

IN THE DISTRICT COURT FOR TULSA COUNTY
STATE OF OKLAHOMA

- (1) NATHANIEL ALPIN,
- (2) BENJAMIN FRAIR,
- (3) MICHAEL MARRS,
- (4) REX TARTAR,
- (5) TRAVIS LULF,
- (6) DERRICK LATHAN,
- (7) DAVID TEAYS,
- (8) VINCE SCHULTZ,
- (9) DARREN TOWNSLEY
- (10) CHRIS GODFREY,
- (11) DARREN NIBURGER, and
- (12) JERED MAULDIN,

Plaintiffs,

v.

- (1) AVALON CORRECTIONAL
SERVICES, INC.,
- (2) DONALD COFFMAN,
- (3) TERRY MOORE,
- (4) F/N/U BROWN,
- (5) F/N/U JONES, and
- (6) STATE OF OKLAHOMA *ex rel*
THE OKLAHOMA STATE
DEPARTMENT OF
CORRECTIONS,

Defendants.

Case No.

CJ-2015-01344

CARLOS J. CHAPPELLE

DISTRICT COURT
FILED

APR - 8 2015

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

PETITION

COMES NOW, Plaintiffs Nathaniel Alpin, Benjamin Frair, Michael Marrs, Rex Tartar, and Travis Lulf, Derrick Lathan, David Teays, Vince Schultz, Darren Townsley,

Chris Godfrey, Darren Niburger, and Jered Mauldin (hereinafter “Alpin” “Frair” “Marrs” “Tartar” “Lulf” “Lathan” “Teays” “Schultz” “Townesley” “Godrey” “Niburger” “Mauldin” or “Plaintiffs”), for their cause of action against the above-named Defendants, would state as follows:

1. Plaintiffs are residents and citizens of the State of Oklahoma.
2. Defendant Avalon Correctional Services, Inc. (“Avalon”), is a domestic for-profit corporation that generates profits by incarcerating individuals. Avalon owns and operates the Avalon Correctional Center (“ACC”) in Tulsa, Oklahoma. By contract with the State of Oklahoma *ex rel* the Oklahoma State Department of Corrections (“ODOC”), Avalon receives taxpayer money in exchange for housing men in ODOC custody at the privately-operated ACC.
3. Defendant Donald Coffman (“Coffman”) was employed by Avalon as the administrator of ACC. Coffman is sued in his individual capacity and as an employee of Avalon. Coffman was responsible for the operational aspects of ACC, including the safety of all inmates and staff. Coffman was also responsible for training, supervising, disciplining of correctional staff. Coffman was responsible for implementing Avalon and ODOC policies and procedures, and to ensure compliance with ACA standards at ACC. Coffman was acting under color of state law at all times relevant to the claims in this lawsuit.
4. Upon information and belief, Coffman actively participated in causing or creating the conditions of confinement at the ACC which caused injury to the Plaintiffs. These conditions, include, but are not limited to, the following:

- unlawfully prolonging confinement by manipulating or falsifying reports to either reflect charges that were not accurate, or by eliminating or destroying reports;
- failing to protect offenders from inmate-on-inmate violence by orchestrating gladiator-style fights between offenders which facilitated a gambling and racketeering scheme to manipulate and control offenders through coercion and fear in lieu of adequate training and staffing;
- manipulating drug urinalysis testing through extortion and coercion of offenders;
- utilizing offenders to discipline and manipulate other offenders through fear, threats, coercion, and violence; and
- orchestrating the sale, distribution and use of illegal drugs within the ACC by staff and offenders.

5. Defendant Terry Moore (“Moore”) was employed by Avalon and is sued both in his individual capacity and as an employee of Avalon. As an Avalon employee, Moore was responsible for the safety and security of offenders. Moore was acting under color of state law at all times relevant to the claims in this lawsuit.

6. Upon information and belief, Moore was an active participant working with the other Defendants in personally forcing and causing the unlawful actions and conditions of confinement upon Plaintiffs. This includes, but is not limited to, the actions set forth above in Paragraph 4.

7. Defendant f/n/u Brown (“Brown”) is believed to be a guard at the ACC facility. Brown was employed by Avalon and is sued both in his individual capacity and as an

employee of Avalon. As an employee, Brown was responsible for the safety and security of offenders. Brown was acting under color of state law at all times relevant to the claims in this lawsuit.

8. Upon information and belief, Jones was an active participant working with the other Defendants in personally forcing and causing the unlawful actions and conditions of confinement upon Plaintiffs. This includes, but is not limited to, the actions set forth above in Paragraph 4.

9. Defendant f/n/u Jones ("Jones") is believed to be a Lieutenant at the ACC facility. Jones was employed by Avalon and is sued both in his individual capacity and as an employee of Avalon. As an employee, Jones was responsible for the safety and security of offenders. Jones was acting under color of state law at all times relevant to the claims in this lawsuit.

10. Upon information and belief, Jones was an active participant working with the other Defendants in personally forcing and causing the unlawful actions and conditions of confinement upon Plaintiffs. This includes, but is not limited to, the actions set forth above in Paragraph 4.

11. ODOC is a state agency with custodial responsibility for Oklahoma offenders assigned to ACC. ODOC is prohibited by law from discharging its custodial duty by contract or otherwise.

12. By contract with ODOC, Avalon received taxpayer money in exchange for housing offenders in ODOC custody at the privately-operated ACC, located in Tulsa, OK.

13. At all times material to the claims alleged, Plaintiffs were living at ACC.
14. The events complained of herein occurred in Tulsa County, making jurisdiction and venue proper.
15. Plaintiffs have timely complied with all prerequisites to filing suit.
16. As part of its contract with ODOC, Avalon administers a work release program from the ACC facility. The work release program was established by the ODOC to facilitate the reintegration of offenders back into the workforce following their release from custody. The 390 bed facility is intended to get non-violent offenders out of higher security prison facilities and prepare them for life as contributing members of the community. Avalon contracted with ODOC to house and provide supervision and control over offenders consistent with state and federal laws and other contractual standards. Keeping male offenders occupying the beds in ACC increased profits for the benefit of Avalon shareholders.
17. Avalon is responsible for the training, supervision, and discipline of ACC staff and officers. Avalon is responsible for complying with Oklahoma state law, including 57 Okla. Stat. §31, and the Oklahoma Constitution. Additionally, Avalon is responsible for implementing ODOC policies and procedures and adhering to standards consistent with the American Correctional Association (“ACA”).
18. At all times relevant, Avalon, ACC and its employees were acting under color of state law. Avalon is responsible and liable for the acts of its employees committed in the scope of their employment and its policies, procedures and practices that resulted in harm to

Plaintiffs.

19. Instead of preparing offenders for a life as contributing members of the community, inmates entered ACC only to discover a world of crime, manipulation, violence and drugs. Upon entry into ACC, Plaintiffs entered an atmosphere that was unlike any penal facility that they had previously experienced. Within minutes of being at the facility, Plaintiffs and other offenders were able to secure drugs, cell phones, tobacco and other contraband. The relaxed atmosphere was rampant with criminal activity which was permitted and condoned by Avalon and the individual Defendants.

Drug Use & Distribution

20. Drug use in ACC was encouraged and utilized by Avalon and the individual Defendants as a method of controlling offenders and making money. Avalon and the individual Defendants also used violence to manipulate and control offenders.

21. Upon information and belief, individual Defendants actively sold drugs to offenders or facilitated drug sales by tacitly approving drug sales, or by ignoring drug transactions of which they had actual knowledge. The individual Defendants were aware and allowed drugs into ACC by actively not searching certain offenders upon entry. In addition to the profits generated through drug sales to offenders, the individual Defendants used drug sales to exercise power and control over offenders who relapsed into addiction, or who became financially indebted to the ACC drug distribution ring.

22. Plaintiffs Lathan, Teays, Schultz, Townsley, Godfrey, Niburger, and Mauldin were former drug addicts who had either received treatment for drug addiction, or who had a

history of sobriety while in ODOC custody at other facilities. Upon exposure to the pervasive drug culture at ACC, these Plaintiffs quickly relapsed which harmed them both physically and psychologically. The pervasive drug culture was created and maintained by the Defendants, who fostered and encouraged the sale and proliferation of drugs inside ACC to maintain control over Plaintiffs in lieu of adequate training and supervision.

23. Plaintiffs Lathan, Teays, Schultz, Townsley, Godfrey, Niburger, and Mauldin were victims of the Defendants' scheme to use drug addiction as a management tool as opposed to spending funds received from contracts with the ODOC to hire and train a sufficient number of supervisory staff. By establishing a drug ring within the ACC, the Defendants maintained influence and control over the facility population using fear, extortion, coercion and violence. The actions and inactions of Defendants caused harm to Plaintiffs by compromising their sobriety, by jeopardizing their reintegration, and by subjecting them to intolerable fear, coercion and violence. The wake of damage caused by the individual Defendants continues to harm Plaintiffs Lathan, Teays, Schultz, Townsley, Godfrey, Niburger, and Mauldin.

Urinalysis Testing

24. The Defendants also used drug urinalysis testing as a means of extorting and manipulating the Plaintiffs in a variety of ways. Upon information and belief, Defendants would provide advance notice of drug testing so offenders could provide clean urine samples, which could be purchased throughout the facility. Defendants would manipulate and control the offenders by selling clean tests or by accepting payment to allow an offender skip a test.

Upon information and belief, Defendants also tested or threatened to test offenders who they knew would test positive for the purpose of coercing or extorting favors and tasks from Plaintiffs and other offenders.

25. Manipulating the drug urinalysis testing was another management tool used by the Defendants to exercise control over the population in lieu of funding adequate staffing and supervision.

Orchestrated Fights

26. Plaintiffs and other offenders who failed a test or who became indebted to Defendants were “taken to court.” Being “taken to court” involved one or more offenders beating one another at the direction of Defendants. An offender may be beaten by other offenders or forced to fight as a “gladiator” during a scheduled or orchestrated fight determined by the Defendants.

27. The “gladiator” style fighting took place between offenders to avoid misconducts or to pay off debts owed to Defendants or other offenders working in the drug distribution ring. The Defendants orchestrated the “gladiator” style fighting and encouraged the behavior by attending and betting on the outcome.

28. Plaintiffs Lulf, Alpin, and Tartar were all victims of the Defendants’ coercion to force “gladiator” style fights. Plaintiffs Lulf, Alpin, and Tartar were all forced into fighting to either satisfy a debt owed or to avoid some discipline that was threatened by Defendants. The harm received and the harm Plaintiffs were required to inflict on others caused damage for which Defendants are liable. The actions and inactions of Defendants

caused harm to Plaintiffs by causing both physical and psychological damage.

29. The Defendants utilized a network of higher ranking offenders to keep the offenders managed through fear, manipulation and coercion. These offenders were used to sell drugs, control gang related activity, to provide and relay information between the Defendants and the offenders, and to enforce discipline. This often resulted in additional offenders being “taken to court.”

30. An offender “taken to court” directly benefited the Defendants in a variety of ways, including the control exerted over Plaintiffs through personal violence. Defendants also controlled the flow of offenders to and from the ACC by manipulating misconducts. By manipulating who could remain at ACC, Defendants exerted control over the population, which benefited Avalon by ensuring that Oklahoma taxpayers subsidized the available bed space.

31. Plaintiffs Marrs and Frair were offenders that, in addition to succumbing to the drug culture maintained by the Defendants, also were forced to exert control and threaten the offender population. Operating as go-betweens for the offenders and the individual Defendants, Plaintiffs Marrs and Frair were coerced into selling drugs, threatening offenders, and promoting an atmosphere of violence by “taking to court” offenders identified by the Defendants. Plaintiffs Frair and Marrs were manipulated by Defendants and physically and psychologically harmed by the forced coercion demanded by the Defendants. The actions and inactions of Defendants caused harm to Plaintiffs by making their reintegration into society delayed and more difficult.

32. Upon information and belief, ODOC had actual knowledge that Avalon was not administering the work release program or contract consistent with ODOC policy, and it knew that exploitation, pervasive drug use, falsified misconducts, and other violations were occurring, highly probable or plainly obvious consequence of Avalon's failure to follow the ODOC work release policy or its contract. Despite this knowledge, ODOC disregarded Avalon's non-compliance and allowed Avalon to continue its practice of exposing offenders, including the Plaintiffs, to exploitation, violence, drug abuse, coercion, and threats. ODOC's failure to investigate and oversee Avalon and the ACC facility continued until approximately January of 2014, when ODOC demanded that Avalon depopulate the ACC over safety concerns. This was, at least in part, in response to a leaked cell phone video depicting the appearance of cash and at least one guard present during the "gladiator" style fighting.

33. Upon information and belief, ODOC received prior notice and had actual knowledge of the failures of violations occurring at ACC, but did nothing to protect the offenders until the public became aware of the leaked video, thereby prompting several investigations which lead to the eventual depopulation of the ACC.

34. Upon information and belief, Avalon disregarded reports and complaints of consistent drug abuse, failed drug tests and other problems evidencing a widespread problem of criminality.

35. Upon information and belief, Avalon continually failed or refused to investigate the merits of reports and complaints, and it continued to foster and permit the drug laden and violent conditions at ACC to continue.

36. Avalon owed a duty of reasonable care to Plaintiffs to operate the work release program in a manner that did not subject them to drug abuse, violence, threats, and coercion. Avalon breached that duty by failing to take reasonable steps to monitor and supervise the employees who participated in the work release program and by failing to adequately investigate reports and complaints of violence and drug abuse. As a direct and proximate result, Plaintiffs suffered harm and damages for which Avalon is liable under state law.

37. The decisions, actions and inaction of Avalon to continually expose vulnerable Plaintiffs to drug abuse and violence arose from a callous and abject disregard for the physical and mental welfare of the Plaintiffs was motivated by desire to maintain its contract with ODOC, which provides a steady stream of taxpayer funds to subsidize both the operation of ACC and the lifestyles of Avalon's Board members, staff and shareholders.

38. Avalon owed a duty of reasonable care to Plaintiffs to adequately hire, review, and retain employees that would ensure that the work release program was operated in a manner that would not subject Plaintiffs to drug abuse, violence, threats, and coercion. Avalon breached that duty by not performing adequate reviews of employees and by failing to hire and/or retain employees that would protect offenders from violence, drugs, and criminality. As a direct and proximate result, Plaintiffs suffered harm and damages for which Avalon is liable under state law.

39. Avalon owed a duty of reasonable care to Plaintiffs to adequately train employees to ensure the work release program was operated in a manner that did not subject Plaintiffs to drug abuse, violence, threats, and coercion. Avalon breached that duty by failing

to provide adequate training that would protect offenders from drug abuse, violence, threats, and coercion. As a direct and proximate result, Plaintiffs suffered harm and damages for which Avalon is liable under state law.

40. Avalon owed a duty of reasonable care to Plaintiffs to adequately staff the facility to ensure the work release program was operated in a manner that did not subject Plaintiffs to drug abuse, violence, threats, and coercion. Avalon breached that duty by failing to provide adequate staff to ensure the safety and security of Plaintiffs, offenders and other staff. As a direct and proximate result, Plaintiffs suffered harm and damages for which Avalon is liable under state law.

41. The circumstances described above demonstrate conduct by Avalon that is morally repugnant, outrageous and motivated by a desire to emphasize corporate profits over the rights of individual people, including the Plaintiffs, sufficient to support an award of punitive damages. This is not the first time Avalon has operated a facility in such a fashion. In 2008, another Avalon facility in Greeley, Colorado was forced to close surrounding the reports of sex, drugs and weapons-related misconduct. Just as with ACC, offenders in Colorado were transferred to other facilities.

42. The ODOC owed a non-delegable duty of reasonable care to the Plaintiffs to supervise its contract with Avalon in a manner that did not subject them to abuse. ODOC breached that duty by failing to take reasonable steps to adequately monitor and supervise Avalon, and by failing to adequately investigate Avalon's failure to operate the ACC in conformance with policy. As a direct and proximate result, Plaintiffs suffered harm and

damages for which ODOC is liable under the Oklahoma Governmental Tort Claims Act. Further, the abuse of the Plaintiffs was a highly predictable and plainly obvious consequence of the ODOC's failure to properly administer and supervise the ACC, and the ability of Avalon to repeatedly subject the Plaintiffs to exploitation and abuse is a direct and proximate result of ODOC's failures for which it is liable under the Oklahoma state constitution.

43. Section 9 of Article II of the Oklahoma Constitution secures a private right of action for Plaintiffs to be free from cruel and unusual punishment.

44. Upon information and belief, Defendants had actual knowledge that offenders were being threatened, intimidated, and coerced to engage in violence and to perform criminal actions.

45. Despite actual knowledge of the threats, intimidation and coercion and despite actual knowledge that offenders were being subjected to abuse and violence, Defendants failed to take any steps to prevent the continued violence and ongoing criminal activity causing harm and injuries inside ACC.

46. As a direct and proximate result of their knowledge that violence and criminal activity was ongoing, Defendants permitted violence and criminal activity in violation of the Oklahoma Constitution for which Defendants are liable under state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Nathaniel Alpin, Benjamin Frair, Michael Marrs, Rex Tartar, and Travis Lulf, Derrick Lathan, David Teays, Vince Schultz, Darren Townsley, Chris Godfrey, Darren Niburger, and Jered Mauldin respectfully pray this Court to enter a

judgment against Defendants for the deprivation of their rights secured by the the Oklahoma Constitution and laws of the state of Oklahoma, and award Plaintiffs as follows:

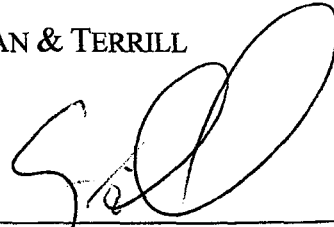
- a. Any and all appropriate injunctive relief;
- b. Declaratory relief affirming that Defendants deprived Plaintiffs of their rights under the Oklahoma Constitution and declaring Defendants liable to Plaintiffs for their actions;
- c. Damages including, but not limited to damages for Plaintiffs' pain and suffering and mental anguish and any other damages allowed by law as a result of Defendants' violations of the Oklahoma Constitution, which exceed *Seventy Five Thousand Dollars* (\$75,000.00);
- d. Punitive damages against the Avalon and the individual Defendants Moore, Jones, and Coffman in their individual and official capacities, in an amount in excess of *Seventy Five Thousand Dollars* (\$75,000.00) to punish Defendants for the intentional and willful conduct against Plaintiffs;
- e. Costs of this action, including but not limited to, attorney fees and expenses, pre-judgment and post judgment interest; and
- f. Any other relief the Court deems appropriate.

JURY TRIAL DEMANDED

ATTORNEY LIEN CLAIMED

Respectfully submitted,

BRYAN & TERRILL

A handwritten signature in black ink, appearing to read "J. Spencer Bryan", is written over a horizontal line. The signature is stylized with large loops and a long tail.

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