

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action Number: 22-cv-01682-GPG

Formerly Crowley County District Court, Case No. 2022CV2

THOMAS PHIL MERCHANT,

Plaintiff,

v.

DEAN WILLIAMS, Executive Director, Colorado Department of Corrections (CDOC),

BARRY GOODRICH, Warden, Crowley County Correctional Facility (CCCF),

CHRISTIANNA CAPPELLUCCI, Clinical Services Head (CCCF),

BRIAN LOVATO, Unit Manager (CCCF),

ASHLEY MACEK, Supervisor, CCI Dog Program (CCCF), and

NAOMI HENSEN, Case Manager (CCCF),

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
OCT 11 2022
JEFFREY P. COLWELL
CLERK

2ND AMENDED COMPLAINT PURSUANT TO 42 U.S.C. § 1983

I. The Parties to This Complaint:

A. The Plaintiff :

Plaintiff No. 1

Thomas Phil Merchant, pro se, at all relevant times cited in this complaint, is a state inmate, convicted and sentenced to the custody of the Executive Director of the Colorado Department of Corrections, currently confined at the Crowley County Correctional Facility.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

B. The Defendant(s)

Defendant No. 1

Defendant, Dean Williams, at all relevant times cited in this complaint, is the Executive Director of the Colorado Department of Corrections (CDOC). Acting for the State of Colorado, his position is created to manage, supervise, and control the correctional institutions operated and supported by the state; to monitor and supervise the activities of private contract prisons; to manage and supervise the divisions, agencies, boards, and commissions that are or may be transferred to or established within the department by law or by the executive director pursuant to > section 17-1-101(2); to provide work and self-improvement opportunities; and to establish an environment that promotes rehabilitation for successful reentry into society. To develop policies and procedures governing the operation of the department. To supervise the business, fiscal, budget, personnel, and financial operations of the department and the institutions and activities under his control. In consultation with the division directors and the wardens, to develop a systematic building program providing for the projected, long-range needs of the institutions under his or her control. To efficiently manage the lands associated with or owned by the department. To the extent practical, to utilize the staff and

services of other state agencies and departments, within their respective statutory functions, to carry out the purposes of this title. To the extent practical, to develop within the correctional institutions industries that develop work skills for inmates and that also will serve the purpose of supplying necessary products for state institutions and other public purposes as provided by law. To appoint an inspector general and investigators and oversee independent annual audits of all prisons that housed Colorado offenders. Finally, it is his responsibility to review Offender Classification policies and Administrative Regulations (AR) 's and update them annually to ensure that they conform with changes in Statutes and Legislative Acts and then communicate those changes to all Colorado officials and offenders under his supervision. He is being sued for prospective, declaratory and injunctive relief as he was acting in his official capacity.

Address: 1250 Academy Park Loop

City & Zip Code: Colorado Springs, 80910

County & State: E Paso County, Colorado

Phone: (719) 579-9580

Defendant No. 2

Defendant, Barry Goodrich, at all relevant times cited in this complaint, is the Warden of (CCCF).

He is being sued in his individual capacity.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

Defendant No. 3

Defendant, Christianna Cappellucci, at all relevant times cited in this complaint, is Head of Clinical Services, at (CCCF). In her position, acting for Core Civic Corporation, she is responsible to ensure

that offenders will be provided with health care services that maintains basic health and prevents other than normal physical and emotional deterioration. Clinical Services includes medical, nursing dental optometry, pharmacy, psychiatric, mental health, intellectual and developmental needs, drug and alcohol, and sex offender treatment service. She must follow clearly established Colorado administrative regulations that provide an overview of the structuring authority and general operating principles for the administration of Clinical Services within CCCF. Specifically relevant to this immediate case, she is responsible to inform offenders that in an emergency situation, diabetic kits are available in Master Control and in housing units when medical personnel are not available and to provide training to all contract workers for these diabetic kits in roll call training annually. Defendant Cappellucci must ensure that offenders with diabetes assigned to CCCF, a level III facility, that have a documented history of hypoglycemia or a hypoglycemic event as determined by Clinical Services, will be housed in a cell with a call button or have access to a call button. She is responsible to ensure that all records from all patient services are recorder in the electronic health record system that shows the place, date, and time of health care encounters along with a record of prescribed medications and administrative records. She is being sued in her individual capacity.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

Defendant No. 4

Defendant, Brian Lovato, at all relevant times cited in this complaint, is Unit Manager, at (CCCF).

He is being sued in his individual capacity.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

Defendant No. 5

Defendant, Ashley Macek, at all relevant times cited in this complaint, is a Unit Manager, at (CCCF). She is being sued in her individual capacity.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

Defendant No. 6

Defendant, Naomi Hensen, at all relevant times cited in this complaint, is a Unit Manager, at (CCCF). She is being sued in her individual capacity.

Address: 6564 State Highway 96

City & Zip Code: Olney Springs, 81062

County & State: Crowley County, Colorado

Phone: (719) 267-3548

II. Basis for Jurisdiction and Venue:

A. This 42 United States Code § 1983, Complaint is brought against Colorado State officials, and the private contractors from the Core Civic Corporation, including their local officials.

B. The federal constitutional or statutory rights violated by state and local officials are listed below:

1. This Court has original jurisdiction pursuant to Title 28 United States Code, Section §1343(a), (1),(2),(3) & (4), because Plaintiff asserts claims to redress the deprivations, under color of Colorado State laws, statutes, ordinances, regulations, custom or usage, of his rights, privileges or immunity secured by the I,IV,V,VII,IX, and XIV Amendments to the Constitution of the United States of America.

2. This Court also has original jurisdiction pursuant to Title 42 United States Code, Section §1985, to allow Plaintiff to recover damages from Defendants due to injury when Defendants failed to prevent the illegal acts when they had knowledge that the illegal acts were taking place, or were about to occur and did not prevent the violations of the Plaintiffs Civil Rights under Title 42, United States Code §1983.

3. This Court also has original jurisdiction pursuant to Title 28, United States Code §1332 because there is a complete diversity between the Parties and the amount in controversy exceeds \$75,000.00, exclusive of fees and costs.

4. This Court has jurisdiction under Title 28, United States Code, Section §1331 because there exist legal issues involving the interpretation and application of the United States Constitution.

5. This Court also has supplemental or pendant jurisdiction pursuant to Title 28, United States Code, Section §1367 because Plaintiffs state law claims are so related to Plaintiffs federal law claims that they form part of the same case or controversy under Article III, Section 2 of the United States Constitution.

6. This is the proper venue for this lawsuit pursuant to Title 28, United States Code, Section §1391 (b), because a substantial part of the events giving rise to this action occurred in this Colorado District.

D. Defendants listed below have acted "under color of law" as follows:

Defendant No. 1: Dean Williams has been the acting Executive Director of the Colorado Department of Corrections (CDOC), when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional Facility.

Defendant No. 2: Barry Goodrich, at all relevant times cited in this complaint, is the acting Warden of Crowley County Correctional Facility when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional Facility.

Defendant No. 3: Christianna Cappellucci, at all relevant times cited in this complaint, is the acting Head of Clinical Services, at Crowley County Correctional Facility (CCCF) when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional Facility. She is responsible to ensure that offenders will be provided with health care services that maintains basic health and prevents other normal physical and emotional deterioration. Clinical Services includes medical, nursing, dental, optometry, pharmacy, psychiatric, mental health, intellectual and developmental needs, drug and alcohol, and sex offender treatment services. She is required to follow clearly established Colorado Administrative Regulations (AR)'s that provide an overview of the structuring authority and general operating principles for the administration of Clinical Services within CCCF.

Defendant No. 4: Brian Lovato, at all relevant times cited in this complaint, is an acting Unit Manager, at Crowley County Correctional Facility (CCCF) when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional Facility.

Defendant No. 5: Ashley Macek, at all relevant times cited in this complaint, is an acting Unit Manager, at Crowley County Correctional Facility (CCCF) when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional facility.

Defendant No. 6: Naomi Hensen, at all relevant times cited in this complaint, is an acting Unit Manager, at Crowley County Correctional Facility (CCCF) when the events that led to this complaint occurred and continue to occur at the Crowley County Correctional Facility.

All preceding, current and successor Defendants have acted, and continue to act, under color of Colorado state law at all time relevant to this complaint.

III. Prisoner Status:

Plaintiff Thomas Phil Merchant is a convicted and sentenced Colorado State prisoner.

IV. Statement of Claims:

Claim #1 - Deliberate Indifference to Medical Treatment, Insulin for Diabetics:

Violation of Mr. Merchants 8th Amendment Rights.

1. On 7/14/20, at approximately 3:05 PM, Plaintiff Merchant, a diabetic, who has been listed as a class member in the ADA class action in the Montez lawsuit since 2017, while living in the Incentive Living Unit 3A, asked officer Carillo if Medical Line (Med Line) had been called because he wanted to get his insulin shot.
2. Even though officer Carillo was a staff member at (CCCF) for over 4 years at the time, he did not understand all the problems that had happened in the past when offenders tried to go to Med Line in a timely manner. Plaintiff Merchant tried to explain that if offenders are late, even through no fault of their own, they could be denied treatment.
3. Officer Carillo did not hear the announcement for Med Line on the radio and since the facility intercom system was broken, Plaintiff Merchant asked if the officer could check on his radio, with Master Control, if the Med Line call had been made.
4. Officer Carillo finally called at approximately 3:30 PM and Master Control said that they had made the call earlier and since it was now facility count time, no offenders were to be released to Med Line. One (CCCF) count time is at 4:00 PM daily.
5. Plaintiff Merchant was finally released after count was clear and he arrived at Med Line at approximately 6:32 PM and Nurse Little said that since he was late, he could not receive his insulin shot. Christianna Cappellucci is the supervisor of all nurses at (CCCF). As such, she is responsible for the nurses under her supervision. She has been made aware of the issues regarding timely insulin shots through the grievance procedure. She has a personal involvement to make sure that her nurses give medications to the proper offender at the proper time. She has been given notice that these procedures have not taken place and as the Head of Clinical Service at (CCCF). As a

registered nurse, she knows that a denial or delay of insulin for Mr. Merchant, a diabetic patient, causes substantial harm that may cause a permanent physical injury or that it may be an immediate injury, such as pain and suffering while waiting for his treatment. She has continued to disregard the risk of harm to Mr. Merchant's health and has failed to take reasonable measures to abate it in the future.

6. Plaintiff Merchant explained to Nurse Little that, if you won't give me my shot because I am late through no fault of my own, "I want to declare a medical emergency". To receive his life saving medicine, he was willing to pay for the insulin shot and he understood he would be charged a \$5.00 fee for the emergency.

7. Nurse Little said that Plaintiff Merchant was late and would receive no shot for the 3:00 PM period on 7/14/20. So, Plaintiff Merchant suffered pain, injury and possible death because he had to wait many additional hours until approximately, 3:00am on 7/15/20, for the next available Med Line time frame. Medical staff at (CCCCF) knew that this delay in treatment for diabetes always results in substantial harm to Mr. Merchant and they routinely continue to harm diabetic patients anyway.

8. Plaintiff Merchant spoke to Case Manager Ms. Aragon and received an Incident Statement and filed it against Nurse Little and the Clinical Services Head at that time, for deliberate indifference to his chronic medical treatment of diabetes.

9. During most of 2020 and 2021, the entire United States, and the offenders at (CCCCF) were in Covid -19 lock down status and the nursing staff delivered medicine to Living Units twice daily.

10. When offenders came off lock down status, many new staff were hired and the logistics for ~~Med Line~~ were disrupted again with missed Med Line calls and treatment denied due to untrained staff and a continuation of the broken intercom system.

11. On 8/26/21, with staff shortages, the then Case Manager Ms. Naomi Hensen was the Unit 3 staff that was in charge of releasing offenders to Med Line.

12. The problems with communication continued because Ms. Hensen did not hear the call on her radio for Med Line at approx. 3:00pm, so Plaintiff Merchant tried to explain the problems with the process of getting his insulin shot to her. After another delay, Plaintiff Merchant was eventually allowed to go late to Med Line.

13. Once again, in an effort to communicate with staff about med line delays or denials, Plaintiff Merchant filed an Incident Statement to resolve this issue. His attempts to communicate with the Head of Clinical Services, Christianna Cappellucci, failed, again. Ms. Cappellucci never responded.

14. On 10/15/21, Plaintiff Merchant filed an Informal Grievance about the Med Line process concerning his denial of medical treatment, specifically his timely insulin shot. The retaliatory action by Defendant Lovato, led to his removal from the Incentive Living Unit and all his efforts to communicate with the Defendants failed.

15. Ashley Macek responded to the Informal Grievance on 10/21/21 and said that she did nothing against Plaintiff Merchant and that he had quit the CCI Dog Program on his own. She did not recall that Plaintiff Merchant had completed the CCI Dog Program. She did not remember signing his Certificate of Completion in 2019 even though she was in charge of the program. There was no response from her about failing to allow Plaintiff Merchant his insulin shot in the Informal Grievance answer by Ashley Macek.

16. Plaintiff Merchant filed a Step I Grievance that included all facts from the Informal Grievance and once again explained that the root of the issue was denial of medical care for his diabetes.

17. Warden Barry Goodrich is responsible for ensuring that the staff at (CCCF) are trained properly and that they follow the clearly established Colorado Department of Corrections (CDOC) procedures for the Colorado State offenders under his care. By not doing so he has clearly shown the state of mind that denies offenders medical treatment when he knows that insulin is not being given in a timely manner for Mr. Merchant.

18. Plaintiff Merchant had many verbal conversations with Warden Goodrich and Unit Manager Lovato that concerned his denial of treatment for diabetes, and the grievance procedure that he was being denied. He also spoke to them about the appeal to be moved from his incentive housing unit without cause. The gist of the conversation with Unit Manager was, that Mr. Merchant would not be placed back into the incentive unit and any attempt by Mr. Merchant to do so would not succeed.

19. On 11/9/21, Brian Lovato responded to the Step I Grievance and made good on his promise to deny any relief requested by Plaintiff Merchant. He never addressed the denial of medical care for Mr. Merchant. Again, there was no staff response about failing to allow Plaintiff Merchant his insulin shot.

20. On 11/10/21, Plaintiff Merchant filed a Step II Grievance and stated all prior grievance information was to be included in this Step II Grievance. The (CCCF) staff response was due within a specific time frame.

21. Since the Defendants did not respond in a timely manner to his Step II Grievance, Plaintiff Merchant filed a Step III Grievance on 12/24/21. The Step III Grievance is to be answered by a Colorado State official even though offenders are housed at a private facility such as Plaintiff Merchant. Administrative Regulation (AR) # 850-04 states that even if a grievance is not timely answered by the staff, offenders must still file their next grievance steps in a timely manner. (CCCF) staff want it both ways. They can be late, offenders can not be late or the grievance will be denied on timeliness issues.

22. In his Step III Grievance, the issue of the denial of medical treatment, delays with the Mcd Line, as well as being moved out of the incentive unit were included. In this final step of the grievance process, Plaintiff Merchant is allowed to insert one additional page of information. So, he added the document that Case Manager Encinas had produced, a Query Offender Programs document, dated 10/8/21. This clearly showed he was employed as a Unit 3 - A, Incentive Living Unit Laundry Porter, within the policy criteria time frame for staying in the Incentive Living Unit.

Plaintiff Merchant expressed his belief that Brian Lovato either lied about or produced a fraudulent document after the fact, to bolster his decision to remove Plaintiff Merchant from the Incentive Living Unit.

23. It is the duty of the (CCCF) Defendants to maintain accurate records that must be retained by the Job Board at (CCCF), so that if Plaintiff Merchant has any disagreement with the record in this case, the truth can easily be ascertained. The Defendants did not refer to any job board records, they rely on the unverified word of Defendant Lovato, instead.

24. It is also the duty of Dean Williams, as acting Executive Director of the Colorado Department of Corrections to ensure that offenders under his watch, receive proper medical treatment. He is the supervisor that must ensure that the (CCCF) private prison meets the standards of care that is required by the 8th Amendment for Colorado prisoners housed at (CCCF). When grievances are completed and letters explaining the issues about medical treatment are sent to his office, he is put on notice that these problems exist at (CCCF). Instead, he allowed these problems to be handled by the (CCCF) staff. His inaction to review the monthly reports that are to be logged for offender care show his indifference to the pain and suffering of the Colorado offenders at (CCCF) during his tenure.

25. In early February of 2022, Plaintiff Merchant was called to a meeting with Brian Lovato, Paul Pacheco and Naomi Hensen to try to resolve the problems with the 3:00 PM Med Line. These Defendants wanted to curtail a civil lawsuit and said that it will be a priority to make sure that Med Line will be called at 3:00 PM on a consistent basis every day. Since that meeting, the problem stays the same. Staff don't hear the call on their radio and Plaintiff Merchant still does not receive his insulin shot in a timely manner.

26. On 1/26/22, Plaintiff Merchant filed a Rule 106 (a)(2), a quasi judicial review of the actions from (CCCF) officials. The complaint was sent back from the Clerk of the Crowley County District Court with a Case Management Order on 4/3/22. It is listed as, Case No. 2022CV2.

27. On 4/3/22, Plaintiff Merchant was reassigned to the Incentive Living Unit 3 - A. No application was requested by Defendants. No answer was given for their change of decision.
28. As the Head of Clinical Services at (CCCF), Christianna Cappellucci is responsible for informing diabetic offenders that in the case of emergency, diabetic kits are available in Master Control and in Living Units when medical personnel are not available and to provide training to all contract workers for these diabetic kits in a roll call training annually.
29. As the acting Head of Clinical Services, Christianna Cappellucci must insure that offenders with diabetes assigned to (CCCF), a level III facility, that have a documented history of hypoglycemia or a hypoglycemic event as determined by Clinical Services, will be housed in a cell with a call button or have access to a call button.
30. Due to the poor condition of the maintenance or lack of maintenance at (CCCF), the intercom system, including the call button function in cells did not work during the Covid 19 Pandemic, and continues to not function properly as of the date of this complaint.
31. Plaintiff Merchant has never been offered a diabetic kit from Master Control staff or by Living Unit staff from 2017 to present. Plaintiff Merchant believes that there is no kit available, in any case, at either location.
32. Diabetics at (CCCF) are to be included in the ADA protocols and are allowed to receive soft soled shoes as per the settlement in the Montez case. Plaintiff Merchant believes that few diabetic offenders at (CCCF) are provided soft soled shoes.
33. Plaintiff Merchant was approved for the Shoe Exchange program on 7/26/19 and has still not received soft soled shoes as per his diabetic class member status from the ADA Litigation Resolution of 7/18/17. (CCCF) continues to continue a policy to deny and ignore diabetic patients their required health care standards, which has no penalogical interest for not doing so.
34. On 3/24/22, Plaintiff Merchant requested C/O Stidham to release him for the diabetic Med

Line. But, once again, staff did not hear the announcement and would not allow him a timely insulin shot. Plaintiff Merchant filed another Incident Statement for this ongoing problem. This problem continues due to the systemic turnover of staff members and untrained staff that deny medical treatment for diabetic offenders.

35. On 9/26/22, Plaintiff filed an Incident Statement because once again, the new untrained staff, Ms. Walker did not allow Unit 3-A, Mr. Merchants living unit and housing pod, to go to the Med Line called at 3:00pm. Mr. Merchant looked out his cell window and saw other offenders returning from Med Line. He was finally released at 3:45pm to get his life saving shot of insulin. The dates and names of the staff change, but the inconsistent procedure for Med Line continues, as does the pain and suffering of diabetic offenders such as Mr. Merchant.

36. As the Head of Clinical Services at (CCCF) Christianna Cappellucci has not addressed the training of staff, the untimely Med Line issues or the deliberate indifference to medical treatment of diabetic offenders under her care even though she has repeatedly been informed of these abuses of serious medical needs of Colorado State offenders at (CCCF).

37. To receive medications, diabetic offenders must rely on their captors. They are unable to go to the drug store or to keep insulin and the needles in their cells to take timely shots. The inaction of Warden Barry Goodrich, Christianna Cappellucci and Naomi Hensen to correct the timely dispensing of insulin shows a state of mind of these Defendants that can only be attributed to acts of deliberate indifference to medical treatment of Mr. Merchant's diabetic condition. The needless pain and suffering as well as the anxiety caused by their inaction to correct the procedures for Med Line requires the relief sought by Mr. Merchant while he is housed at (CCCF), in this instant case.

Without an ORDER from this Court, the Defendants will never make any corrections to comply with the 8th Amendment to the United States Constitution that prevents the cruel and unusual punishment inflicted upon Mr. Merchant for merely trying to receive his life saving medicine as a confirmed insulin dependant diabetic.

Claim #2 – Denial of the Administrative Grievance Process and the:

CCCF Defendants Retaliation for Asserting His Constitutional Right To Seek Relief .

1. The Administrative Regulation (AR) #850-04, concerning grievance procedures for Colorado officials, or private contractors acting under the color of Colorado law, have clearly established guidelines and time frames that must be followed for responding to offender grievances. Defendants at the (CCCF) private prison routinely violate those time frames, as in their responses to Plaintiff Merchants grievances. While the Court has explained that, “There is no constitutional right to a grievance procedure.” *citing Boyd v. Werholtz*, 443 F. App'x 331 (10th Cir. 2011), Plaintiff Merchant is still required to exhaust all administrative remedies before pursuing any claim in any Court. This creates a justiciable controversy, a lack of judicial economy, and a delay in the constitutional rights to the meaningful access to the Court. But for the retaliatory actions of the Defendants, this instant case would not have this claim attached.

2. The Defendants have insisted that Plaintiff Merchant did not have a job and thus was removed from the Incentive Living Unit. Colorado has already created a liberty interests for prisoners, that requires that offenders either have a job or are in education or vocational programs to receive earned time, to reduce their sentences, by 10 days per month. This liberty interest should now include the grievance process toward his employment status. Plaintiff Merchant had to file a grievance to forestall any lost earned within 30 days of the anticipatory loss of that earned time. Under this theory, it is reasonable for Plaintiff to assume that without filing a timely grievance, according to (AR)'s, he must do so right away, or forever be denied that right to do so. The Prison Litigation Reform Act of 1995, states that, “no action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a) (See, *Sisney v. Wyandotte County Detention Center*, 166 F.3d 1222, (C.A. 10 (Kan.) 1999) Plaintiff Merchant believes this is a justiciable controversy that

includes the retaliatory actions of (CCCCF) officials when he is exercising his constitutional right to access the process that the lower Courts and upper level Court require him to exhaust before seeking their guidance.

3. Plaintiff Merchant believes that there exist several ways that Defendants have abused the process for grievances. One way is to create an unsecured grievance box in the facility chow hall that does not require any staff to answer grievances, give a copy of the grievance to offenders, or to sign the bottom of the form that would provide proof of the date the grievance was filed. Second, they simply throw away the grievances from the box, stating they never received one. Third, they used the Covid Pandemic, citing staff shortages and/or do not have a back-up grievance coordinator in case of staff sickness. Fourth, they only respond to some of the issues stated in the grievance any never acknowledge portions of the grievance such as deliberate indifference to medical treatment. Fifth, offenders are retaliated on by moving them from one Living Unit or in the case of private prisons, they deem the offender a threat to the safety of the facility and move the offender to another facility. All these measures and others are used by the Defendants in this case and for offenders similarly situated at (CCCCF).

4. Plaintiff Merchant complained about not receiving an insulin shot by filing an Incident Statement against Naomi Hensen. But for the fact that he complained about it, the Defendants retaliatory action against him, moving him to a more restrictive Living Unit, would not have taken place.

5. Ms. Hensen refused to allow Plaintiff Merchant to go to Med Line and retaliated by then filing a complaint with Plaintiff Merchants' Supervisor of the CCI Dog Program, Ashley Macek, who placed Plaintiff on a 90 probation for "yelling at" Ms. Hensen.

6. Plaintiff Merchant was the Clerk for the CCI Dog Program for about 2 years because he had completed the program on 11/2/2019.

7. On 9/2/21, citing differences with employer, Supervisor Macek, a Defendant in this case, Plaintiff Merchant quit that job and became a Unit 3 Incentive Laundry Porter. He was assigned on 9/28/21, as per the Query Offender Programs, printed on 10/8/21.

8. Plaintiff Merchant explained to Brian Lovato and Ashley Macek that he did retain a job within the criteria of the Incentive Living Unit policy and that he had already completed the CCI Dog Program on 11/2/19.

9. Plaintiff Merchant was housed in the Incentive Living Program situated in Unit 3A until Unit Manager, Brian Lovato, made the decision to remove him because he was no longer employed in the CCI Dog Program. When Plaintiff Merchant asked about appealing the decision to remove him, because he had already been assigned a different job before the time frame criteria expired, Brian Lovato retaliated against him by not allowing Plaintiff Merchant an appeal, stating "grieve it" if you don't like my decision and "you" referring to Plaintiff Merchant, "won't win an appeal from me."

10. But for the actions of Brian Lovato that denied the right to an appeal or to grieve the process of removing him from the Incentive Living Unit, Plaintiff Merchant would not have been moved. Even though the facts show that Plaintiff Merchant had already attained a job within the parameters of the criteria for staying in the Incentive Living Unit, Brian Lovato retaliated against him, by removing him from the Incentive Living Unit, for complaining about the denial of treatment for his medical condition, an insulin shot for his diabetes.

11. Plaintiff Merchant spoke to Defendant Goodrich, the Warden of (CCCF), many times about Med Line not being called or being denied his insulin shot and the fact that he was moved out of the Incentive Living Unit, to no avail. He explained that he believed that he was merely exercising his constitutional rights by making use of the appeals and grievance process to Warden Goodrich, but was still retaliated against when he was moved from the Incentive Unit, without cause.

12. This Court has stated that, "There is no constitutional right to a grievance procedure." But, if

any offenders have failed to complete all the exhaustion of administrative remedies, then they are denied access to the next level of Court action. This is not a mere assertion of an allegation, this showing of specific facts that describe the actions of the Defendants in their retaliatory actions are explained in specific detail above. Simply put, Plaintiff Merchant was denied his medicine and when he complained about it, by using the procedures that are required of him, the Defendants retaliated by threatening him with a loss of earned time, a disciplinary charge, and then moved him from his assigned housing without allowing him an appeal or access to the liberty interest that they created, a right to access the administrative grievance procedures in a timely manner.

13. Mr. Lovato again was stating incorrectly that his decision to remove Plaintiff Merchant from his Incentive Living Unit housing was based upon the fact that he had not finished the program and that he had no replacement job before the time frame to allow continuation in said Incentive Living Unit. Brian Lovato also produced a fraudulent, new updated Query Offender Programs document dated 10/19/21 that showed that Plaintiff Merchant was unassigned, and not assigned as a Laundry Porter at all.

14. Plaintiff Merchant believed that he must file an action in the Crowley County Combined Court within a set time frame, even though the Defendants had not answered his grievances in a timely manner. Due to fighting from drunk offenders in Plaintiff Merchant's Living Unit 4 -C, he was denied access to the law library because the unit was in lock down status. When the lock down was over, Ms. Harrison, Law Library Supervisor, contracted Covid and the Law Library was closed from 1/17/22 through 1/24/22. There have been so many closures but in this limited brief Plaintiff does not list them all. The Mail Room issues are also too lengthy to submit, but, suffice to say that, the process of mailing out and receiving legal mail issues are also a factor for this case.

15. On 1/26/22, Plaintiff Merchant filed a Notice of Intent and began research to file the Rule 106 motion, a quasi judicial review of the policy and procedures denied to him at (CCCF) and to exhaust all remedies before filing this instant prisoner complaint.

16. After filing the Notice of Intent with the Crowley County Combined Court , the Colorado official, Marshall Griffith, responded to Plaintiff Merchant's Step III Grievance. There was a delay in delivering the response to Plaintiff Merchant, but the date on the Step III Grievance response was 1/26/22. Marshall Griffith denied the Step III Grievance stating that Plaintiff Merchant had not exhausted his administrative remedies, "because this is not a valid method for review of your issue" but then stated, "This is the final administrative action in this matter."

17. As Plaintiff Merchant stated earlier, the private contractors at (CCCF) and Colorado State officials want it both ways. Plaintiff Merchant cannot seek review and/or has not exhausted remedies. Plaintiff Merchant asks this Honorable Court to cut through all the balderdash from these Defendants and allow him a meaningful opportunity to be heard for this justicable controversy because there exist similarly situated offenders that have issues with the private contractors at (CCCF) that are capable of repetition yet evading review without the oversight of this Court.

18. Brian Pacheco also told Plaintiff Merchant to resubmit his request to be placed back into the Incentive Living Unit 3 - A because they could accommodate him sooner than the 6 month time frame for approval.

19. Plaintiff Merchant resubmitted his request for the Incentive Living Program and Brian Lovato denied it.

VI. Relief

1. Plaintiff incorporates and re-alleges all preceding paragraphs.
2. Based on the foregoing, Plaintiff respectfully requests the following relief:
 - a. awarding injunctive relief enjoining Defendants from destroying all records from Medical, Maintenance, Mail Room, Grievance Coordinator, and other similar data concerning this instant complaint.
 - b. awarding all actual, compensatory, consequential, special, treble, statutory and/or punitive

damages suffered by Plaintiff with respect to each and every cause of action asserted herein; and

c. awarding all costs, expenses, and reasonable paralegal and attorney fees incurred by Plaintiff in investigating, readying, bringing, and prosecuting each and every cause of action asserted herein; and

d. any additional relief the Court deems warranted under the circumstances.

VII. Exhaustion of Administrative Remedies Administrative Procedures

A. Plaintiffs' claims arose while confined at the Crowley County Correctional Facility (CCCF).

B. The grievance procedure for this private prison is shown by the Colorado Department of Corrections (CDOC) Administrative Regulation (AR) #850-04.

C. Some, but not all of the claims for relief in this complaint are covered through the grievance process at this facility. Plaintiffs' Claim #1 and Claim #2 grievances have been attempted to be resolved informally through letters and verbal conversations.

D. The Plaintiff and other offenders filed grievances that concerned facts to be addressed in this complaint.

E. 1. Yes, grievances were filed at the Crowley County Correctional Facility.

2. The grievances that were filed concerned conditions of confinement that mirror the *Ramos v. Lamm* case from 1979. After 43 years, many conditions of confinement that were issues in that case, still "showed that plaintiff's are housed under conditions which fall below all recognized constitutional and professional standards", which are not followed by the Defendants at (CCCF).

3. Some grievances filed were lost by staff, other grievances were responded to many days late and then denied.

4. The language in the (CDOC) grievance process creates a "justicable controversy" because one is placed in a catch 22 position. The Colorado Department of Corrections requires offenders to

submit grievances within a 30 days window of time to avoid loss of that right, but these same officials routinely violate all mandated time frames required by them to respond.

5. On other grievances, Defendant 's have falsified documents and then they claim that the result of that grievance is that it has been resolved. (See, Claim #1) The appeal process in another situation was not followed by Defendant Lovato. That claim shows a conflict of interest because the same Defendant, Defendant Lovato, denied Plaintiff Merchant an appeal. (See, Claim # 1) Claim #2 requests relief because (CDOC) Defendants did not complete the grievance process when they failed to answer the final Step III grievance in a timely manner, thus denying Plaintiff Merchant access to the grievance process. (See, Claim #2)

6. Plaintiff Merchant filed a State action, No. 2022CV2, Rule 106(a)(2) on 1/26/22. Plaintiff had no confidence in a favorable outcome in the local District Court due to conflict of interest. But, he believed that he must try to settle his claims at a lower level to avoid possible exhaustion issues. Plaintiff also understands that this Honorable Court would rather have cases settled at the lowest level possible and could require that Plaintiff file there, first. But, as seen in this complaint, Plaintiff believes that his constitutional issues need not be heard first in the lower local court because of the nature of the constitutional issues raised. The Plaintiffs' issues require that they be addressed in the proper jurisdiction at the Federal level because the claims are timely filed due to the nature of unconstitutional behavior that continues even 43 years after similar case law was decided against the Defendants in *Ramos v. Lamm*. Simply put, no one follows up on the bad behavior by the State or it's minions, the Private Prison industry, and specifically in this instant case, (CCCF).

7. On July 7, 2022, Defendant Dean Williams removed this Crowley County District Court Case No. 2022cv2 to the Federal Court. Dean Williams believed that Plaintiffs issues should be heard in Federal Court due to their possible constitutional violations.

F. Some offenders claims have issues where a grievance was not filed.

1. The reason many offenders don't file grievances is due to the threat of retaliation by the Defendants. In the past, offenders at a Private Prison, were deemed a threat to the security of the facility because they filed in the local District Court and the 10th Circuit Federal Court to seek redress for illegal disciplinary hearings. When the private prison official do not allow the filing of an appeal, how can one seek redress? The (CDOC) officials, specifically the Private Prison Monitoring Unit (PPMU) does not respond to offender requests, they simply let the (CCCF) official get away with their bad behaviors. If the (PPMU) and (CCCF) staff believe that one becomes a hindrance, that offender is moved out of the facility and their issue is now moot. This is a retaliatory act common from the Defendants from the Private Prison system.
2. Some offenders have been reclassified and moved to a higher rated custody level facility for seeking relief from Defendants through the grievance process. Defendant Goodrich has attempted to move other offenders in the past and has completed these moves for others in a consistent manner in line with the concept of a retaliatory transfers.
3. Many offenders at (CCCF) don't speak English or are unable to explain their issues because they are illiterate. The Grievance Box in the Chow Hall is merely a drop box. It does not make use of a process that allows for a copy to be made for the offender or some type of a date stamp that would require staff to respond in a timely manner. So, staff simply throw out grievances and say that the offender did not file it in a timely manner to avoid answering the grievance. The grievances filed by Plaintiff Merchant that are cited in this complaint were timely filed by him. The responses to his grievances were not answered by the Defendants in a timely manner or not answered at all. Plaintiff Merchant made use of Case Managers that were not assigned to him, at times when their assigned Case Managers were out sick with Covid. He made sure to sit in the same room, get copies of their unanswered grievances throughout the process and watched the Case Manager log their grievances into the system.
4. Many verbal conversations take place with staff about condition of confinement on a daily basis.

Defendant, Warden Barry Goodrich can be seen making rounds at this facility, so oftentimes offenders try to voice their concerns and individual grievances with him. Plaintiff Merchants experience with Defendant Goodrich is that he is consistent in agreeing in that moment that changes need to be made, when speaking face to face and then he goes back to his office up front and nothing is done. He basically wants to answer a question with a question and then never resolves any issues that he said he would fix. Most of the conversations are "I don't know, I'll get back to you, It was someone else's decision, their fault, not mine." Or he may say, "No, I'm not going to address that issue at this time". But, the issues are never resolved. The leadership at this facility lacks any motivation for change because they don't need to. The Private Prison Monitoring Unit (CDOC) staff, do not watch the watchers. There exists no oversight from (CDOC) staff, so, as a for profit prison corporation, this corporation has procedures, rules and policies that are based upon capital expenditures verses profit for their shareholders and not on the constitutional rights of offenders under their care which has been clearly established for these Private Contractors by Statute and which is consistently violated by them.

VIII. Previous Lawsuits

Plaintiff Merchant has never had any case dismissed based on the "three strikes rule" in a civil action or an appeal in federal court.

A. Plaintiff Merchant as prior mentioned in this complaint, had a case dealing with some of the same facts in Crowley Combined Court that are the same as this action, but Defendant Dean Williams removed that case from the District Court to the Federal District Court.

IX. Certification and Closing

A. For Parties Without an Attorney

1. At an early practicable time, the pro se Plaintiff, Thomas Merchant requests this Court to certify this 2nd Amended Complaint Pursuant to 42 U.S.C. § 1983 concerning both deliberate indifference

to medical treatment for his diabetes and for the retaliatory actions of the Defendants that occurred directly after Mr. Merchant complained about his medical treatment by filing his appeals and grievances against (CCCF) Defendants.

2. Additionally, and finally, the Plaintiff requests this Court to appoint counsel as soon as practicable to supplement or correct any errors or omissions by the Plaintiff due to his inexperience with handling a complaint, other complex litigation and the types of claims asserted in the action before this Court.

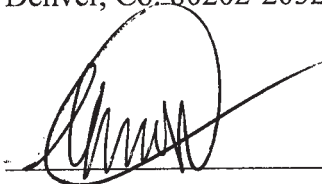
CERTIFICATE OF SERVICE

I, Thomas Phil Merchant, hereby certify that both a true and correct copy of the foregoing, 2nd Amended Complaint Pursuant To 42 U.S.C. § 1983, was mailed via the United States Postal Service, postage prepaid, from the inmate mail system at the Crowley County Correctional Facility, P.O. Box 100, Olney Springs, Co. 81062, on the 5th day of October, 2022, to the following:

Office of the Clerk
United States District Court
Alfred A. Arraj Courthouse
901 19th St.; Room A105
Denver, Co. 80294 - 3589

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| FACILITY | CCCF | | |