UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD NUNES, CARL COE, JOHN DOE, PETER POE, and RICHARD ROE, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO.
UMASS CORRECTIONAL HEALTH, MASSACHUSETTS DEPARTMENT OF CORRECTION, LEONARD MCGUIRE, WARREN FERGUSON, JUDITH STEINBERG, THOMAS GROBLEWSKI, and PETER HEFFERNAN,	)	
Defendants.	)	

COMPLAINT

Introduction

HIV-positive prisoners in the Massachusetts Department of Correction have for years been able to keep their lifesaving medications in their cells. This Keep On Person program was an unquestionable success, enabling HIV-positive prisoners to take their medication consistently and privately. UMass Correctional Health – an arm of the University of Massachusetts Medical School hired by the DOC to provide health services to its prisoners – has terminated this program, requiring that all HIV-positive prisoners come to the "med line" at their prison's Health Services Unit for each dose of medicine. The DOC's Health Services Division approved this change. No other medications were removed from the Keep On Person program.

The Defendants have offered several reasons for taking HIV patients off of the Keep On Person program. Not only are these reasons unpersuasive, they are irrational, and they do not justify this act of discrimination against HIV-positive prisoners. The Defendants have feigned ignorance of the real issue driving their decision: cost. HIV medications are expensive, but they are lifesaving and as such they cannot be easily rationed or limited. While UMass and the DOC cannot simply deny patients their medication, they can and have erected barriers to access in order to discourage adherence.

Compelling patients to go to med line for each individual dose, day after day, is one such barrier. The problems with med line are many, including errors in the medications or doses provided, delayed or denied access to the line, and the absence of privacy. These problems are known to the Defendants, and they are exacerbated for HIV-positive prisoners, who have heightened concerns about missed doses, contagion, and privacy. Even prisoners who do not refuse medications outright may have their medications taken away for missing med line too often, regardless of the reason for the absence.

The removal of HIV medications from the Keep On Person program is callous and extremely short-sighted, as patients who refuse or are unable to go to the med line, or who miss doses because of the chronic defects in the med line process, will become more sick. Defendants' actions are also discriminatory and betray a disregard for HIV-positive prisoners' welfare and their privacy. Plaintiffs bring this class action for declaratory and injunctive relief, asking this Court to bring this practice to a halt.

Parties

1. Plaintiff Richard Nunes is currently incarcerated at Old Colony Correctional Center in

Bridgewater, Massachusetts, a penal institution operated by the Massachusetts Department of Correction ("DOC").

2. Plaintiff Carl Coe is currently incarcerated at MCI-Shirley Medium in Shirley, Massachusetts, a penal institution operated by DOC. In order to maintain his privacy with regard to his HIV-positive status, Plaintiff Coe is substituting a pseudonym for his real name.

3. Plaintiff John Doe is currently incarcerated at MCI-Norfolk in Norfolk, Massachusetts, a penal institution operated by DOC. In order to maintain his privacy with regard to his HIV-positive status, Plaintiff Doe is substituting a pseudonym for his real name.

4. Plaintiff Peter Poe is currently incarcerated at MCI-Norfolk in Norfolk, Massachusetts, a penal institution operated by DOC. In order to maintain his privacy with regard to his HIV-positive status, Plaintiff Poe is substituting a pseudonym for his real name.

5. Plaintiff Richard Roe is currently incarcerated at MCI-Norfolk in Norfolk, Massachusetts, a penal institution operated by DOC. In order to maintain his privacy with regard to his HIV-positive status, Plaintiff Roe is substituting a pseudonym for his real name.

6. Defendant UMass Correctional Health ("UMCH") is a program of UMass Medical School which, pursuant to a contract between UMass Medical School and the DOC, is responsible for providing adequate medical care to all prisoners in DOC custody. UMCH has a principal place of business in Shrewsbury, Massachusetts.

7. Defendant Massachusetts Department of Correction ("DOC") is an agency of the Commonwealth of Massachusetts, charged with the care and custody of state prisoners. The DOC has a constitutional obligation to attend to the serious medical needs of the prisoners in its custody.

8. Defendant Leonard McGuire is the Executive Director of UMass Correctional Health. Defendant McGuire bears the ultimate responsibility for the services provided by UMCH to DOC prisoners, and for the employees and agents who provide those services. He is responsible for ensuring that the medical services provided by UMCH employees and agents are provided in accordance with applicable law and with UMCH and DOC policies, rules, and regulations. He also is responsible for the development and approval of UMCH policies and practices, including those for the administration of HIV medications. Defendant McGuire is acting under color of law and is being sued in his official capacity.

9. Defendant Warren Ferguson is the Associate Chairman for Commonwealth Medicine, the division of UMass Medical School that operates UMCH. Defendant Ferguson is a physician. He is responsible for ensuring that the medical services provided by UMCH employees and agents are provided in accordance with applicable law and with UMCH and DOC policies, rules, and regulations. He also is responsible for the development of UMCH policies and practices, including those for the administration of HIV medications. Defendant Ferguson is acting under color of law and is being sued in his official capacity.

10. Defendant Judith Steinberg is the Senior Director of Clinical Affairs for the Center for Health Policy and Research, which is part of Commonwealth Medicine. Defendant Steinberg is a physician and infectious disease specialist. She is responsible for developing and implementing clinical policies, guidelines, and standards for Commonwealth Medicine programs, including UMCH. She is responsible for the development of UMCH policies and practices, including those for the administration of HIV medications. Defendant Steinberg is acting under color of law and is being sued in her official capacity.

11. Defendant Thomas Groblewski is the Program Medical Director for UMCH. As Program Medical Director, Defendant Groblewski is responsible for ensuring that all prisoners cared for by UMCH receive adequate and appropriate medical care. He is responsible for ensuring that the medical services provided by UMCH employees and agents are provided in accordance with applicable law and with UMCH and DOC policies, rules, and regulations. He is also responsible for the development of UMCH policies and practices, including those for the administration of HIV medications, and he is a member of the joint DOC/UMCH Pharmacy & Therapeutics Committee. Defendant Groblewski is acting under color of law and is being sued in his official capacity.

12. Defendant Peter Heffernan is the Deputy Director of the DOC's Health Services Division. There is presently no Director of the DOC's Health Services Division. Defendant Heffernan is responsible for ensuring that all prisoners within the DOC receive adequate and appropriate medical care. He is also responsible for supervising the DOC's contractual medical provider, UMCH, and ensuring that the medical services provided by UMCH are provided in accordance with applicable law and with DOC and UMCH policies, rules, and regulations. He also is responsible for the development of DOC and UMCH medical policies and practices, including those for the administration of HIV medications, and he is the Chair of the Pharmacy & Therapeutics Committee. Defendant Heffernan is acting under color of law and is being sued in his official capacity.

Jurisdiction and Venue

13. The Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343 (civil rights jurisdiction).

14. Venue is proper pursuant to 28 U.S.C. § 1391(b).

Class Action Allegations

15. This is a class action under Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

16. Plaintiffs are representatives of a class composed of all persons who are now or may be confined in Department of Correction custody and who have HIV.

17. Membership in the class is so numerous that joinder of all members is impracticable. There are approximately 200-300 persons in DOC custody with HIV at any one time, and the population changes as persons are admitted and released.

18. The Plaintiffs' claims involve common questions of law and fact and are typical of the claims of the class as a whole.

19. These common questions predominate over any questions affecting only individual class members. Defendant has acted and refused to act on grounds generally applicable to the class so that final declaratory and injunctive relief would be appropriate to the class as a whole.

20. Plaintiffs have a strong personal interest in the outcome of this litigation, are represented by competent counsel, and will adequately and fairly protect the interests of the class.

21. A class action is superior to any other available method for a fair and efficient adjudication of this controversy. Separate actions by individual members of the class would create a risk of inconsistent or differing adjudications and delay the ultimate resolution of the issues at stake.

Factual Allegations

Pharmacy Services in DOC Prisons

22. The DOC contracts with UMass Medical School for the provision of medical services to DOC prisoners. UMass Medical School, through its Commonwealth Medicine division, provides

these services under the name UMass Correctional Health.

23. UMCH providers prescribe medications for DOC prisoners. Medications are ordered from the State Office of Pharmacy Services, an agency of the Commonwealth of Massachusetts. The State Office of Pharmacy Services arranges for procurement and delivery of the medications to each prison.

24. DOC and UMCH policies and procedures govern the prescription and administration of medications.

25. A joint DOC/UMCH Pharmacy & Therapeutics Committee meets regularly to review pharmacy practices, including medication usage and cost, prescribing practices, and administration practices.

26. The Pharmacy & Therapeutics Committee also drafts, modifies and approves policies governing pharmacy services.

27. Defendant Peter Heffernan is chair of the Pharmacy & Therapeutics Committee. His approval is required before any changes in pharmacy policy or practice are made, including the change at issue in this action.

28. Defendant Groblewski, as UMCH Program Medical Director, is a member of the Pharmacy & Therapeutics Committee. He participates in and approves of any changes in policy and practice, including the change at issue in this action.

29. DOC and UMCH have policies governing the administration of medications, including the Keep On Person ("KOP") medication program.

30. Through the KOP program, prisoners bring their prescribed medications back to their cells and store them there, taking each dose when indicated.

31. DOC and UMCH approve individual prisoners to participate in the KOP program. They may exclude a prisoner from the program for failing to keep medication in a locked container; having more than one prescription container of any one medication; failing to request refills on time; or otherwise exhibiting signs that the prisoner is abusing the program or lacks the capacity to understand and follow its rules.

32. By default, all medications are approved for the KOP program unless they are excluded by DOC and UMCH.

33. The list of excluded medications includes drugs that are not taken orally but must be injected, and narcotics or other drugs that pose a security risk, as they can be used as intoxicants and are subject to theft, sale, and trade. Many mental health medications are also excluded, for the latter reason and out of concern over the possibility of self-harm through an overdose.

34. At all times relevant to this complaint, Plaintiffs were approved for the KOP program.

35. Until February 2, 2009, HIV medications were not excluded from the KOP program.

HIV Care in DOC Prisons

36. The incidence of HIV in the DOC population is higher than that in the general population.

37. A stigma surrounds HIV in DOC prisons. HIV-positive prisoners live in close quarters to other prisoners and to staff, and they readily encounter bias and prejudice. Such prejudice can take the form of harassment, protests over shared facilities (*e.g.*, showers, bathrooms, dining), threats, or bodily harm.

38. In addition, some HIV-positive prisoners have not disclosed their HIV-positive status to their families or other people outside the prison.

39. Accordingly, many HIV-positive prisoners in DOC prisons, including Plaintiffs Carl Coe,

John Doe, Peter Poe, and Richard Roe, choose not to make their HIV-positive status known to everyone in the prison.

40. HIV is a life-threatening illness. For DOC prisoners who have HIV, this means that whatever the length of their sentences, they may ultimately die in prison.

41. In the 1990s, the Governor of the Commonwealth of Massachusetts convened an advisory board to analyze HIV care in DOC prisons, and to recommend and enact policies to improve such care.

42. Pursuant to the advisory board's recommendations, HIV medications were included in the KOP program. Patients could pick up their prescribed medications and keep them in their cells, in a locked container.

43. There are several benefits to the KOP program. Patients can ensure privacy when they take their medication, avoiding any unwanted disclosures. In order to diminish side effects from the medication, prisoners can take their medication with food or right before going to sleep. Patients have ready access to their medication at any time, regardless of what is happening at the prison. When medication can only be obtained at the "med line" – at the prison's Health Services Unit at an appointed hour – access to that medication can be disrupted in several ways. A disturbance in the prison (such as a medical emergency or an altercation) may freeze prisoner movement and limit access to the med line. A prisoner may feel too ill to walk to and wait in the med line, or he or she may have a court or hospital appointment that conflicts with the scheduled med line.

44. Along with KOP medications, the Governor's advisory board on HIV care in the prisons recommended case management, in which an infectious disease nurse at each prison followed all

HIV-positive prisoners, instead of having those patients see multiple different providers. Infectious disease doctors were brought into each prison to see and treat HIV-positive prisoners, instead of transporting the prisoners out to the specialist.

45. Implementation of these practices coincided with the development of Highly Active Anti-Retroviral Therapy, or HAART, for the treatment of HIV. Combinations of multiple drugs are prescribed, which together work to limit replication of the virus.

46. According to the federal Centers for Disease Control and Prevention (CDC), the primary goals of antiretroviral therapy are to maximally and durably suppress plasma HIV viral load, reduce HIV-associated morbidity and prolong survival, improve quality of life, restore and preserve immunologic function, and prevent HIV transmission.

47. In the years following the advisory board's work, with HAART medication included in the KOP program, as well as case management and in-house visits from the specialists, the clinical outcomes for HIV-positive prisoners were very favorable. Prisoners on HAART through KOP predominantly had sustained suppressed HIV viral loads with well-recovered CD4 cell counts.

48. Adherence to HIV medications is essential. Even brief disruptions in treatment can result in the emergence of viral resistance to one or more of the agents in use. Such resistance may have far-reaching implications, as some of these resistance mutations may result in the loss of entire classes of antiviral agents. This loss would restrict future treatment options to more complex and more expensive agents that have more significant side effect profiles, resulting in the need for additional medication management of those side effects.

The Removal of HIV Medications from the KOP Program

49. In November 2008, UMCH announced a blanket change in HIV medication

administration. Instead of patients receiving KOP medications in thirty-day prescriptions, they would instead receive fifteen-day prescriptions.

50. There was no stated reason for the change from thirty-day to fifteen-day prescriptions.

51. This change was reviewed and approved by each of the Defendants. It was approved by the Pharmacy & Therapeutics Committee.

52. Two months later, in January 2009, UMCH announced another blanket change in policy. All HIV medications would be removed from the KOP program. Instead, as of February 2, 2009, anyone taking HIV medications would have to come to the med line at the Health Services Unit for each dose.

53. This change was reviewed and approved by each of the Defendants. It was approved by the Pharmacy & Therapeutics Committee.

54. Only HIV medications were removed from the KOP program. No other medications were terminated.

55. A memorandum to prisoners announcing this change stated that Defendants were excluding HIV medications because of prisoner transfers between facilities. The memorandum alleged that Defendants sought to ensure the availability of these medications in the event that a prisoner was moved from one prison to another.

56. The memorandum did not report the prevalence of this phenomenon – of medications disappearing when a prisoner was transferred between prisons.

57. DOC and UMCH have policies regarding prisoner transfers between facilities. Whenever a prisoner is transferred, that prisoner's KOP medication is transported with him or her to the new institution.

58. As HIV-positive prisoners questioned this new KOP ban, UMCH and DOC abandoned the prisoner transfer rationale and reported a new reason for the change: concern over clinical outcomes. Specifically, UMCH and DOC alleged that there were problems with HIV patients' adherence to their medications.

59. UMCH and DOC did not substantiate this new rationale.

60. The policies governing the KOP program already addressed the issue of non-adherence. Patients who do not reliably take their KOP medications may be suspended from the KOP program. Through this policy, UMCH and DOC could remedy any adherence problems, without punishing those patients who consistently take their medications.

61. These stated reasons for prohibiting KOP medications for HIV-positive patients are irrational and pretextual. Defendants seek not to improve adherence but to reduce it.

Reducing Costs by Reducing Access

62. Defendants' real reason for removing all HIV medications from the KOP program, and for forcing all HIV-positive prisoners to go to the med line for each individual dose, is cost reduction.

63. HIV medications represent a significant expense for UMCH and DOC. Millions of dollars each year are spent on these medications.

64. Between two and three hundred DOC prisoners are prescribed HIV medication. These prisoners – about two to three percent of the overall population in DOC custody – account for at least twenty percent of the overall annual spending on medications.

65. UMCH collects data on the number of prisoners being treated for HIV, the medications prescribed for each prisoner, and the cost of each medication.

66. That data is reported to Defendants McGuire, Ferguson, Steinberg, Groblewski, and

Heffernan, among others.

67. Defendants McGuire, Ferguson, and Steinberg are charged with overseeing UMCH services. Defendant McGuire, who is not a physician, is responsible for administrative as opposed to clinical issues. However, the two concerns are inextricably linked. For UMCH, successful performance of its contractual duties means providing the agreed-upon services for the agreed-upon price. UMCH must therefore endeavor to contain treatment costs, lest it lose money on the contract with DOC. Accordingly, Defendant McGuire participates with physicians in the development of clinical policies and practices, which must be framed with an eye to cost.

68. Defendants Ferguson and Steinberg have similar administrative responsibility. Both are Commonwealth Medicine administrators who oversee UMCH's contractual performance. In addition, both are physicians who oversee clinical and research activities at UMCH, including the development of clinical policies and practices. In doing so, they consider the cost of UMCH services, among other factors.

69. Defendant Groblewski, as Program Medical Director, is responsible for carrying out UMCH's performance. He too must recognize cost considerations in doing so.

70. Defendant Heffernan, as Deputy Director of the DOC Health Services Division, is responsible for ensuring that DOC meets its constitutional obligation to provide adequate health services to the prisoners in DOC custody. He monitors and directs the contractual medical provider, UMCH, in the performance of these services pursuant to the contract between DOC and UMCH. Although DOC assigns responsibility for medications to UMCH, Defendant Heffernan is concerned with drug utilization costs, as rising costs may limit UMCH's ability to provide all the services called for in the contract. Rising costs may also impose pressure to modify the existing

contract to increase DOC payments, and they will factor into the bidding for future contracts. Accordingly, like the other individual Defendants, Defendant Heffernan is concerned with containing medication costs.

71. Controlling drug utilization costs is one mission of the Pharmacy & Therapeutics Committee, of which Defendant Heffernan is the Chair and Defendant Groblewski is a member.

72. Reducing HIV medication costs is easier said than done. For the treatment of HIV, there is no adequate alternative treatment to HAART medication.

73. Moreover, there is little gray area as to whether an HIV patient needs treatment. The HIV diagnosis is confirmed by a blood test, and HAART medication is indicated for all HIV patients with a CD4 count below a defined level. UMCH and DOC have little room to make qualitative judgments about whether an HIV patient needs medication.

74. As a result, HIV medication costs resist traditional controls. By contrast, the cost of expensive psychiatric medications can be controlled through modifying prescribing practices, *i.e.* reducing prescriptions or substituting less expensive drugs. This practice is more defensible for psychiatric medications, given the subjectivity of mental health diagnosing and treatment. Similarly, there is greater subjectivity in the treatment of Hepatitis C, including the decision on whether and when to prescribe expensive antiviral medications. UMCH and DOC explicitly ration Hepatitis C medication for prisoners, offering only a fixed number of prescriptions to the prisoner population at any given time.

75. Defendants have no capacity to limit or modify diagnoses of HIV, they cannot ration treatment with HAART medications, and they do not control the number of HIV patients, as they are obligated to treat all prisoners in DOC custody.

76. Defendants can only reduce the expense of HIV medications by somehow discouraging patients from taking them.

77. Defendants control the administration of medical treatment. They may ease or hinder access to that treatment. In hindering access to HIV medication, they can dissuade HIV patients from taking their medications. Patients frustrated with interruptions, errors, the needless risk of contagion, and breaches of privacy may give up and refuse treatment, or their medications may be discontinued by the provider to avoid developing a drug resistance. In addition, UMCH may discontinue their medications as a penalty for noncompliance, even though Defendants foster the noncompliance.

Removal from the KOP Program Hinders Access to HIV Medication

78. Medications excluded from the KOP program must be taken at med line. A patient reports to the prison's Health Services Unit at a prescribed time for each dose of medicine, every day. The patient waits in a line with other prisoners. On his or her turn, the patient speaks with a UMCH nurse whose task is to verify the prescription and to locate and provide the individual dose. The patient must take and swallow the medication then and there. A correctional officer observes the patient, who then opens his or her mouth for inspection, to ensure that no medication is being hidden.

79. The KOP program holds several advantages over the med line. The main advantage is reliable access. A prisoner with KOP medication is self-reliant, save for one time each month when he must obtain a refill from medical staff. Prisoners without KOP medication must leave their cells and the unit, go to the med line, wait for their turn, rely on the nurse to provide correct medication and dosage, and be inspected by a correctional officer, for every individual dose of

medicine. In a prison environment, where movement is tightly controlled, this is no small difference.

80. The med line affords little privacy. A patient's HIV-positive status can become known to the correctional officer and to other prisoners in the med line, by hearing the verbal exchange between patient and nurse, by reading the patient's chart or medication packaging, by recognizing the pills being administered, or by inference (as only a few types of drugs are excluded from the KOP program).

81. The med line is time consuming. Lines can be lengthy, as each individual administration requires time for the nurse to locate the appropriate medicine and to record its administration, for the patient to take the medicine, and for the officer to inspect the patient's mouth, before moving to the next patient.

82. On any given day, the normal delay associated with med line can be extended for a variety of reasons. Medical or correctional staff shortages may limit the staff available to run the med line. A code or other medical emergency may force the interruption or postponement of med line. Any number of events may cause prisoner movement to be frozen. Prisoners may be unable to get to the med line, or if already there may be ordered to return to their units.

83. The med line may conflict with a prisoner's job or program, forcing the patient to choose between medication and participation in programs or employment.

84. A patient who is ill or infirm may be unable to get to or wait in the med line. Similarly, prisoners who are temporarily detained in their cells or in a segregation unit will be unable to attend med line.

85. A prisoner requires permission from correctional staff to leave his or her unit and go to

med line, permission that may be denied for a number of reasons, proper or improper. Regardless of the reason, the prisoner will be denied his or her medication.

86. Even where a prisoner has access to the med line, the performance within med line is not perfect. Errors and omissions are made by UMCH staff in the administration of medications. Patients may recognize and attempt to point out these errors, but they may be unsuccessful in persuading UMCH staff to correct the error. By having to raise the issue with the medication nurse, patients are more likely to disclose their HIV-positive status to others nearby.

87. The med line typically takes place at or near the Health Services Unit, which is where sick prisoners are seen. HIV-positive prisoners who must go to the med line once or twice each day increase the risk of catching diseases carried by other prisoners or staff.

88. The med line prevents HIV patients from mitigating side effects. Some HIV medications have serious side effects, including stomach cramping and distress, diarrhea, and dizziness. Such side effects can be minimized by taking a dose with food, or by taking an evening dose right before going to sleep instead of in the early evening. The scheduling of morning med lines, which can span a two-hour range, renders patients unable to take medications with breakfast. The scheduling of evening med lines, anytime from 5:00 to 9:00 p.m., renders patients unable to take medications just before going to sleep, leaving them to endure the side effects that accompany the medication every evening.

89. The med line is more labor-intensive than the KOP program, as to both medical and correctional staff.

90. The aforementioned problems with the operation of med lines are known to Defendants.

91. Removing HIV medications from the KOP program, and requiring HIV patients to go to

med line for every dose, is both less efficient and less effective at ensuring adherence.

92. A prisoner who misses one or more med lines, no matter the reason, can be deemed noncompliant by the Defendants and have his or her HIV medications discontinued.

The Descent from HIV Into AIDS: One Patient's Example

93. The problems generated by removing HIV medications from the KOP program are real, and many of them came to light in the experience of one prisoner, who has since been released from DOC custody, and whose health has suffered enormously from this policy change.

94. Brett Boe is using a pseudonym rather than his real name, in order to maintain his privacy with regard to his HIV-positive status. From 2006 until January 2010, Mr. Boe was in the custody of the Department of Correction. From February 2009, when Defendants removed HIV medications from the KOP program, until his release, he was incarcerated at Pondville Correctional Center in Norfolk, Massachusetts.

95. Prior to the Defendants' policy change, Mr. Boe kept his HIV medications in his cell and was adherent to his medication regimen.

96. After Defendants removed HIV medications from the KOP program, Mr. Boe attempted to obtain his medications in the med line. At Pondville Correctional Center, the med line starts outside the door to the Health Services Unit. A correctional officer is posted at the door and lets one prisoner in at a time. The prison calls one med line, which can contain one hundred or more patients.

97. Mr. Boe has witnessed the spread of disease through med line. At one point, the prison population became afflicted with norovirus, a severe stomach flu. The first people to contract the virus were prisoners who regularly attended the med line, among them Mr. Boe.

98. Mr. Boe has encountered interference from the correctional officer posted at the HSU door. On one occasion, in order to avoid contracting another illness, Mr. Boe stayed back until the med line was nearly complete, then stepped up to the back of the line. When he reached the door, the officer denied him entrance, declaring that Mr. Boe was too late for med line.

99. On other occasions, Mr. Boe has been turned away by the officer, who advised that the HSU was closed so that staff could eat.

100. The med line failed to safeguard Mr. Boe's privacy. Mr. Boe does not publicly disclose his HIV-positive status, but after the policy change, his privacy was breached.

101. The correctional officers staffing the med line were aware that Mr. Boe had HIV, given their close proximity and comments occasionally made by the UMCH nurse distributing medications.

102. Those officers who became aware that Mr. Boe was HIV-positive did not keep the information to themselves; they told other officers. Mr. Boe had several interactions with officers that betrayed their knowledge of this information, typically through their reluctance to get close to Mr. Boe.

103. On at least one occasion, an officer was searching a group of prisoners returning from a work project. The officer patted down all of the prisoners, but when he came to Mr. Boe he declined to touch him, instead telling him to go ahead.

104. Such an action, singling a prisoner out for seemingly beneficial treatment without reason, placed Mr. Boe at serious risk of physical harm, as other prisoners were left to suspect that he was an informant.

105. Mr. Boe's HIV-positive status was also improperly revealed to prisoners. UMCH staff

scheduled a special med line, for all interested prisoners, to administer the influenza vaccine. While dozens of prisoners waited in line, UMCH staff announced the names of certain prisoners over the intercom, and instructed them to come to the front of the line, leapfrogging the other prisoners. The prisoners who were named, including Mr. Boe, were called to the front because UMCH did not have enough vaccine for all of the prisoners, and UMCH staff sought to ensure that HIV-positive prisoners were vaccinated, given their serious needs. While a laudable sentiment, the method by which UMCH prioritized HIV-positive prisoners all but disclosed their status to the other prisoners, who were quick to conclude why certain individuals were being called to the front.

106. The intercom, which runs throughout the prison, was also used on a regular basis to call individually named prisoners to the HSU for an appointment with the HIV specialist. The specialist came from off site and did not treat any patients other than those with HIV. Other prisoners could readily deduce that anyone being called over the intercom for an appointment with that doctor must be HIV-positive.

107. The removal of HIV medications from the KOP program produced interruptions in access that were so frequent that Mr. Boe's illness deteriorated from HIV to AIDS.

108. At Pondville, a minimum-security facility, prisoners are required to work. Mr. Boe was on a work crew while at Pondville.

109. Work crews perform different projects each day. Their work times vary as well, based on the particular project.

110. As a result, on a frequent basis Mr. Boe was already at work when the morning med line started, and remained at work until after the morning med line closed.

111. Upon returning from work, if Mr. Boe had missed the med line, he would ask the correctional officer supervising the crew to assist him with obtaining his medication. The HSU door was locked, and Mr. Boe was turned away if he went there alone, requesting his medication. He needed the officer to advise UMCH staff, and the HSU correctional officer, of the situation so that he could obtain his medication.

112. On a frequent basis, the officer supervising Mr. Boe's work crew refused to make any effort to get Mr. Boe into the HSU.

113. On a frequent basis, even when the officer did help Mr. Boe, UMCH staff and the HSU correctional officer still turned Mr. Boe away, sometimes citing the obvious fact that the med line had ended, sometimes giving no reason at all.

114. Mr. Boe complained repeatedly about this state of affairs. He filed grievances and discussed the issue directly with UMCH staff.

115. Neither UMCH nor DOC staff offered any relief from this situation.

116. Mr. Boe could not simply miss work, without being disciplined and possibly transferred to a higher security prison.

117. After Mr. Boe repeatedly petitioned medical and correctional staff about this problem, UMCH staff retaliated against him by accusing Mr. Boe of missing the med line on purpose. When Mr. Boe explained that the officer supervising his work crew refused to bring him to the HSU to arrange for his entry, UMCH staff accused Mr. Boe of lying.

118. After repeated confrontations of this sort, DOC staff placed Mr. Boe on "Pending Investigation" status, an indication that Mr. Boe was being investigated for possible institutional violations. The nature of the investigation was not revealed to him.

119. Prisoners on "Pending Investigation" status may be transferred to a segregation unit. In this case, DOC staff transferred Mr. Boe to a higher security prison, MCI-Norfolk, and its segregation unit.

120. Mr. Boe was confined in segregation for 33 days. He was never interviewed by any investigators. After 33 days, he was taken off of Pending Investigation status and returned to Pondville.

121. Notwithstanding the Defendants' stated concerns about prisoner transfers, Mr. Boe had never suffered from any disruptions in his medication when HIV medications were part of the KOP program. Mr. Boe had always been permitted to carry those medications, along with a few essentials, on his person from one prison to the next.

122. By contrast, when Mr. Boe was transferred from Pondville to the segregation unit at Norfolk, he could not bring his medication with him. He did not receive any HIV medication until approximately one week after his arrival.

123. Upon information and belief, DOC and UMCH never did transfer Mr. Boe's medication from Pondville to Norfolk. UMCH staff at Norfolk simply ended up ordering new refills for Mr. Boe.

124. Several months after the Defendants' removal of HIV medications from the KOP program, Mr. Boe met with the HIV specialist. His CD4 cell count was fluctuating dramatically, as was his viral load.

125. The specialist attributed these fluctuations to Mr. Boe's inconsistent access to his medication. The specialist also feared that if the inconsistencies continued, Mr. Boe was at great risk of developing a resistance to the drugs currently being prescribed.

126. In light of these facts, and the fact that Mr. Boe was due to be released from DOC custody within a few months, the specialist advised that Mr. Boe's health would be better served by discontinuing the medication completely, rather than continuing with the medication subject to such frequent interruptions.

127. Accordingly, for the last several months of his incarceration, Mr. Boe's prescription for HIV medications was canceled.

128. Mr. Boe was released on January 9, 2010.

129. Before his 2006 incarceration, and through most of his time in DOC custody, Mr. Boe's CD4 cell count hovered around 540.

130. Upon his release, Mr. Boe went to an HIV specialist to be examined and to resume taking medication.

131. Testing after his release revealed that Mr. Boe's CD4 cell count had dropped below 200, thereby meeting the CDC's definition of AIDS.

132. Mr. Boe has resumed his previous medication regimen, in the hopes that it remains effective and to avoid the emergence of drug resistance.

Individual Plaintiffs' Experiences

133. Plaintiff Richard Nunes has longstanding disc problems in his back. One effect of this condition is that on occasion, without warning, the discs impinge on nerves and cause Mr. Nunes' legs to give out.

134. Mr. Nunes fell down the stairs in his unit in March 2008, when his lower back acted up and his legs gave out. Since that fall, he has suffered from pain and stiffness in his thoracic spine and neck.

135. Mr. Nunes had surgery in 2005 to repair a severely fractured tibia and patella after an accident. He had rods and screws inserted into his left leg. Mr. Nunes has not yet recovered full strength in this leg.

136. As a result of his conditions, Mr. Nunes has difficulty standing in one place for long periods of time. He also has difficulty climbing up or down stairs. His ability to stand, and his pain, vary from day to day.

137. Mr. Nunes is housed on the bottom tier of his unit, to reduce the frequency with which he climbs stairs. Pursuant to a UMCH order, Mr. Nunes is placed in the bottom bunk of his cell to avoid having to climb into and out of bed every night. Mr. Nunes avoids lines whenever possible, to avoid having to stand for long periods. He waits until the last possible moment to line up to return from the outside yard. Mr. Nunes is one of the first from his unit to leave for the chow hall, so that he does not have to stand in line for a long time while getting his meal. On some days, when he is not feeling well, Mr. Nunes avoids the chow hall altogether and eats in his cell.

138. Mr. Nunes has taken the same HIV medication regimen for years. As a side effect to these medications, Mr. Nunes suffers from frequent, sudden bouts of diarrhea. In the past, Mr. Nunes has had to cut short a visit or appointment and return to his cell, because of the onset of diarrhea.

139. In light of the diarrhea Mr. Nunes frequently experiences, and his other medical conditions, Defendants' removal of his HIV medication from the KOP program presents a significant obstacle to consistent access to his medication.

140. Moreover, in light of his HIV, Mr. Nunes takes pains to avoid illness and infection. He is diligent about his hygiene and hand-washing; he avoids putting his fingers to his eyes, nose, or

mouth; and he is circumspect in his interactions with others, especially those who may be sick or carrying illness.

141. These efforts of Mr. Nunes are thwarted by a policy that needlessly requires him to wait outside the Health Services Unit for med line every day. This setting – where sick prisoners go to be seen and treated, in a line of prisoners some of whom may also have contagious illnesses – lends itself to the spread of disease.

142. Moreover, the med line process promotes the spread of disease. At Old Colony Correctional Center, where Mr. Nunes is incarcerated, each prisoner in med line takes a plastic cup from the same stack and fills it from the same water fountain, to take with his pills. Each prisoner must then put his fingers in his mouth and pull his cheeks apart, to show the correctional officer that he swallowed the pills.

143. Prior to the Defendants' policy change, Mr. Nunes kept his HIV medications in his cell and was adherent to his medication regimen.

144. In 2008, Mr. Nunes was held for several weeks in a segregation unit, where KOP medications are not allowed. A UMCH nurse was responsible for providing medications to prisoners in that unit, similar to the way in which nurses provide medication at med line. On two occasions during Mr. Nunes' segregation, the nurse responsible for medication rounds omitted one of his HIV medications. On another occasion, the nurse attempted to give too high a dose of one medication.

145. Despite Mr. Nunes' serious concerns about the med line, his particular medical conditions, and his historical adherence to HIV medications, Defendants have refused to allow Mr. Nunes to continue to receive his HIV medications through the KOP program. Mr. Nunes has asked for an

exception to be made in his case. He has also proposed as an alternative that he be permitted to go to med line first, so as to avoid the long wait, or that his medications be brought to his cell by the nurses who visit his unit daily, to administer medications to prisoners who for various reasons are locked in their cells. Defendants have denied these requests and informed Mr. Nunes that there are no exceptions to the new policy.

146. Frustrated and discouraged by a med line process that he knows will make errors, foster the spread of illness, and cause him pain and discomfort, Mr. Nunes has declined to go to the med line for his HIV medication. In this respect, the Defendants' policy change has achieved its desired effect, if temporarily. On the day of the policy change, Mr. Nunes filed a *pro se* lawsuit challenging Defendants' actions. He voluntarily dismissed that action in order to participate in the instant action. As such, Mr. Nunes has been declining to go to the med line only until he can obtain relief from the courts in the form of a return to KOP medication.

147. Plaintiff Carl Coe, prior to the Defendants' policy change, kept his HIV medications in his cell and was adherent to his medication regimen.

148. Mr. Coe suffers from side effects as a result of his HIV medication, including dizziness and numbness on his tongue. To combat these side effects, in the past Mr. Coe took his medicine right before going to sleep. In this way, he was able to sleep through the worst of the side effects.

149. Since Defendants removed HIV medications from the KOP program, Mr. Coe has had to take his medication when called out to med line, typically between 5:30 – 7:30 p.m. He now suffers from the worst of the side effects every evening, while still awake.

150. Since the policy change, Mr. Coe has gone to med line for his HIV medication when able. For each morning and evening med line, Mr. Coe and others in his unit must await a call from

UMCH staff to the correctional officer in his unit, authorizing that unit's prisoners to be sent out for med line. The officer must then announce to the unit that prisoners may go to med line.

151. On several occasions since the policy change, Mr. Coe's unit was not called out for med line. Either the UMCH staff never called the unit officer, or the officer never relayed the message to the prisoners in the unit. On these occasions, the errors were not remedied in time and Mr. Coe missed his medication.

152. The med line at MCI-Shirley Medium begins inside the Health Services Unit, but quickly extends outside the building. Most of the time Mr. Coe spends waiting in line is spent outside. At times the outdoor conditions, including rain, snow, or extreme cold, plus any seasonal or other illness, force Mr. Coe to choose between foregoing his medications that day and risking the onset or exacerbation of illness from waiting in the elements.

153. Plaintiff John Doe, prior to the Defendants' policy change, kept his HIV medications in his cell and was adherent to his medication regimen.

154. Since the Defendants removed HIV medications from the KOP program, Mr. Doe has gone to med line to obtain his HIV medication.

155. When that change was made, Mr. Doe was called to the Health Services Unit to discuss it with his infectious disease specialist and the case manager, a UMCH employee. At that meeting, Mr. Doe gave no indication that he would stop taking his medications. Nevertheless, the case manager advised Mr. Doe that he should let her know "when" he was ready to stop, so that she could make the proper arrangements.

156. On one occasion, Mr. Doe woke up feeling terribly ill. He felt too sick to leave his cell and wait in med line. Mr. Doe's unit officers were aware of his condition. There was no

procedure in place for Mr. Doe to obtain his medication, and so Mr. Doe went without his HIV medication that day.

157. Mr. Doe's HIV medications cause unpleasant side effects, including stomach cramps and vomiting. When Mr. Doe possessed his medications in his cell, he arranged to take the medications with food, in order to mitigate these side effects.

158. Since the policy change, Mr. Doe has been forced to take his medication whenever he is permitted to go to med line and makes his way to the front of that line. As a result, Mr. Doe cannot take his medications with food, and he suffers from more severe side effects.

159. In addition, Mr. Doe takes three medications twice a day. To maximize their efficacy and to minimize the potential for developing resistance, the recommendation is to take these medications at twelve-hour intervals.

160. When Mr. Doe possessed his medications in his cell, he could take them at twelve-hour intervals.

161. Presently, Mr. Doe has no control over when he receives his morning and evening doses. There is a range of at least two-hours within which Mr. Doe could receive his medications at each med line. Accordingly, more often than not Mr. Doe cannot take his medication at twelve-hour intervals.

162. On several occasions, officers in Mr. Doe's housing unit have failed to announce that his unit had been called to the med line. Mr. Doe did not receive his HIV medications on these days.

163. On other occasions when Mr. Doe has gone to the med line, the nurse administering medications has not prepared the correct dose of Mr. Doe's medications. Mr. Doe has had to correct the nurse.

164. On one occasion, when Mr. Doe wished to attend a religious ceremony that took place during the morning med line, UMCH staff refused to accommodate his request to obtain his medications before or after the ceremony. Instead, after Mr. Doe was forced to forego his HIV medication that morning, UMCH staff summoned Mr. Doe to the HSU for a meeting. There, they threatened to discontinue Mr. Doe's HIV medications for noncompliance.

165. Mr. Doe does not publicly disclose his HIV-positive status. Since the policy change, however, his privacy has been breached.

166. At the time the Defendants removed HIV medications from the KOP program, there was a poster in the Health Services Unit, within sight of those waiting in the med line. The poster contained photos and labels of the various HIV medications. With help from the poster, anyone who could see the pills being dispensed to Mr. Doe, or any other HIV patient, would be able to conclude that he had HIV.

167. The poster was eventually taken down. However, UMCH staff members at med line have continued to make comments loud enough for the correctional officer and other prisoners in the unit to hear, making direct reference to Mr. Doe's HIV-positive status. The poster remains on the wall in certain offices in the Health Services Unit.

168. In addition, many of the other medications distributed at med line are crushed before they are administered. HIV medications are not crushed, and so other prisoners can deduce that Mr. Doe is HIV-positive.

169. Plaintiff Peter Poe, prior to the Defendants' policy change, kept his HIV medications in his cell and was adherent to his medication regimen.

170. Mr. Poe does not publicly disclose his HIV-positive status. Since the policy change,

however, his privacy has been breached.

171. UMCH staff members at med line have made comments verbally, loud enough for the correctional officer and other prisoners in the unit to hear, making direct reference to Mr. Poe's HIV-positive status.

172. Mr. Poe has a job at the prison. He works in the mornings. On multiple occasions since February 2, 2009, there have been conflicts between the timing of the med line and his scheduled work. Defendants purport to have a procedure that allows prisoners with jobs to receive their morning medications before going to work, in a special med line. Despite having this procedure in place, Mr. Poe has still suffered from conflicts between med line and his job.

173. If he is absent from his job, Mr. Poe risks being issued a disciplinary report and being punished. He also risks losing his job.

174. If he does not attend med line, Mr. Poe puts his health in jeopardy. He also risks being accused of noncompliance with his medication, and ultimately with cancellation of his HIV medication.

175. Before the policy change, Mr. Poe's viral load was undetectable.

176. After having his HIV medications removed from the KOP program, Mr. Poe's viral load increased to detectable levels.

177. Plaintiff Richard Roe, prior to the Defendants' policy change, kept his HIV medications in his cell and was adherent to his medication regimen.

178. Mr. Roe has made efforts to keep his HIV-positive status private. He has disclosed his condition to some trusted individuals, but he is not public about having HIV.

179. Since the policy change, Mr. Roe has gone to med line for his HIV medication.

180. At the med line, UMCH nurses have breached his privacy. They have disclosed his HIV-positive status verbally, out loud, for the correctional officer and other prisoners waiting in line to hear.

181. On one occasion, Mr. Roe has been given the wrong medication by the med line nurse. When Mr. Roe identified the error, the nurse denied providing the wrong medication and refused to correct the error.

182. Mr. Roe has missed his medication because he was too ill to go to and wait in the med line. He was ultimately diagnosed with influenza, but the Defendants made no arrangement to provide Mr. Roe his medication in his cell after falling ill.

183. Defendants are and have been aware of all of the aforementioned problems with the med line. Before they removed HIV medications from the KOP program, Defendants knew that there were systemic problems with med line delays, disruptions, interruptions, conflicts with other programs, errors, contagion, and breaches of privacy.

184. Accordingly, Defendants knew that when they required all HIV-positive prisoners to come to med line daily for every dose of their medication, they all would experience difficulties in accessing these life-saving medications, and breaches of privacy over their HIV-positive status.

COUNT I

CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

185. Plaintiffs restate and reallege Paragraphs 1-184 as if fully set forth in this Count I.

186. By their policies, practices, and acts, all of the Defendants violate the rights of convicted

prisoners with HIV to be free from cruel and unusual punishment as protected by the Eighth and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983.

187. In all relevant aspects, Defendants have acted and are acting under color of law.

188. As a matter of blanket policy, Defendants have prohibited all HIV-positive prisoners from receiving their essential medications as KOP medications, instead requiring them to come to the prison's med line for every dose.

189. Defendants enacted this policy with full knowledge of the disruptions, delays, and other difficulties that accompany the med line process.

190. Defendants also knew of the increased risk of error, contagion, infection, and breach of privacy that result from forcing every HIV-positive prisoner to go to the med line for every dose of medicine.

191. Defendants make no exceptions to the requirement that all HIV medications must be distributed at med line, regardless of a patient's side effects, other medical conditions, conflicts with work, religious or program schedule, or other valid reasons for seeking a temporary or permanent accommodation.

192. Defendants enacted this policy knowing that it would reduce, rather than improve, adherence. They knew that it would frustrate and discourage HIV patients, and induce some of them to give up on their medication regimen, thus lowering costs.

193. By requiring all HIV-positive prisoners to come to the med line for their medications, and barring any of them from having KOP medication, Defendants act with deliberate indifference to the serious medical needs of these prisoners.

COUNT II

VIOLATION OF EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

194. Plaintiffs restate and reallege Paragraphs 1-193 as if fully set forth in this Count II.

195. By their decision to bar HIV medications from the Keep on Person program, Defendants violate the equal protection rights of convicted prisoners with HIV, as protected by the Fourteenth Amendment to the United States Constitution, as enforceable through 42 U.S.C. § 1983.

196. HIV medications, like most medications, do not pose a sufficient risk of abuse, sale, or theft to require all prisoners taking such medications to come to med line. HIV medications have traditionally been dispensed as Keep on Person medications.

197. By removing HIV medications but no other medications from the KOP program, Defendants are treating Plaintiffs, and all prisoners with HIV, differently from other similarly situated individuals.

198. Defendants did not remove any other medications from the KOP program. Plaintiffs, and all HIV-positive prisoners taking medications, were singled out by this change.

199. There is no rational reason for singling out these prisoners.

COUNT III

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

200. Plaintiffs restate and reallege Paragraphs 1-199 as if fully set forth in this Count III.

201. Plaintiffs are qualified individuals with disabilities as defined in Section 504 of the Rehabilitation Act of 1973. *See* 29 U.S.C. § 794.

202. Defendants UMCH and DOC administer programs or activities that receive federal financial assistance.

203. Defendants UMCH and DOC discriminate against Plaintiffs by canceling their keep on person prescriptions for HIV medications, solely by reason of their disability, *i.e.* their HIV.

204. Defendants UMCH and DOC are denying Plaintiffs the benefits of the KOP program or service for medication administration, solely by reason of their disability, *i.e.* their HIV.

COUNT IV

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

205. Plaintiffs restate and reallege Paragraphs 1-204 as if fully set forth in this Count IV.

206. Plaintiffs are qualified individuals with disabilities, as defined in the Americans with Disabilities Act. As state prisoners, Plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants UMCH and DOC. *See* 42 U.S.C. § 12102(2); 42 U.S.C. § 12131(2).

207. Defendants UMCH and DOC are public entities as defined under Title II of the ADA, 42 U.S.C. 12131(1)(B).

208. Defendants UMCH and DOC discriminate against Plaintiffs by canceling their keep on person prescriptions for HIV medications on the basis of their disability, *i.e.* their HIV.

209. Defendants UMCH and DOC are denying Plaintiffs the benefits of the KOP program or service for medication administration on the basis of their disability, *i.e.* their HIV.

COUNT V

VIOLATION OF THE RIGHT TO PRIVACY UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

210. Plaintiffs restate and reallege Paragraphs 1-209 as if fully set forth in this Count V.

211. By their policies, practices and acts, Defendants violate the right to privacy of convicted prisoners with HIV, as protected by the Fourteenth Amendment to the United States Constitution, as enforceable through 42 U.S.C. § 1983.

212. Plaintiffs' HIV-positive status is private medical information.

213. Disclosure of one's HIV-positive status to other prisoners, correctional officers, or anyone other than medical staff is unreasonable.

214. As a matter of blanket policy, Defendants have prohibited all HIV-positive prisoners from receiving their essential medications as KOP medications, instead requiring them to come to the prison's med line for every dose.

215. Defendants enacted this policy with full knowledge of the breaches of privacy that routinely accompany the med line process.

216. Defendants UMCH and DOC, through their employees and agents, have disclosed the HIV-positive status of Plaintiffs Carl Coe, John Doe, Peter Poe, and Richard Roe, to other prisoners and correctional officers.

217. There is no valid, rational basis for the disclosure of this information.

PRAYER FOR RELIEF

218. WHEREFORE, Plaintiffs request that this Court grant them the following relief:

a. Certify that this action be maintained as a class action of all persons who are now or may be confined in Department of Correction custody and who have HIV;

b. Issue a preliminary injunction ordering Defendants to restore Keep On Person

administration of HIV medication for Plaintiff Richard Nunes, pending the outcome of this action;

c. Issue a judgment against Defendants, declaring that their acts, omissions, policies, and practices with regard to the administration of HIV medication are cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution;

d. Issue a judgment against Defendants, declaring that their acts, omissions, policies, and practices with regard to the administration of HIV medication violate the equal protection rights of Plaintiffs under the Fourteenth Amendment to the United States Constitution;

e. Issue a judgment against Defendants UMCH and DOC, declaring that their acts, omissions, policies, and practices with regard to the administration of HIV medication violate Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132;

f. Issue a judgment against Defendants UMCH and DOC, declaring that their acts, omissions, policies, and practices with regard to the administration of HIV medication violate the right to privacy of Plaintiffs Carl Coe, John Doe, Peter Poe, and Richard Roe under the Fourteenth Amendment to the United States Constitution;

g. Issue a permanent injunction ordering Defendants to restore all HIV medications to the KOP program;

h. Enjoin Defendants from taking any action to interfere with Plaintiffs' right to maintain this action, or from retaliating in any way against Plaintiffs for bringing this action;

i. Award Plaintiffs their reasonable attorneys' fees and costs, in accordance with 42 U.S.C. § 1988 and other applicable law;

j. Grant such other and further relief as this Court considers just and proper.

Respectfully submitted,

Plaintiffs Richard Nunes, Carl Coe, John Doe, Peter Poe, and Richard Roe, on behalf of themselves and all others similarly situated,

By their attorney,

/s/ Joel H. Thompson

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