guidelines and regulations of the Harrisonburg-Rockingham Regional Jail, while upholding his responsibility as the doctor for HRRJ.

**C. John Doe #1 and John Doe #2, Defendants**

5.

Defendants John Doe #1 and John Doe #2, at all relevant times, were nurses employed by Southern Health Partners, Inc. John Doe #1 and John Doe #2, at all times relevant, were placed at Harrisonburg-Rockingham Regional Jail in order to provide medical care to the inmates of HRRJ, pursuant to a contract between Southern Health Partners and Rockingham County. John Doe #1 and John Doe #2 each had an obligation to ensure that Mr. Hixson received insulin and/or prescribed medication to treat Mr. Hixson's diabetes. During Mr. Hixson's entire stay at HRRJ, nurses John Doe #1 and John Doe #2 knew Mr. Hixson required diabetes medication because these nurses tested Mr. Hixson's

blood sugar levels daily and reviewed the blood sugar tests, which regularly demonstrated high blood sugar levels in excess of 180.

Despite these consistently high levels, and despite Mr. Hixson's repeated complaints about the excruciating pain and discomfort he was experiencing as a result, John Doe #1 and John Doe #2 repeatedly refused to provide Mr. Hixson with his required, prescribed diabetes medications, including insulin, thus allowing and even ensuring that Mr. Hixson's diabetes went untreated. In response to his complaints, these nurses actually threatened to cause Mr. Hixson to be placed Mr. Hixson in solitary confinement and once caused Mr. Hixson to be placed Mr. Hixson in solitary confinement. As medical professionals, nurses John Doe #1 and John Doe #2 knew that extended periods of high blood sugar levels could cause excruciating pain and severe discomfort and damage internal organs, and thus knew these were serious risks for Mr. Hixson, and still they did nothing. Mr. Hixson suffered excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision and ringing in his ears for months as a result, and his bodily organs deteriorated as a result of the acts and omissions of John Doe #1 and John Doe #2.

#### **D. Southern Health Partners, Inc., Defendant**

6.

Rockingham County had an enforceable contract with Southern Health Partners at all relevant times. The purpose of the contract was for Southern Health Partners to provide medical care services to the inmates of HRRJ. The intended beneficiaries of the contract between Rockingham County and Southern Health Partners were the periodic inmates of HRRJ who were to receive the medical services of Southern Health Partners, including Mr. Hixson.

Southern Health Partners was required by contract with Rockingham County and by law to provide legally adequate medical care to the inmates of HRRJ. Southern Health Partners made a multitude of promises in their contract regarding inmate medical care, and specifically the special attention and treatment plans that inmates with chronic illnesses like diabetes would receive.

Southern Health Partners failed to provide legally adequate medical services and failed to provide appropriate medical care as it had contracted to do when it refused to provide insulin to Mr. Hixson. As a direct result of Southern Health Partners' failure, Mr. Hixson suffered excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision and ringing in his ears for months, and his bodily organs deteriorated.

## **E. Sheriff Brian Hutcheson, Defendant**

7.

Defendant Sheriff Bryan Hutcheson, at all relevant times, was the supervising operator of HRRJ. Defendant Hutcheson's tenure as operator of HRRJ was approved by the Rockingham County Board of Supervisors. Hutcheson, at all relevant times, was responsible for creating and implementing all policies and procedures at HRRJ. Prior to HRRJ staff refusing to provide Mr. Hixson with prescribed medications (including insulin) to treat his diabetes, Defendant Hutcheson implemented a policy of prohibiting HRRJ staff from prescribing medication (including insulin) to treat diabetes. Relevantly, Sheriff Hutcheson's job description states that he must ensure the proper health, development, and medical care for all inmates.

At all times relevant to this Complaint, Bryan Hutcheson was responsible for ensuring that he knew all controlling law within the Fourth Circuit regarding deliberate indifference to medical needs, including the Fourth Circuit Court of Appeals case law with respect to (1) under-medicating inmates and flat-out denying prescribed medication to inmates who demonstrate a medical need for said medication, and (2) the requirements of the Americans with Disabilities Act in state prisons. At all times relevant to this Complaint, Bryan Hutcheson was

acting under the color of state and federal laws, and Bryan Hutcheson was responsible for knowing and acting in accordance with all policies, procedures, orders, special orders, general orders, guidelines and regulations of the HRRJ, while upholding his responsibility as the general operator for HRRJ.

**F. Captain Steven Shortell, Defendant**

8.

Defendant Captain Steven Shortell, at all relevant times, was the operator of HRRJ. Defendant Shortell's tenure as operator of HRRJ was approved by the Sheriff of Rockingham County, Bryan Hutcheson. Defendant Shortell, at all relevant times, was responsible for creating and implementing all policies and procedures at HRRJ. Prior to HRRJ staff refusing to provide Mr. Hixson with prescribed medications (including insulin) to treat his diabetes, Defendant Shortell implemented a policy of prohibiting HRRJ staff from prescribing medication (including insulin) to treat serious diabetes. Relevantly, Captain Shortell's job description stated that he must ensure the proper health, development, and medical care for all inmates.

At all times relevant to this Complaint, Steven Shortell was responsible for ensuring that he knew all controlling law within the Fourth Circuit regarding deliberate indifference to medical needs, including the Fourth Circuit Court of

Appeals case law with respect to (1) under-medicating inmates and flat-out denying prescribed medication to inmates who demonstrate a medical need for said medication, and (2) the requirements of the Americans with Disabilities Act and the Rehabilitation Act in state prisons.

At all times relevant to this Complaint, Steven Shortell was acting under the color of state and federal laws, and Steven Shortell was responsible for knowing and acting in accordance with all policies, procedures, orders, special orders, general orders, guidelines and regulations of the HRRJ, while upholding his responsibility as the general operator for HRRJ.

### **RELEVANT FACTS**

#### **A. Southern Health Partners, Inc.**

9.

Southern Health Partners, Inc., a Tennessee corporation doing business in and with the State of Virginia, is a regional medical services provider that employs medical care professionals to provide medical care to prisoners.

10.

At all relevant times, Southern Health Partners was under a legally enforceable and binding contract with Rockingham County to provide medical care services to the inmates of HRRJ.

11.

Southern Health Partners' legally enforceable contract included promises to provide special treatment plans to chronically ill inmates, including inmates with diabetes.

12.

Southern Health Partners had an obligation to provide adequate medical care to inmates at HRRJ in accordance with the terms of its contract with Rockingham County.

13.

Southern Health Partners had an obligation to provide adequate medical care to inmates at HRRJ.

14.

All inmates of HRRJ are intended beneficiaries of the medical services provided by Southern Health Partners as a result of the contract created between Southern Health Partners and Rockingham County.

15.

Southern Health Partners failed to provide sufficient amounts of prescription medication to treat known, medically diagnosed injuries of inmates

at HRRJ, including the medically diagnosed diabetes from which Mr. Hixson suffered.

16.

By failing to provide sufficient amounts of prescription medication to inmates at HRRJ who were known by medical staff (including the named Defendants) to require prescription medication, Southern Health Partners materially breached their contract with Rockingham County.

17.

As a direct result of Southern Health Partners' failure to provide sufficient amounts of prescription medication to the inmates of HRRJ who were known by medical staff (including the named Defendants) to require said medication and thereby breaching its contract with Rockingham County, Mr. Hixson, an intended beneficiary of that contract, was severely and seriously injured, was put in fear of death, suffered extreme pain in his hands and feet, suffered blurred vision and ringing in his ears, suffered damage to his internal organs, and suffers a shortened life span as a result of damage to his internal organs.

**B. Defendants Brian Hutcheson and Steven Shortell**

18.

At all relevant times to this Complaint, Defendant Brian Hutcheson was the Sheriff of Rockingham County.

19.

In his role as Sheriff of Rockingham County, Defendant Brian Hutcheson was the operator of HRRJ.

20.

At all relevant times to this Complaint, Defendant Steven Shortell was a Captain at the Rockingham County Sheriff's Office.

21.

In his role as Captain at the Rockingham County Sheriff's Office, Defendant Steven Shortell was the operator of HRRJ.

22.

Defendant Shortell's tenure as operator of HRRJ was approved by the Sheriff of Rockingham County, Bryan Hutcheson.

23.

The Sheriff of Rockingham County offered Defendant Shortell his job as the operator of Harrisonburg-Rockingham Regional Jail.

24.

Defendant Shortell accepted the job offer made by the Sheriff of Rockingham County to become the operator of HRRJ.

25.

At all relevant times to this Complaint, Defendant Hutcheson's job description stated that he must ensure the proper health, development, and medical care for all inmates.

26.

At all relevant times to this Complaint, Defendant Shortell's job description stated that he must ensure the proper health, development, and medical care for all inmates.

27.

Defendant Hutcheson's job description required him to review and approve medical polices at HRRJ, and these medical policies were in effect prior to Mr. Hixson being incarcerated at HRRJ, including medical policies related to prescribing inmates prescription medications.

28.

Defendant Shortell's job description required him to review and approve medical policies at HRRJ, and these medical policies were in effect prior to Mr. Hixson being incarcerated at HRRJ, including medical policies related to prescribing inmates prescription medications.

29.

Prior to Mr. Hixson being incarcerated at HRRJ, Defendant Hutcheson developed, approved, and implemented a policy that prohibited all staff, including medical staff, from prescribing medication (including insulin) to inmates who were known by HRRJ staff (including the named Defendants) to suffer from medically diagnosed diabetes.

30.

Prior to Mr. Hixson being incarcerated at HRRJ, Defendant Shortell developed, approved, and implemented a policy that prohibited all staff, including medical staff, from prescribing medication (including insulin) to inmates who were known by HRRJ staff (including the named Defendants) to suffer from medically diagnosed diabetes.

31.

Numerous inmates at HRRJ, over the span of years, have been denied prescription medication to treat known, medically diagnosed diabetes because of the policy that Hutcheson approved.

32.

Numerous inmates at HRRJ, over the span of years, have been denied prescription medication to treat known, medically diagnosed diabetes because of the policy that Shortell approved.

33.

While Mr. Hixson was incarcerated at HRRJ, HRRJ's policy of refusing to prescribe HRRJ inmates medication to treat known medically diagnosed diabetes was in effect and thus applied to Mr. Hixson's request for HRRJ to prescribe him medication (including insulin) based on his known, medically diagnosed diabetic illness.

34.

Brian Hutcheson, as Sheriff of Rockingham County and operator of HRRJ, required all staff – as a matter of HRRJ policy – to refuse prescribing medication (including insulin) to treat inmates who suffered from known medically

diagnosed diabetes at HRRJ, as evidenced by staff telling Mr. Hixson that HRRJ staff will not prescribe him his required diabetic medication, and staff threatening Mr. Hixson with solitary confinement if he continued to complain about not receiving his required medication to treat his known, medically diagnosed diabetic problem.

35.

Steven Shortell, as a Captain at the Rockingham County Sheriff's Office and operator of HRRJ, required all staff – as a matter of HRRJ policy – to refuse prescribing medication (including insulin) to treat inmates who suffered from known medically diagnosed diabetes at HRRJ, as evidenced by staff telling Mr. Hixson that HRRJ staff will not prescribe him his required diabetic medication and staff threatening Mr. Hixson with solitary confinement if he continued to complain about not receiving his required medication to treat his known, medically diagnosed diabetic problem.

36.

At all relevant time to this Complaint, Brian Hutcheson enforced HRRJ's policy of refusing to prescribe diabetic medication (including insulin) to HRRJ inmates by disciplining any staff member who disobeyed said directive/policy.

37.

At all relevant time to this Complaint, Steven Shortell enforced HRRJ's policy of refusing to prescribe diabetic medication (including insulin) to HRRJ inmates by disciplining any staff member who disobeyed said directive/policy.

38.

At the time that Brian Hutcheson implemented HRRJ's policy of refusing to prescribe HRRJ inmates diabetic medication (including insulin), Defendant Hutcheson was an employee of Rockingham County Sheriff's Office.

39.

At the time that Steven Shortell implemented HRRJ's policy of refusing to prescribe HRRJ inmates diabetic medication (including insulin), Defendant Shortell was an employee of Rockingham County Sheriff's Office.

40.

At the time that Brian Hutcheson approved HRRJ's policy of refusing to prescribe diabetic medication (including insulin), Defendant Hutcheson was an employee of Rockingham County Sheriff's Office.

41.

At the time that Steven Shortell approved HRRJ's policy of refusing to prescribe diabetic medication (including insulin), Defendant Shortell was an employee of Rockingham County Sheriff's Office.

42.

At all relevant times to this Complaint, Defendant Hutcheson's job description required him to ensure legal compliance of HRRJ by remaining current on all correctional philosophies and case law.

43.

At all relevant times to this Complaint, Defendant Shortell's job description required him to ensure legal compliance of HRRJ by remaining current on all correctional philosophies and case law.

**C. Dr. Moran**

44.

Defendant Moran was the medical doctor at HRRJ, from at least August 1, 2016 through January 29, 2017.

45.

During that time period that Dr. Moran was the medical doctor at HRRJ, Moran had the obligation to provide Mr. Hixson with his requested diabetes medication (including insulin).

46.

During Mr. Hixson's entire stay at HRRJ, Dr. Moran knew Mr. Hixson required diabetes medication because Moran reviewed Mr. Hixson's medical records, which demonstrated that while at HRRJ, Mr. Hixson required prescribed diabetes medication to treat his condition and also required a diabetic diet.

47.

Dr. Moran instructed HRRJ staff to serve a diabetic diet meal plan to Mr. Hixson.

48.

Dr. Moran actually believed that Mr. Hixson was a Type 1 diabetic, and recorded that in Mr. Hixson's records.

49.

Dr. Moran ordered medical staff to check Mr. Hixson's fasting blood sugar levels every morning, and he made this order multiple times by writing the order on Mr. Hixson's Blood Sugar Flow Sheets.

50.

Dr. Moran also ordered medical staff that Mr. Hixson was not to be given any medication for his diabetes, regardless of Mr. Hixson's actual blood sugar levels, and he made this order multiple times by writing the order on Mr. Hixson's Blood Sugar Flow Sheets.

51.

Dr. Moran personally reviewed Mr. Hixson's Blood Flow Sheets, saw that Mr. Hixson's blood sugar levels were always over 110 mg/dL (except three times), and initialed the flow sheets by the blood sugar readings with an "M."

52.

During Mr. Hixson's entire stay at HRRJ, Dr. Moran knew Mr. Hixson required diabetes medication because Moran reviewed the blood sugar tests that medical staff gave to Hixson on a daily basis, blood sugar tests that demonstrated dangerously high blood sugar levels.

53.

During Mr. Hixson's stay at HRRJ, Dr. Moran repeatedly refused to provide Mr. Hixson with his required (and prescribed) diabetes medication, including insulin.

54.

Dr. Moran received information directly from Mr. Hixson that Hixson suffered severe, excruciating pain in his hands and feet, blurred vision, ringing in his ears, and extreme discomfort.

55.

As a medical doctor, Dr. Moran knew the risks of untreated diabetes.

56.

As a medical doctor, Dr. Moran knew that prolonged periods of high blood sugar levels causes damage to the body's internal organs.

57.

Dr. Moran thus knew there were health risks to Mr. Hixson in particular if his diabetes went untreated.

58.

During Mr. Hixson's six-month stay at HRRJ, Dr. Moran knew that Mr. Hixson's blood sugar levels reached severely high levels that, if untreated by insulin, causes damage to the internal organs.

59.

Dr. Moran received complaints by Mr. Hixson that the medical staff at HRRJ refused to provide him with insulin required to treat his serious diabetes.

60.

Dr. Moran threatened Mr. Hixson that he would put Mr. Hixson in isolation if he continued to complain.

61.

Afraid for his physical wellbeing and his life, Mr. Hixson continued to complain that he needed to receive his insulin to treat his diabetes, a condition of which Dr. Moran was aware.

62.

In response to Mr. Hixson's continued complaints, Dr. Moran tried to have deputies put Mr. Hixson in segregation to punish him for requesting treatment of his diagnosed, serious medical condition and disability: diabetes.

63.

As a direct and proximate result of Dr. Moran's deliberate indifference and total failure and refusal to provide medical care to a known diabetic, Mr. Hixson was severely and seriously injured, was put in fear of death, suffered extreme pain in his hands and feet, suffered blurred vision and ringing in his ears, suffered damage to his internal organs, and suffers a shortened life span as a result of damage to his internal organs.

64.

At all times relevant to this Complaint, Dr. Moran was responsible for ensuring that he knew all controlling law within the Fourth Circuit regarding deliberate indifference to medical needs, including the Fourth Circuit Court of Appeals' case law with respect to under-medicating inmates and flat-out denying diabetic medication to inmates who demonstrate a medical need for said medication and with respect to the Americans with Disabilities Act.

65.

At all times relevant to this Complaint, Moran was acting under the color of state and federal laws, and Moran was responsible for knowing and acting in accordance with all policies, procedures, orders, special orders, general orders,

guidelines and regulations of the Harrisonburg-Rockingham Regional Jail and Rockingham County Sheriff's Office, while upholding his responsibility as the general doctor for HRRJ.

**D. Nurses John Doe #1 and John Doe #2 and Mr. Hixson's Blood Sugar readings**

66.

During Mr. Hixson's stay at HRRJ, John Doe #1 and John Doe #2 were nurses employed by Southern Health Partners.

67.

At all relevant time to this Complaint, John Doe #1 and John Doe #2 were responsible for providing medical care to the inmates of HRRJ.

68.

During Mr. Hixson's entire stay at HRRJ, nurses John Doe #1 and John Doe #2 knew Mr. Hixson required diabetes medication because nurses John Doe #1 and John Doe #2 reviewed Mr. Hixson's medical records, which demonstrated that while at HRRJ, Mr. Hixson required prescribed diabetes medication to treat his condition and also required a diabetic diet.

69.

Nurses John Doe #1 and John Doe #2 actually believed that Mr. Hixson was a Type 1 diabetic, and recorded that in Mr. Hixson's records.

70.

John Doe #1 and John Doe #2 took daily fasting blood sugar readings from Mr. Hixson, and both read and recorded Hixson's blood sugar levels on a Southern Health Partners form called the Blood Sugar Flow Sheet.

71.

The Blood Sugar Flow Sheet states at the top of the page that: blood sugar tests check for conditions such as hypoglycemia (low blood sugar), pre-diabetes, and diabetes; common tests include a **fasting blood sugar** which is no eating or drinking for at least 8 hours prior to testing.

72.

The physician order/instructions at the top of Mr. Hixson's Blood Sugar Flow Sheet indicate that the Nurses John Doe #1 and John Doe #2 were to check Mr. Hixson's Fasting Blood Sugar levels in the morning.

73.

Nurses John Doe #1 and John Doe #2 took blood sugar readings from Mr. Hixson **150 times**.

74.

Of the 150 times Nurses John Doe #1 and John Doe #2 took blood sugar readings from Mr. Hixson, 139 of those readings were recorded as taken at 04:30am.

75.

The Blood Sugar Flow Sheet states at the top of the page that: **blood sugar tests less than 110 is considered normal**.

76.

Of the 150 times that Nurses John Doe #1 and John Doe #2 took blood sugar readings, Mr. Hixson's blood sugar tests read **less than 110 only three (3) times**.

77.

Mr. Hixson's blood sugar levels were measured as being **over 180 mg/dL** on **41 occasions**, and actually measured as high as **407 mg/dL**.

78.

Despite Mr. Hixson's severely high blood sugar levels, Nurses John Doe #1 and John Doe #2 refused to provide Mr. Hixson with insulin.

79.

Despite Mr. Hixson's severely high blood sugar levels, Nurses John Doe #1 and John Doe #2 refused to provide Mr. Hixson with any medication that treats diabetes.

80.

As professional nurses, John Doe #1 and John Doe #2 knew the serious, life-threatening risks of untreated diabetes and high blood sugar levels because they were trained to know those risks prior to reading and understanding the Mr. Hixson suffered from untreated diabetes and high blood sugar levels.

81.

As professional nurses, John Doe #1 and John Doe #2 knew the risks to Mr. Hixson in particular if his diabetes went untreated because they were trained to know those risks prior to reading and understanding the Mr. Hixson suffered from untreated diabetes and high blood sugar levels.

82.

As medical professionals, nurses John Doe #1 and John Doe #2 knew that extended periods of high blood sugar levels could cause excruciating pain, as well as blurred vision, ringing in the ears, and severe discomfort because nurses John Doe #1 and John Doe #2 received training about the negative physical effects that occur from untreated diabetes, such as pain, ringing of the ears, blurred vision, and discomfort.

83.

As medical professionals, nurses John Doe #1 and John Doe #2 knew that extended periods of high blood sugar levels cause damage to internal organs because nurses John Doe #1 and John Doe #2 received training with respect to internal organ damage caused by untreated diabetes.

84.

During Mr. Hixson's stay at HRRJ, John Doe #1 and John Doe #2 repeatedly refused to provide Mr. Hixson with his required, prescribed diabetes medications, including insulin, despite the fact that both John Doe #1 and John Doe #2 had the authority to order the prescription medication.

85.

By their repeated refusal to provide Mr. Hixson with his required, prescribed diabetes medication (including insulin), John Doe #1 and John Doe #2 allowed and even ensured that Mr. Hixson's diabetes went untreated.

86.

As a result of John Doe #1 and John Doe #2 repeated refusal to provide Mr. Hixson with his required, prescribed diabetes medication (including insulin), Mr. Hixson suffered severe, excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision and ringing in his ears for months.

87.

Mr. Hixson's bodily functions were severely impaired due to John Doe #1 and John Doe #2's refusal to provide Mr. Hixson with insulin.

88.

Mr. Hixson's bodily functions were severely impaired due to John Doe #1 and John Doe #2's refusal to request that Dr. Moran provide Mr. Hixson with insulin, the medicine required to treat the lifetime medical disability of diabetes.

89.

On many occasions, Mr. Hixson made complaints about the failure of Dr. Moran, nurses John Doe #1 and John Doe #2, and Southern Health Partners to provide him with required insulin to treat his disability, and nurses John Doe #1 and John Doe #2 were aware of these complaints.

90.

These nurses, John Doe #1 and John Doe #2, received or were otherwise made aware of Hixson's complaints about his physical health that was due to his untreated high blood sugar levels.

91.

As a result of receiving or being made aware of Mr. Hixson's complaints, Nurses John Doe #1 and John Doe #2 knew that Mr. Hixson was regularly experiencing excruciating pain throughout his feet, hands and legs, as well as experiencing blurred vision and ringing in his ears for months.

92.

In response to Mr. Hixson's complaints, nurses John Doe #1 and John Doe #2 did nothing to treat Mr. Hixson's diabetes.

93.

In response to Mr. Hixson's complaints, nurses John Doe #1 and John Doe #2 threatened Mr. Hixson that they would have the prison deputies put Mr. Hixson in a segregation unit if he continued to complain.

94.

In fear for his physical wellbeing and his life, Mr. Hixson continued to complain that he needed to receive his insulin to treat his diabetes.

95.

In response to Hixson's continued complaints, nurses John Doe #1 and John Doe #2 tried to have the deputies put Mr. Hixson in segregation to punish him for requesting treatment of his diagnosed, serious medical condition and disability.

96.

As a direct and proximate result of John Doe #1 and John Doe #2's deliberate indifference and total failure and refusal to provide medical care to a known diabetic, Mr. Hixson was severely and seriously injured, was put in fear of death, suffered extreme pain throughout his feet, hands and legs, suffered prolonged blurred vision and ringing in his ears, suffered damage to his internal

organs, and suffers a shortened life span as a result of damage to his internal organs.

97.

At all times relevant to this Complaint, nurses John Doe #1 and John Doe #2 were responsible for ensuring that they knew all controlling law within the Fourth Circuit regarding deliberate indifference to medical needs, including the Fourth Circuit Court of Appeals' case law with respect to under-medication of inmates and denying diabetic medication to inmates who demonstrate a medical need for said medication and with respect to the Americans with Disabilities Act.

98.

At all times relevant to this Complaint, John Doe #1 and John Doe #2 were acting under the color of state and federal laws, and they were responsible for knowing and acting in accordance with all policies, procedures, orders, special orders, general orders, guidelines and regulations of the Harrisonburg-Rockingham Regional Jail and Rockingham County Sheriff's Office, while upholding their responsibility as Southern Health Partners' medical staff assigned to HRRJ.

**E. Facts related to Mr. Hixson's claims of deliberate indifference against Brian Hutcheson, Steven Shortell, Dr. Moran, John Doe #1, and John Doe #2**

99.

Upon entering HRRJ, medical staff performed a medical screening of Mr. Hixson and inquired as to whether Mr. Hixson was taking prescribed medication; indeed, Mr. Hixson told HRRJ medical staff that he suffered from medically diagnosed diabetes and as a result, he must take medication (including insulin) to treat his serious diabetes.

100.

Insulin is a medication that treats diabetes.

101.

After Mr. Hixson told HRRJ medical staff that he had suffered from diabetes, he had been prescribed insulin medication, Mr. Hixson provided HRRJ staff with information as to where to acquire his medical records from previous medical providers.

102.

During his entire 6 months stay at HRRJ, no medical staff ordered insulin or prescribed medication for Mr. Hixson, so that Mr. Hixson could treat his diabetes.

103.

Dr. Moran ordered medical staff to monitor Mr. Hixson's blood sugar levels by drawing blood from Mr. Hixson in the morning.

104.

The staff who took blood monitored Mr. Hixson's blood sugar levels through reading his medical chart, and reported to Dr. Moran Mr. Hixson's blood sugar levels that were on multiple occasions in the range of 160 to 400.

105.

As a result of receiving said reports regarding Mr. Hixson's blood sugar levels, Dr. Moran knew Mr. Hixson required medication (including insulin) yet Dr. Moran failed to order said medication, himself, and failed to require appropriate medical staff to order said medication.

106.

Despite fully understanding Mr. Hixson's essential need for his medication (including insulin) to treat his diabetic problem, Dr. Moran refused to prescribe Mr. Hixson with any form of medication to treat Mr. Hixson's diabetes because HRRJ policy – approved by Brian Hutcheson and Steven Shortell – prohibited Dr. Moran from prescribing Mr. Hixson diabetic medication, and prohibited Dr.

Moran from requiring medical staff at HRRJ to order Mr. Hixson medication to treat his diabetes.

107.

Dr. Moran has the professional ability to prescribe medication to treat Mr. Hixson's diabetes, and, despite fully understanding Mr. Hixson's essential need for his diabetic medication, Dr. Moran never ensured that Mr. Hixson received his medically required diabetes medication.

108.

Mr. Hixson stated that HRRJ staff told him, in response to his repeated requests for his diabetic medication, that if he continued complaining about not receiving said medication, he would be placed in solitary confinement.

109.

As a result of Mr. Hixson not receiving his diabetic medication, he suffered excruciating pain throughout his legs, feet, and hands, and he also suffered deprecation in the functionality of his bodily organs.

**F. Facts related to Mr. Hixson's claims of violations of the Americans with Disabilities Act and the Rehabilitation Act against Brian Hutcheson and Steven Shortell in their official capacities as employees of the Rockingham County Sheriff's Office and operators of HRRJ**

110.

As an outgrowth of the Fourteenth Amendment of the U.S. Constitution, the Americans with Disabilities Act ("ADA") was passed by Congress to protect people with disabilities and ensure they receive reasonable accommodations.

111.

The Supreme Court of the United States has held since 1998 that the ADA applies to state prisons.

112.

HRRJ is a state prison operated by Sheriff Brian Hutcheson and Captain Steven Shortell.

113.

In 2008, Congress passed the ADA Amendments Act (the "ADAAA").

114.

Effective January 1, 2009, the ADAAA became law.

115.

Among the purposes of the ADAAA was the reinstatement of a broad scope of protection by expanding the definition of the term “disability.”

116.

Congress found that persons with many types of impairments – including epilepsy, **diabetes**, multiple sclerosis, major depression, and bipolar disorder – had been unable to bring ADA claims because they were found not to meet the ADA’s definition of “disability.”

117.

Yet, Congress thought that individuals with these and other impairments should be covered.

118.

The ADAAA explicitly rejected certain Supreme Court interpretations of the term “disability.”

119.

The U.S. Government does not maintain an exhaustive list of disabilities. Rather, one of the purposes of the ADAAA was for ADA claims to focus on the merits of each case.

120.

The ADAAA and the final regulations define a disability using a three-pronged approach:

- a physical or mental impairment that substantially limits one or more major life activities, or
- a record of a physical or mental impairment that substantially limited a major life activity, or
- when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor (“regarded as”).

121.

An individual only has to meet one of the three prongs of the definition of “disability” to be covered under the ADA.

122.

The ADA regulations identify **examples of specific impairments that should easily be concluded to be disabilities** and examples of major life activities (including major bodily functions) that the impairments substantially limit. The impairments include: deafness, blindness, intellectual disability (formerly known

as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, **diabetes**, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

123.

The changes to the definition of disability also apply to all of the ADA's titles, including Title II (**programs and activities of State and local government entities**).

124.

The ADAAA specifically states that all of its changes also apply to section 504 of the Rehabilitation Act (**recipients of federal financial assistance and services and programs of federal agencies**).

125.

Mr. Hixson was diagnosed with diabetes before entering HRRJ, and has been prescribed and been required to take insulin since his diagnosis.

126.

Employees of HRRJ were aware on the first day of Mr. Hixson's stay at HRRJ that he was a diabetic.

127.

In their official capacities as operators of HRRJ, Brian Hutcheson and Steven Shortell developed, approved, and implemented a policy of refusing prescribed medication to inmates, including inmates with serious, medically diagnosed conditions and including inmates with ADA-recognized disabilities.

128.

At the direction of Brian Hutcheson and Steven Shortell, HRRJ medical staff refused to provide Mr. Hixson with his prescribed insulin to treat his ADA-recognized disability: diabetes.

129.

As a result of Hutcheson and Shortell's actions, Mr. Hixson suffered excruciating pain throughout his feet, hands and legs, as well as blurred vision and ringing in his ears for months while incarcerated at HRRJ.

130.

Mr. Hixson made numerous complaints at HRRJ regarding his severe pain throughout his feet, hands and legs, his blurred vision and ringing in his ears, and the failure and refusal of HRRJ and medical staff to provide Hixson with the insulin he needed to treat his ADA-recognized disability and engage in the ordinary activities of life.

131.

In response to Mr. Hixson's complaints, Mr. Hixson was threatened with solitary confinement as punishment if he continued to complain about not receiving the insulin he needed to treat his ADA-recognized disability.

132.

Mr. Hixson continued to complain, and he continued to be threatened with solitary confinement.

133.

As a result of the actions of Hutcheson and Shortell, Mr. Hixson never, not once received the insulin he requires and has been prescribed to treat his ADA-recognized disability, and as a direct result was made to suffer severe, agonizing pain throughout his feet, hands and legs, suffer blurred vision and ringing in his

ears for months, fear for his life, and be disallowed from participating in daily activities at HRRJ.

**G. Facts related to Mr. Hixson's claims of negligence against Dr. Moran, John Doe #1, and John Doe #2**

134.

Dr. Moran had a duty of care to the inmates in his charge at HRRJ, and a duty of care to inmates that he knew to have chronic illnesses like diabetes, including Mr. Hixson.

135.

John Doe #1 and John Doe #2 each had a duty of care to the inmates in their charge at HRRJ, and a duty of care to inmates that they knew to have chronic illnesses like diabetes, including Mr. Hixson.

136.

Dr. Moran refused to provide insulin to Mr. Hixson, whom he knew to be a medically diagnosed diabetic who routinely had dangerously high blood sugar levels and whom he knew to be complaining of excruciating pain and discomfort from his lack of treatment.

137.

John Doe #1 and John Doe #2 refused to provide insulin to Mr. Hixson, whom they each knew to be a medically diagnosed diabetic who routinely had dangerously high blood sugar levels and whom each knew to be complaining of excruciating pain and discomfort from his lack of treatment..

138.

As a direct and proximate result of Dr. Moran's failure to provide medication to treat Mr. Hixson's diabetes, Mr. Hixson suffered extreme, prolonged pain throughout his feet, hands and legs, suffered blurred vision and ringing in his ears for months, feared for his life, suffered long-term internal organ damage, and suffers from a reduced life span from his internal organ damage.

139.

As a direct and proximate result of John Doe #1 and John Doe #2's failure to provide medication to treat Mr. Hixson's diabetes, Mr. Hixson suffered extreme, prolonged pain throughout his feet, hands and legs, suffered blurred vision and ringing in his ears for months, feared for his life, suffered long-term

internal organ damage, and suffers from a reduced life span from his internal organ damage.

**H. Facts related to Mr. Hixson's claims of gross negligence against Brian Hutcheson, Steven Shortell, and Dr. Moran**

140.

Mr. Hixson regularly complained of the severe pain that he was experiencing due to his medicine being refused to treat his diabetes.

141.

Mr. Hixson's complaints of severe pain and discomfort were directly received by Hutcheson.

142.

Mr. Hixson's complaints of severe pain and discomfort were directly received by Shortell.

143.

Mr. Hixson's complaints of severe pain and discomfort were directly received by Dr. Moran.

144.

Hutcheson, Shortell, and Dr. Moran each showed complete disregard for the pain and suffering of Mr. Hixson – pain and suffering that could be quickly and easily remedied by providing Mr. Hixson with his prescribed insulin.

145.

Hutcheson, Shortell, and Dr. Moran's complete disregard for Mr. Hixson's serious and dangerous medical needs and disability requirements demonstrated a complete neglect of the safety and wellbeing of Mr. Hixson's life as an inmate of HRRJ.

146.

As a result of the total disregard for Mr. Hixson's safety by Hutcheson, Shortell, and Dr. Moran, Mr. Hixson suffered severe, prolonged pain throughout his feet, hands and legs, suffered blurred vision and ringing in his ears for months (his entire stay at HRRJ), and now suffers from organ damage and a shortened life expectancy.

**I. Facts related to Mr. Hixson's claim of breach of contract against Southern Health Partners**

147.

Southern Health Partners, Inc. ("Southern Health Partners") is a Tennessee corporation that does business in the State of Virginia.

148.

Southern Health Partners, at all relevant times, was a corporation that provided medical services at Harrisonburg-Rockingham Regional Jail.

149.

In 2001, Southern Health Partners was awarded a contract from Rockingham County after submitting a response, dated April 18, 2001, to a Request for Proposals (RFP) titled "Medical Services - Rockingham Regional Jail" that was issued February 12, 2001 (revised February 27, 2001).

150.

As a result of Rockingham County selecting Southern Health Partners' proposal, a contract was executed between Rockingham County and Southern Health Partners on June 19, 2001, effective July 1, 2001.

151.

That contract executed June 19, 2001 was subsequently renewed every year. At the time of the filing of this Complaint, the active term of that renewed contract covered July 1, 2016 to June 30, 2017 (the “**16-17 Contract.**”)

152.

Under the 16-17 Contract between Southern Health Partners and Rockingham County, Southern Health Partners contracted to provide certain medical care services for inmates of Harrisonburg-Rockingham County Jail.

153.

In the 16-17 Contract, Southern Health Partners contracted to provide inmates of Harrisonburg-Rockingham County Jail with medical care services that would be legally adequate.

154.

In the 16-17 Contract, Southern Health Partners contracted that upon arrival at the Rockingham County facility, each inmate will receive a preliminary health assessment (Receiving Screening) will be performed by trained correctional officers.

155.

In the 16-17 Contract, Southern Health Partners contracted that a minimum list of assessment items would be performed in the Receiving Screening, including documentation of current illnesses and health problems including medications taken and special health requirements.

156.

In the 16-17 Contract, Southern Health Partners contracted that a minimum list of assessment items would be performed in the Receiving Screening, including referral of the inmate for emergency services or additional health services, as may be necessary.

157.

In the 16-17 Contract, Southern Health Partners contracted that if as a result of the receiving screening it is apparent that an inmate requires medical attention, then the inmate will immediately be referred for treatment.

158.

In the 16-17 Contract, Southern Health Partners contracted that the appropriate level of treatment (i.e. treatment in-house by a member of the professional health services staff or referral to a hospital or other community-

based health service) should be made after a thorough evaluation of the inmate's condition.

159.

In the 16-17 Contract, Southern Health Partners contracted that Southern Health Partners will be financially responsible for the cost of medical treatment and health care services provided to any inmate after commitment of such person to the custody of the administration of the Rockingham Regional Jail and will end with the discharge of the inmate.

160.

In the 16-17 Contract, Southern Health Partners contracted that once an inmate has been formally committed to the Rockingham County facility, and after any serious "off the street" type injuries have been treated, Southern Health Partners will assume financial responsibility for the inmate's medical care.

161.

In the 16-17 Contract, Southern Health Partners contracted that the cost of all medical treatment for health care services, regardless of the nature of the illness or injury or whether or not the illness or injury occurred prior or

subsequent to the individual's incarceration at Rockingham County facility, will be paid by Southern Health Partners.

162.

In the 16-17 Contract, Southern Health Partners contracted that health care standards require that information regarding access to health care services be communicated orally and in writing to inmates upon arrival at the correctional facility. In the 16-17 Contract, Southern Health Partners contracted that to meet these standards, Southern Health Partners will use notices posted in the intake area advising inmates of how to access the health care delivery system, in addition to the verbal and written/documented notification which is provided at booking.

163.

In the 16-17 Contract, Southern Health Partners contracted that a comprehensive medical history and physical examination will be performed on each inmate by the 14<sup>th</sup> day of incarceration, which will include: review of the preliminary health evaluation during the intake screening; additional data necessary to compare a standard history and physical examination; and

laboratory tests as directed by the physician for any particular medical or health problem discovered.

164.

In the 16-17 Contract, Southern Health Partners contracted that inmates will receive subsequent physical examinations as indicated by their age and physical condition, and when it is determined that an inmate requires medical treatment, the inmate will be referred to see the physician at the next scheduled sick call or, if deemed necessary, will receive immediate medical treatment by the physician.

165.

In the 16-17 Contract, Southern Health Partners contracted that moreover, **if the health assessment finds that an inmate has a chronic health problem** (e.g., AIDS, **diabetes** or epilepsy), **the physician will order and initiate a specialized treatment plan** for the individual inmate. In the 16-17 Contract, Southern Health Partners contracted this treatment plan would include information and **direction for other medical staff personnel** who may be involved in the treatment, as well as pertinent information for correctional staff, **so that so that they all may know their responsibilities in the care and supervision of the affected inmate.**

166.

In the 16-17 Contract, Southern Health Partners contracted they would use a structured, daily triage procedure in order to ensure that inmate health problems and requests are addressed promptly, appropriately and efficiently.

167.

In the 16-17 Contract, Southern Health Partners contracted that its Medical Director (Physician) always oversees the triage system that is followed by all health care personnel, and that this ensures that the inmates received the appropriate level of care and that their complaints are properly processed and resolved; at all relevant times with regards to this Complaint, Dr. Moran was its Physician.

168.

In the 16-17 Contract, Southern Health Partners contracted that inmates have the ability to access the triage system by submitting a health care request form.

169.

In the 16-17 Contract, Southern Health Partners contracted that as part of the triage system these health care request forms are received daily by the health

care staff and **as a first step in the triage system, the inmate is then seen by a member of the professional nursing staff and appropriate treatment is administered within the scope of the Nurse Practice Act.** In the 16-17 Contract, Southern Health Partners further contracted that inmates requiring a higher level of service will be referred to the physician or other appropriate professional practitioner in a timely manner.

170.

In the 16-17 Contract, Southern Health Partners contracted that the triage system **guarantees an appropriate level of care and easy access to the health care system by inmates.**

171.

In the 16-17 Contract, Southern Health Partners contracted that it would have a **designed program of ordering, dispensing, and administering prescription drugs** under the control of a physician, and that it had a developed formulary of pharmaceuticals for use at the Rockingham Regional Jail. In the 16-17 Contract, Southern Health Partners contracted that its intent is to provide the safest, most efficacious and cost-effective medication appropriate to each individual's treatment.

172.

In the 16-17 Contract, Southern Health Partners contracted that medications may be ordered only by a physician, and when verbal orders are received, they must be countersigned by the physician at the earliest opportunity.

173.

In the 16-17 Contract, Southern Health Partners contracted that no medication ay be prescribed without documentation of its clinical need in the patient's chart.

174.

In the 16-17 Contract, Southern Health Partners contracted that **all costs of prescription and non-prescription medication will be covered by Rockingham County.**

175.

In the 16-17 Contract, Southern Health Partners contracted that it will have a Special Medical Program and that it will provide all special health care services required including, but not limited to, **care for inmates who are chronically ill.** Relevantly, Southern Health Partners stated that examples of chronic illness

include **diabetes**. Under this program, Southern Health Partners contracted that the type of treatment will be determined by the needs of the individual inmate, but may include such things as medications, special diets, physical therapy, or laboratory tests, and that each treatment plan will be initiated by the physician and will be detailed in the individual's medical record.

176.

In the 16-17 Contract, Southern Health Partners contracted that as part of its Special Medical Program it will keep a list of inmates with special needs and maintain schedules for medical treatment in accordance with its established protocols for each illness; **for example, weekly blood sugars are obtained on all diabetics receiving insulin.**

177.

In the 16-17 Contract, Southern Health Partners contracted that all personnel would be interviewed by the Medical Team Administrator.

178.

In the 16-17 Contract, Southern Health Partners contracted that it would have a physician or physician assistant in the jail each week to see those inmates

that have been referred through the triage process, and that this is expected to require up to four hours each week.

179.

In the 16-17 Contract, Southern Health Partners contracted that each member of its health care staff at the jail will be properly licensed and new employees will receive appropriate orientation and training before assuming duties within the jail.

180.

Southern Health Partners knew that Mr. Hixson was diabetic because he told Southern Health Partners staff that he was a diabetic at his intake screening.

181.

Southern Health Partners knew that Mr. Hixson was diabetic because a Southern Health Partners staff member and licensed practical nurse requested Mr. Hixson's medical records from Rockingham Memorial Hospital, specifically noting that only Mr. Hixson's diabetes records were being requested.

182.

Southern Health Partners knew that Mr. Hixson was diabetic because at or following Mr. Hixson's intake screening a Southern Health Partners staff member and licensed practical nurse wrote that Mr. Hixson is Type 1 diabetic.

183.

Southern Health Partners knew that Mr. Hixson was diabetic because a Southern Health Partners staff member checked his blood sugar daily as a result of that knowledge.

184.

Southern Health Partners knew that Mr. Hixson was diabetic because a Southern Health Partners staff member checked his blood sugar 150 times and on only 3 occasions was Mr. Hixson's blood sugar levels considered "normal" and below 110 mg/dl according to the Southern Health Partners' Blood Sugar Flow Sheets that were used to record Mr. Hixson's blood sugar levels.

185.

Southern Health Partners breached the 16-17 Contract by failing to provide appropriate treatment for Mr. Hixson, who they knew to be diabetic.

186.

Southern Health Partners failed to provide legally adequate medical care to Mr. Hixson by refusing to give Mr. Hixson his prescribed, medically necessary medication for his serious diabetes.

187.

Mr. Hixson suffered severe pain throughout his feet, hands and legs, suffered blurred vision and ringing in his ears for months as a result of Southern Health Partners' failure to provide him with adequate medical care for his diagnosed diabetes.

188.

Mr. Hixson suffered a damage to his internal organs, as a result of Southern Health Partners' failure to provide him with adequate medical care for his diagnosed diabetes.

189.

Mr. Hixson suffered severe emotional distress for many months, as a result of Southern Health Partners' failure to provide him with adequate medical care for his diagnosed diabetes.

190.

Mr. Hixson suffered a serious fear for his life for many months, as a result of Southern Health Partners' failure to provide him with adequate medical care for his diagnosed diabetes.

**COUNT I**  
**VIOLATION OF MR. HIXSON'S EIGHTH AMENDMENT RIGHTS**  
**PURSUANT TO 42 U.S.C § 1983**

*(Federal claim against Dr. Moran, John Doe #1, and John Doe #2)*

“The Due Process Clause of the Fourteenth Amendment governs a pretrial detainee's claim of denial of medical care. However, ‘[p]retrial detainees are entitled to at least the same protection under the Fourteenth Amendment as are convicted prisoners under the Eighth Amendment.’ Thus, we use the Eighth Amendment's ‘deliberate indifference’ standard of Estelle v. Gamble, 429 U.S. 97, 104 (1976), in evaluating the pretrial detainee's claim.”

[Hall v. Holsmith, 340 F. App'x 944, 946-47 (4th Cir. 2009)]

191.

Plaintiff fully incorporates paragraphs 3-6, 44-109, and 147-190, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count I.

192.

Based on the incorporated paragraphs to support this Count I, Defendant Dr. Moran and nurses John Doe #1 and John Doe #2 violated Mr. Hixson's right

to be free from deliberate indifference to his known serious medical need for his prescribed medication to treat his known, medically diagnosed condition of diabetes, and said right was clearly established at the time Defendants Dr. Moran, John Doe #1, and John Doe #2 deliberately failed to provide Mr. Hixson with any medication at all to deal with Mr. Hixson's known severe diabetic condition. Consequently, Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT II**  
**SUPERVISORY LIABILITY**  
**REGARDING THE VIOLATION OF MR. HIXSON'S**  
**EIGHTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C § 1983**  
*(Federal claim against Defendants Bryan Hutcheson and Steven Shortell in their individual capacities)*

In a published Opinion, the Fourth Circuit Court of Appeals had this to say about the potential liability of a supervisory official in the context of alleged unconstitutional conduct that causes harm to any person:

Recognizing that supervisory liability can extend "to the highest levels of state government," we have noted that liability ultimately is determined "by pinpointing the persons in the decisionmaking chain whose deliberate indifference permitted the constitutional abuses to continue unchecked." Slakan, 737 F.2d at 376. See Spell v. McDaniel, 591 F.Supp. 1090, 1109-10 (E.D.N.C.1984) (determining issue on supervisory liability is whether defendant proximately caused a violation of the plaintiff's rights by doing something or failing to do something he should have done).

Shaw v. Stroud, 13 F.3d 791, 798-99 (4th Cir. 1994) (citing Slakan v. Porter, 737 F.2d 368, 376 [4th Cir. 1984]).

193.

Plaintiff fully incorporates paragraphs 3-8, and 18-109, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count II.

194.

On top of the incorporated paragraphs to support this Count II, Defendants Brian Hutcheson and Steven Shortell approved a policy that prohibited HRRJ inmates from receiving prescribed medication to treat diabetes by any official contractually associated with HRRJ, and thus Mr. Hixson never received prescription medication to treat his illness. Because of those facts, and *all facts used to support this Count II*, Bryan Hutcheson and Steven Shortell are the persons in the "decisionmaking chain whose deliberate indifference permitted the constitutional abuses to continue unchecked." Consequently, Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT III**  
**VIOLATION OF MR. HIXSON'S RIGHTS UNDER TITLE II**  
**OF THE AMERICANS WITH DISABILITIES ACT**  
*(Federal claim against Brian Hutcheson in his official capacity as Sheriff of Rockingham County and operator of HRRJ and Steven Shortell in his official capacity as Captain and operator of HRRJ)*

“[T]he plain text of Title II of the ADA unambiguously extends to state prison inmates . . .”

[Pennsylvania Dep't of Corr. v. Yeskey, 524 U.S. 206, 213 (1998)]

195.

Plaintiff fully incorporates paragraphs 3-5, 7-8, 18-98, and 110-133, *and any paragraph this Court deems relevant*, as full stated herein to support Plaintiff's Count III.

196.

Sheriff Hutcheson and Captain Shortell's policy of refusing to provide not only reasonable accommodations but also minimum medical treatment to Mr. Hixson for his ADA-recognized disability, diabetes, caused Mr. Hixson severe and continuous pain, made him fear for his life, and caused long-term internal organ damage, all in direct violation of the ADA. Additionally, Hutcheson and Shortell's policy actually discriminated against Mr. Hixson directly for having a disability and requesting treatment for that disability, also in direct violation of

the ADA. Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT IV  
VIOLATION OF MR. HIXSON'S RIGHTS  
UNDER THE REHABILITATION ACT**

*(Federal claim against Brian Hutcheson in his official capacity as Sheriff of Rockingham County and operator of HRRJ and Steven Shortell in his official capacity as Captain and operator of HRRJ)*

197.

Plaintiff fully incorporates paragraphs 3-3-5, 7-8, 18-98, and 110-133, *and any paragraph this Court deems relevant*, as full stated herein to support Plaintiff's Count IV.

198.

HRRJ is liable under the Rehabilitation Act because HRRJ receives federal funding. Sheriff Hutcheson and Captain Shortell's policy of refusing to provide not only reasonable accommodations but also minimum medical treatment to Mr. Hixson for his diabetes, which is a disability for Mr. Hixson under the Rehabilitation Act pursuant to the ADAAA, caused Mr. Hixson severe and continuous pain, made him fear for his life, and caused long-term internal organ damage, all in direct violation of the Rehabilitation Act. Additionally, Hutcheson and Shortell's policy actually discriminated against Mr. Hixson directly for

having a disability and requesting treatment for that disability, also in direct violation of the Rehabilitation Act. Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT V**  
**GROSS NEGLIGENCE**

*(State claim against Brian Hutcheson, Steven Shortell, and Dr. Moran in their individual capacities)*

In Virginia, “ ‘[g]ross negligence’ is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another.” Frazier v. City of Norfolk, 362 S.E.2d 688, 691 (Va. 1987). It “amounts to the absence of slight diligence, or the want of even scant care.” Id. “[W]hether certain actions constitute gross negligence is generally a factual matter for resolution by the jury and becomes a question of law only when reasonable people cannot differ.” Koffman v. Garnett, 574 S.E.2d 258, 260 (Va. 2003) (citing Griffin v. Shively, 315 S.E.2d 210, 212 (Va. 1984)).

[Jenkins v. Woody, 2017 WL 342062, at \*19 (E.D. Va. Jan. 21, 2017)]

199.

Plaintiff fully incorporates paragraphs 3-3-8, 18-98, and 140-146, *and any paragraph this Court deems relevant*, as full stated herein to support Plaintiff’s Count V.

200.

By refusing to treat Mr. Hixson's serious medical condition and serious disability, which could have been easily treated by providing Mr. Hixson with insulin, and by refusing to treat Mr. Hixson after he voiced numerous complaints, Hutcheson, Shortell, and Dr. Moran each demonstrated an utter and complete disregard of care amounting to complete neglect of the safety of Mr. Hixson's life and wellbeing, and he suffered severe pain throughout his feet, hands and legs, suffered blurred vision and ringing in his ears for months, and suffered organ damage as a result.

**COUNT VI**  
**GROSS NEGLIGENCE (RESPONDEAT SUPERIOR)**  
*(State claim against Sheriff Hutcheson in his individual capacity)*

201.

Plaintiff fully incorporates paragraphs 3-8, 18-98, and 140-146, *and any paragraph this Court deems relevant*, as full stated herein to support Plaintiff's Count VI.

202.

Sheriff Hutcheson's deputies failed to report and otherwise ignored serious and obvious signs of Mr. Hixson's serious need for medical attention, thus delaying his access to critical medical care that would have prevented his

excruciating pain. Hutcheson utterly disregarded the safety of inmates at HRRJ, including Mr. Hixson, by demonstrating an utter disregard to failures by his staff to report and secure medical attention for the serious medical needs of inmates. Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT VII  
NEGLIGENCE**

*(State claim against Dr. Moran, John Doe #1, and John Doe #2)*

203.

Plaintiff fully incorporates paragraphs 3-6, 44-98, 134-139, 147-190, and any paragraph this Court deems relevant, as full stated herein to support Plaintiff's Count VII.

204.

Dr. Moran violated the duty of care owed to Mr. Hixson, a medically diagnosed diabetic, when he refused to give Mr. Hixson medication (prescription or otherwise) despite knowing that Mr. Hixson's blood sugar levels were dangerously high, and Mr. Hixson suffered excruciating pain and life-threatening deterioration of his organs as a direct and proximate result. Additionally, nurses John Doe #1 and John Doe #2 each violated the duty of care

owed to Mr. Hixson, a medically diagnosed diabetic, when they each refused to give Mr. Hixson medication or otherwise treat him, despite knowing that Mr. Hixson's blood sugar was dangerously high, and he suffered excruciating pain and life-threatening deterioration of his organs as a direct and proximate result. Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT VIII**  
**BREACH OF CONTRACT**  
*(State claim against Southern Health Partners)*

“The status of an intended third party beneficiary does not depend upon permanent membership in the class of persons entitled to receive the benefit of the contract.”

[Ogunde v. Prison Health Servs., Inc., 274 Va. 55, 64, 645 S.E.2d 520, 525 (2007) (holding that an inmate was an intended beneficiary of a contract between the Virginia Department of Corrections and a medical services corporation)]

205.

Plaintiff fully incorporates paragraphs 3-6, 9-17, 66-98, and 147-190, *and any paragraph this Court deems relevant*, as full stated herein to support Plaintiff's Count VIII.

Based on all the facts to support this COUNT VIII, and the fact that Mr. Hixson, along with all inmates at HRRJ, is an intended beneficiary of the contract between Southern Health Partners and Rockingham County, Southern Health Partners is liable for the injuries suffered by Mr. Hixson as a direct result of the breach of its contract with Rockingham County when it failed to provide adequate healthcare to the inmates of HRRJ, including Mr. Hixson, a documented, diagnosed serious diabetic. Mr. Hixson is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

**COUNT IX**  
**PUNITIVE DAMAGES**  
*(Against all Defendants individually)*

**Based on the facts alleged in this complaint,** Plaintiff is entitled to punitive damages, under all applicable laws, because Defendants acted with a willful and conscience indifference to the laws that protect Mr. Hixson's Constitutional rights.

**COUNT X  
ATTORNEY FEES**

**Based on the facts alleged in this Complaint,** Mr. Hixson is entitled to attorney fees, under all applicable laws.

**WHEREFORE,** Mr. Hixson prays for a trial by jury of twelve and judgment against Defendants as follows:

- (a) The process issue and service be had on each Defendant;
- (b) That judgment be granted in favor of the Plaintiff against the Defendants, jointly and severally, for the injuries of Plaintiff;
- (c) That Plaintiff recover compensatory damages including pain and suffering, lost income and future lost income, and other expenses in an amount to be determined at trial, including attorney fees;
- (d) Plaintiff be awarded damages for his loss earnings and reduction in his earning capacity from Defendants;
- (e) That Plaintiff recover all costs of this litigation;
- (f) That a jury trial be had on all issues so triable;
- (g) Plaintiff have Judgment against Defendant for punitive damages; and
- (h) That Plaintiff receives such other and further relief as the Court deems just and proper.

Respectfully this submitted 31<sup>st</sup> day of March 2017,

By   
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