

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

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SHERRY LYNN THORNHILL, for herself  
and as Administrator of the Estate of her  
son, Shawn Christopher Berry, deceased,

Plaintiff,

v.

Case No.

F. GLENN AYLOR, CENTRAL VIRGINIA  
REGIONAL JAIL AUTHORITY,  
CHRISTIE M. APPLE-FIGGINS,  
OFFICER FIRST CLASS ERIN O.  
LaPANTA, JASMINE BUCKNER-JONES,  
SERGEANT ROBERT J. COUNTS,  
OFFICER FIRST CLASS JEREMY D.  
BOSTON, LIEUTENANT M.  
HORROCKS, OFFICER FIRST CLASS  
LAST, T. VOGT, AMANDA PITTS,  
and JOHN and JANE DOE 1-20,

Defendants.

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**COMPLAINT**

Plaintiff, Sherry Lynn Thornhill (“Thornhill”), for herself and as Administrator of the Estate of Shawn Christopher Berry (“Berry”), by and through her undersigned counsel, hereby files her Complaint against Defendants F. Glenn Aylor (“Aylor”), Central Virginia Regional Jail Authority (“CVRJ”); Christie M. Apple-Figgins (“Apple-Figgins”), Officer First Class Erin O. LaPanta (“LaPanta”); Jasmine Buckner-Jones (“Buckner-Jones”), Sergeant Robert J. Counts (“Counts”), Officer First Class Jeremy D. Boston (“Boston”), Lieutenant M. Horrocks (“Horrocks”), Officer First Class Last (“Last”), T. Vogt (“Vogt”); Amanda Pitts (“Pitts”), and John and Jane Doe 1-20 (“Doe Defendants”) (collectively “Defendants”), and alleges as follows:

### **NATURE OF THE ACTION**

1. This action, to recover substantial damages for Defendants' deliberate torture and killing of Berry, is brought pursuant to 42 U.S.C. § 1983, Virginia Code §8.01-50, et seq., and common law, to compensate Thornhill, Berry's family, and Berry's Estate for the unlawful denial of adequate medical care to Berry while he was an inmate at CVRJ from August 7 through August 9, 2014, which denial resulted in Berry's death on August 9, 2014.

2. Following Berry's death, CVRJ ousted Aylor, CVJR's former Superintendent, from his command. But that is not enough. Defendants must be held accountable for their deliberate indifference to the health and welfare of inmates at CVRJ, including for their deliberate indifference to Berry's condition, which they knew how to treat, but refused to treat. The nurses at CVRJ must have the authority to practice basic first aid without fear of reprisal. And the counties of Fluvanna, Greene, Louisa, Madison, and Orange (the "CVRJ Counties"), which control and support CVRJ, must provide adequate resources to allow for proper medical care at CVRJ.

3. Accordingly, by this Complaint, Thornhill seeks to secure damages, and such injunctive and other equitable relief as this Court deems necessary to ensure that CVRJ no longer endangers the health and safety of the citizens and denizens of Virginia, including one or more orders appointing a Federal Receiver to manage the affairs of CVRJ until such time as CVRJ, and the CVRJ Counties, expend sufficient resources to ensure that CVRJ provides adequate medical care for those imprisoned at CVRJ. A jail sentence should not be a death sentence.

**PARTIES, JURISDICTION, AND VENUE**

4. Plaintiff Thornhill is the mother of Berry, and the Administrator of Berry's Estate.

5. Defendant Aylor, until May 31, 2015, served as the Superintendent of CVRJ with ultimate power and control over the medical care and attention, if any, provided to the inmates at CVRJ, and actively participated in the creation of a culture of deliberate indifference to the medical needs of CVRJ inmates, including the medical care of Berry.

6. Defendant CVRJ is a regional jail authority, organized under Virginia Code § 53.1-95.2, that is owned, controlled, funded, and sponsored by the CVRJ Counties, pursuant to an Amended and Restated Regional Jail Agreement (dated April 9, 2009). CVRJ operates the Central Virginia Regional Jail, which is located at 13021 James Madison Highway, Orange, Virginia 22960. As used herein, the term "CVRJ" applies to both the authority and the jail itself.

7. Defendant Apple-Figgins, a Licensed Practical Nurse, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

8. Defendant LaPanta, trained in first aid, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

9. Defendant Buckner-Jones, a Certified Nursing Assistant, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

10. Defendant Counts, trained in first aid, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

11. Defendant Boston, trained in first aid, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

12. Defendant Horrocks, trained in first aid, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014. The full first name of Horrocks is currently unknown to Thornhill. Thornhill will move to amend this complaint when she obtains it through discovery.

13. Defendant Last, trained in first aid, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014. The first name of Last is currently unknown to Thornhill. Thornhill will move to amend this complaint when she obtains it through discovery.

14. Defendant Vogt, an Emergency Medical Technician, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014. The full first name of Vogt is currently unknown to Thornhill. Thornhill will move to amend this complaint when she obtains it through discovery.

15. Defendant Pitts, a Licensed Practical Nurse, was employed by CVRJ and actively participated in Berry's torture on August 7 through 9, 2014, acting with deliberate indifference to Berry's known medical needs, which resulted in Berry's death on August 9, 2014.

16. The Doe Defendants, at all times relevant hereto, were employed and worked at CVRJ during Berry's incarceration there. The Doe Defendants were—and, on information and

belief, remain—responsible for applying the known policies, procedures, and customs for treating inmates at CVRJ suffering from alcohol and heroin abuse, including the effects of immediate withdrawal from such substances. The true names of the Doe Defendants are currently unknown to Thornhill. However, Thornhill is informed and believes that each was employed by CVRJ and worked at CVRJ over the time that CVRJ tortured and then killed Berry. Thornhill therefore sues the Doe Defendants by fictitious names and will move to amend this complaint when she obtains their true names through discovery.

17. This Court has subject-matter jurisdiction over this case and controversy pursuant to 28 U.S.C. §§ 1331 and 1343 because, inter alia, this action seeks to “recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights” within the meaning of 28 U.S.C. § 1343(a)(4). This Court has supplemental jurisdiction over Thornhill’s non-federal claim pursuant to 28 U.S.C. § 1367(a) and 42 U.S.C. § 1988(a).

18. Personal jurisdiction is proper in this judicial district because Defendants, and each of them, reside, work, or otherwise maintain continuous and systematic contact within this judicial district.

19. Venue within this judicial district is proper under 28 U.S.C. §§ 1391(b) because each Defendant is subject to personal jurisdiction in this judicial district and because a substantial part of the conduct giving rise to this action occurred within this judicial district.

#### **CONDITIONS PRECEDENT**

20. Any and all conditions precedent to bringing or maintaining this action have been satisfied by Thornhill or have been excused or waived by Defendants, and each of them.

## **FACTS**

21. In the early morning hours of August 7, 2014, deputies of the Sheriff's Department of Orange County, Virginia, arrested Berry and his girlfriend Pamela Dale Legg ("Legg") at their home on outstanding warrants.

22. At the time of the arrest, Berry had been addicted to alcohol for over twenty years, and addicted to heroin for about ten years. During the arrest, Berry informed the deputies of his addictions, and the fact that he would experience severe withdrawal when he went to jail.

23. The deputies then took Berry and Legg to CVRJ to await extradition hearings. Before entering CVRJ, Legg again informed the deputies that Berry was addicted to alcohol and heroin, and would go into withdrawal in jail. Legg related the fact that Berry had been in jail in Prince William County, Virginia, the previous year, and there had experienced withdrawal so severe that he was taken to the hospital and placed in intensive care.

24. The deputies told Berry to be sure to tell CVRJ staff about his addictions and the fact that he would be going into withdrawal, and assured Berry that the staff would take care of him.

25. The deputies then transferred custody of Berry to CVRJ. As part of the transfer, S.C. Dickson of the Sheriff's department completed a Central Virginia Regional Jail Arresting/Transporting Officer Questionnaire, in which he noted that Berry "stated he has DT [delirium tremens] real bad."

26. CVRJ staff then conducted an intake interview of Berry, which they recorded in writing. CVRJ intake staff noted that Berry suffered from asthma and high blood pressure, and that he was addicted to alcohol and heroin. CVRJ intake staff noted that Berry used a fifth of liquor every day and that he snorted heroin daily.

27. During the interview, a CVRJ officer rolled his eyes and stated that he did not feel sorry for addicts, because “it was a choice they make.”

28. At 5:34 p.m. on the day of the arrest, CVRJ staff entered the following in bold letters on CVRJ’s Booking Observation Report on Berry: “WILL BE GOING THROUGH WITHDRAWAL/DRUG-HEROIN/ALCOHOL –LIQUIER [sic]/DRUG- 2100 hrs 08/06/2014.”

**Defendants Were Aware of the Dangers Posed by Berry’s Imminent Withdrawal From Alcohol and Heroin**

29. Alcohol and heroin withdrawal are serious medical conditions requiring medical treatment. If left untreated, they can lead to severe negative consequences, including death.

30. CVRJ has written policies and procedures for treating inmates suffering from alcohol and heroin withdrawal, which were in effect from August 7-9, 2014.

31. The CVRJ procedures for alcohol withdrawal state: “Alcohol acts as a depressant and an anesthetic. The margin of safety for the person anesthetized by alcohol is very small and can result in death. When a person is semi-conscious, call the doctor. Send the inmate to the emergency room for evaluation if unconscious or in respiratory distress.” (emphasis added).

32. When an inmate presents with alcohol withdrawal or self-reports alcohol abuse, the CVRJ procedures direct staff to complete the following tasks:

1. Do CIWA scale. Record the vital signs and obtain as much information as possible about the drinking habit and history, i.e., when was the last drink, how much was ingested, previous history of detox, and any complications of previous detox--note history of seizures and any allergies.
2. If the inmate becomes confused, draw a stat blood sugar, using the accucheck, and report findings to the physician.
3. Do a neuro check to include orientation, pupil size and reactivity, respirations, and gross movement of extremities on any person with an altered level of consciousness or if they have a suspected head injury.
4. Call the physician for any person scoring greater than 20 on the CIWA scale or any person that you are particularly concerned about, this includes severe

symptomatology, incomplete response to therapy or persistent abnormal vital signs. Report all of the above information to the physician. Start detox protocol on any person scoring greater than 20. See Inmate treatment criteria.

5. Place inmate on a 15-minute intoxication watch if the inmate scores between 10 to 20, has obvious tremors, is moderately disoriented or is an alcoholic with a history of seizures when withdrawing. Note to awaken every 15 minutes and check for level of consciousness and arousal.

33. The “CIWA scale” referenced above is the Addiction Research Foundation Clinical Institute Withdrawal Assessment for Alcohol. The CIWA scale is a multi-part assessment designed to measure various symptoms of alcohol withdrawal. Each symptom is assessed, and then assigned a numerical severity score, with all scores added together at the conclusion of the test.

34. If the CIWA scale score is less than 20, CVRJ staff are instructed to monitor the inmate as needed. For scores from 20 to 25, staff must notify the doctor on call and start administering Ativan at 1-2 mg. For scores greater than 25, staff must notify the doctor on call immediately and start administering Ativan at 2-3 mg.

35. The CVRJ procedures specify that “[e]arly treatment of AWS [Alcohol Withdrawal Syndrome] prevents the development of DT’s [delirium tremens].” Treatment includes sedation with Benzodiazepenes or Phenobarbital, Clonidine, and Beta-Blockers.

36. The CVRJ procedures highlight the danger of seizures associated with alcohol withdrawal, stating that they “almost always occur before the onset of DT’s.”

37. The CVRJ procedures describe the DT’s as “major” withdrawal, characterized by “clouding of consciousness and delirium.” The specified treatment for DT’s is “Hospitalization!” (emphasis added) (exclamation mark in original).

38. CVRJ’s procedures for managing inmate heroin withdrawal including the following mandates:



(a) “For persons who report or are observed to be in acute physical withdrawal, call the physician for orders.”

(b) “Signs and symptoms of withdrawal generally occur within 24 hours of the last dose of the drug taken.”

(c) “Physical signs and symptoms associated to withdrawal include: Diaphoresis, chills, nausea, diarrhea, marked tremor, dilation or constriction of the pupils, bone pain, an increased appetite, tachycardia, elevation of temperature, increase or decrease in the blood pressure, rapid or depressed respirations, and altered state of mentation.”

(d) “Any person who appears to be unconscious, obtunded, non-ambulatory, or who appears to be in a state of emergency should be transferred by Rescue to the hospital emergency room for evaluation and treatment. The emergency room physician needs to clear the inmate to detox in an outpatient setting.”

(e) “Obtain as much information as possible about the person’s drug history, including all types of drugs used and route of administration, time and dosage of last drugs used, any history of withdrawal or problems associated with withdrawal, and any allergies.”

(f) “Do a neuro check on any person with an altered level of consciousness, to include orientation, pupil size and reactivity, and presence or absence of gross movements of the extremities.”

(g) “Call the physician and report the above findings.”

39. The procedures also recommend treatment with Clonidine 0.2 mg twice per day for one week, with doses tapered off over time thereafter.

40. As shown below, CVRJ staff performed none of these mandates or performed them in a way designed to inflict maximum pain and suffering on Berry.

**Defendants Acted With Deliberate Indifference to Berry's Pain and Suffering Through a Known Life-Threatening Medical Condition, and in Derogation of the Applicable Standard of Care**

41. Berry's health deteriorated rapidly after his arrival at CVRJ. By 10:00 p.m. on the evening of his arrest, CVRJ staff, responding to a self-described "medical emergency," discovered that Berry had vomited all over his jump suit and his bunk.

42. Horrocks stated in his Incident Report of that date: "I was told he was beginning to go through drug withdrawals."

43. Vogt stated in his Incident Report of that date: "We went to medical and found out that [Inmate] Berry was going through heroin withdrawals."

44. By the morning of August 8, 2014, Berry was delusional.

45. At 8:05 a.m. that morning, two CVRJ officers reported that Berry had lost track of time. CVRJ Officer Frazier reported:

As Off. Roberts and I entered into MH2 inmate Berry stated he was sick to the stomach and wanted to wait for court in the morning. We explained to him that it was morning and that he was scheduled to go to court.

CVRJ officers drove Berry to court, but the judge would not see Berry due to the risk that Berry might vomit in the courtroom.

46. And so CVRJ staff transported Berry back to CVRJ, not to any physician, clinic, or hospital. How much more would it have cost CVRJ to have simply driven Berry from the courthouse (or the jail) to a hospital in Culpeper or Charlottesville?

47. By the morning of August 9, 2014, the CVRJ staff, including no fewer than four licensed medical personnel on site, recognized that Berry was unable to cope with the symptoms of alcohol and heroin withdrawal, symptoms that Berry and CVRJ staff knew he would suffer.

48. By 10:00 a.m. on August 9, 2014, CVRJ staff noted that Berry was too weak to stand, to eat, or to drink, was delirious, was severely dehydrated, was vomiting blood, and had

lost control of his bowels, having defecated in his prison jumpsuit, including the following observations (from CVRJ Incident Reports):

BOSTON: "Berry had soiled his jumpsuit and appeared very weak and sick. We assisted [Inmate] Berry into a wheelchair and moved him into the [Inmate] Shower/Bathroom. . . . Approximately 8 minutes after assuming Post 2 duty, I went to check on [Inmate] Berry because I could hear water hitting the shower floor. (It does not make this noise if someone is showering inside the stall). When I raised the window flap, I saw [Inmate] Berry on the floor of the bathroom with his jumpsuit half on. I entered into the bathroom and asked [Inmate] Berry "Are you okay?" He was dry heaving and had appeared to vomit on the floor . . . Roughly 3 to 4 hours later, LaPanta asked for a male officer to booking, [Inmate] Berry had fallen out of his bed. Lt. Lee intercommed [sic] me at the R4 door and asked me to go to booking. When I arrived [Inmate] Berry was on the floor of his cell, half dressed. I entered the cell and covered [Inmate] Berry's groin area, and then [Officer] LaPanta entered his cell. Both OFC LaPanta & myself assisted [Inmate] Berry back into his bunk."

APPLE-FIGGINS: "On arrival to booking inmate Berry was lying on the floor near the shower. Inmate was assisted [by] Ofc. LaPanta and Sgt. Counts to a sitting position. At this time Inmate was dry heaving. Inmate is being monitored and treated for possible heroin withdrawals. Inmate refused to come to medical for vital sign check this AM."

LaPANTA: "I asked if the inmate was dressed. OFC Boston said not all the way. I entered the inmate was dry-heaving sitting/leaning against the wall. I called for Medical to come to Booking and to bring their bag to take vitals. OFC Boston and I stayed by inmate Berry. Medical arrived and took vitals, said he was fine. I pointed out the "coffee grain" looking vomit and asked Nurse Apple-Figgins, 'out of curiosity, what does that mean,' she told me that it was old blood, and that bright red was usually from the mouth. I asked if he was okay, and she said she would get him some Gatorade. . . . I went through out the day to check on the inmate and refill his Gatorade. He seemed to be drinking it and holding it down. When I entered the cell I did see the same "coffee ground" looking stool or vomit. I would flush the toilet for the inmate and continued to ask if he was okay. He said he was thirsty. I poured him more Gatorade. As I was booking an inmate, I heard an odd noise. I locked the inmate down that I was booking in and checked on everyone. I found inmate Berry lying on the floor naked.

49. To address these symptoms, CVRJ staff administered Gatorade® and pills for Bery to swallow to relieve Berry's nausea and diarrhea. There is no record, however, that these CVRJ medical practitioners made sure that Berry was able to swallow the liquids or the medicine

they had prescribed; and none of these CVRJ staff investigated Berry's continued complaint of stomach pain.

50. At no time was Berry given the CIWA scale test to assess his alcohol withdrawal, or administered any of the drugs—other than nausea medication—mandated by the CVRJ alcohol and heroin withdrawal procedures, including Ativan, Benzodiazepenes, Phenobarbital, Clonidine, or Beta-Blockers.

51. Berry's treatment deviated from the applicable standard of care in several material ways, including, but not limited to:

(a) Failure to recognize risk for ineffective self-health management related to imminent likelihood of withdrawal, including Berry's symptoms of irritability and difficulty breathing, as noted in CVRJ's own medical record on Berry;

(b) Failure to identify risk for impaired swallowing related to severe vomiting, including: (i) Berry was repeatedly offered fluids to drink and pills to take as a remedy even after vomit that looked similar to coffee grounds was observed. This is a sign of a gastric bleed, and Berry should have been made NPO immediately ("nothing by mouth"); and (ii) Berry was at risk for aspiration with the first signs of withdrawal and was repeatedly offered fluids immediately after vomiting. Indeed, there were gastric contents noted in his lungs upon postmortem examination.

(c) Failure to accurately assess vital signs: Berry had a history of high blood pressure, and none of his vital sign readings were in a high range, so in essence they were all abnormal for him given his medical history. This should have been a warning sign that withdrawal symptoms were beginning.

(d) Failure to reassess Berry for instability: When Berry's vital signs were continually interpreted as normal, he was not reassessed each shift, as was documented on one of the nursing notes as protocol.

(e) Failure to recognize signs and symptoms of deficient fluid volume and hypovolemic shock: Berry experienced a drop in blood pressure readings of more than 20 points from August 8, 2014 to August 9, 2014. This was a clear indicator of hypovolemic shock, and paired with his vomiting, should have prompted immediate emergency care including IV fluids. This was not done, and instead Berry was again offered Gatorade® as a remedy.

(f) Failure to treat seizure symptoms and recognize ineffective breathing pattern: Berry's oxygen saturation was recorded at 92% after suffering a seizure. Berry should have been given oxygen via mask or nasal cannula immediately as a standard of care for seizure and low oxygen saturations below 94%.

(g) Failure to recognize and treat severe withdrawal symptoms: Berry's seizure should have prompted CVRJ to immediately initiate a hospital transfer, as this is a dangerous and deadly symptom of withdrawal.

(h) Failure to assess risk for bleeding: After CVRJ medical staff noted "coffee ground," or old blood, vomiting by Berry, Berry was given 800 mg of Ibuprofen, which is contraindicated with clear symptoms of gastrointestinal bleeding.

(i) Failure to treat symptoms of gastrointestinal bleeding: When Berry symptoms progressed and a nurse was asked about the vomiting with the "coffee grounds" appearance, it was identified as old blood, but not treated. This should have resulted in an emergent transfer to a hospital for treatment that could have saved Berry's life.

52. Had Apple-Figgins, Vogt, Pitts, and Buckner-Jones not been working for Aylor and CVRJ on August 7-9, 2014, they would have, consistent with their training as medical personnel, and following the written policies of CVRJ, promptly called a physician and administered medication, if not placed Berry in a hospital emergency room.

53. Had LaPanta, Counts, Horrocks, Boston, and Last not been working for Aylor and CVRJ, they would have, consistent with their training in basic first aid, and following the written policies of CVRJ, promptly called a physician, if not placed Berry in a hospital emergency room.

54. Defendants knew what to do to treat Berry, but refused to do it, because under Aylor's command of CVRJ, it was (and remains) an impermissible drain on the budget of CVRJ and the CVRJ Counties to provide proper medical care to CVRJ inmates.

55. Berry suffered in pain and delirium for more than 12 hours on August 9, 2014, before he died from alcohol and heroin withdrawal on the floor of CVRJ, first having suffered a seizure—for which LaPanta rubbed Berry's foot with her fingernail for five minutes—and then more than ten minutes later losing copious amounts of blood as it poured from his mouth, ears, and nose.

56. An Incident Report by Counts, dated August 9, 2014, at 5:20pm states:

On August 9, 2014, I was called to booking in order to assist Inmate Berry use the bathroom. Officer LaPanta opened the MH2 door. I entered with her and found Inmate Berry laying on the mat on the floor. He was delirious, but conscious. I asked him if he needed to use the bathroom and he said yes. I assisted him to a sitting position. He was dizzy and further disoriented. He asked for help. I laid him back down on the mat and pulled the mat over to the toilet. We were about to assist him to the toilet when he seemed to have a fit. He was breathing, but unresponsive. His eyes fluttered and he was making spazming [sic] movements i.e. jerking movements. Ofc LaPanta ran her fingernail across the bottom of his foot in an attempt to wake him up. She did this for about 5 minutes, at which point he came out of it. He was very confused. . . . CNA Buckner-Jones entered the cell to check his vitals. . . . She said that his blood pressure was fine. She left

to go to medical to call the doctor. . . . [Lt. Lee and I] attempted to wipe up some of the blood. While I was observing [Berry], he spat up a small amount of blood that ran down the right side of his face. I placed him on his side in the recovery position. After it seemed to stop coming up, I moved him back to his back. . . . About two minutes later a large flow of blood erupted from his mouth. Ofc LaPanta and I immediately placed him on his side, the blood continued flowing out his mouth and nose. Lt. Lee called the nurse and told her that were sending him out. Lee then went to get a set up for the blood. As I watched Berry in the recovery position, he seemed to stop breathing. I left him in the recovery position and started calling his name. Ofc LaPanta entered as a I checked for a pulse on his n neck and had my hand under his nose. Ofc LaPanta said I don't think he is breathing. I told her to call "Code Blue."

57. But Buckner-Jones did not call a doctor. Instead, she called Pitts. According to Buckner-Jones's own account:

While inmate Berry was on the toilet at 1735, I went back to medical to call Amanda Pitts LPN and explain to her that inmate Berry was throwing up and was it okay to send him out 911. She informed me on all proper paperwork that I needed to get and to go ahead and send him out 911.

What Buckner-Jones's account does not convey is that Berry had been vomiting since arrival at CVRJ, and no one at CVRJ—not the licensed medical personnel, nor CVRJ's trained staff—invoked the known CVRJ procedure to contact a physician, much less send Berry out of CVRJ for prompt medical treatment of his known condition.

58. Berry never recovered, and was pronounced dead at 6:17 p.m. August 9, 2014, a little more than 48 hours after he arrived at CVRJ, with his alcohol and heroin addiction fully known to CVRJ staff.

59. Aylor's attempt to blame Berry for his own death was prompt and continuous. Before Aylor called Thornhill, or any of Berry's kin, Aylor wrote an email to Dr. William Wilson, in which he falsely stated: "Inmate Berry's death appears to be from a pre-existing medical condition that my medical department was not aware of." (emphasis added). The next day Ayor told Berry's aunt, Sandy Via: "It wasn't [Berry's] first rodeo."

60. At all times relevant hereto, Defendants were acting under color of the law, rules, rules, regulations, customs and usages of the Commonwealth of Virginia.

61. At all times relevant hereto, Defendants acted jointly and in concert with each other. Each Defendant had the duty to provide proper medical care for Berry and to protect Berry from the unlawful denial of such medical care by other Defendants, but each Defendant failed and refused to provide such care and protection, thereby proximately causing injury and death to Berry.

**COUNT I**  
**Violation of 42 U.S.C. § 1983**

62. Thornhill hereby incorporates by reference, as if fully set forth in this Paragraph, Paragraphs 1 through 61 of her Complaint.

63. Through their deliberate indifference to Berry's known and serious medical condition, including without limitation their failure to follow their own written policies for providing proper medical care to Berry as part of his incarceration at CVRJ, Defendants acted with deliberate indifference to an excessive risk to Berry's health and safety, and knowingly subjected Berry to substantial pain and suffering, anxiety, anguish, fear, neglect, and, ultimately, his death.

64. Through their deliberate indifference to Berry's known and serious medical needs, Defendants directly and proximately caused Berry to suffer substantial pain, anxiety, anguish, fear, neglect, and death in violation of Berry's 8th Amendment right to be free of cruel and unusual punishment, and his 14th Amended rights to due process and the equal protection of the laws.

**WHEREFORE**, Thornhill respectfully requests that this Court: (a) pursuant to 42 U.S.C. § 1983, enter judgment in favor of Thornhill for compensatory and punitive damages sufficient



to compensate Berry and Berry's Estate for the violation of Berry's rights to be free of cruel and unusual punishment and to enjoy due process and equal protection, and to punish Defendants for their violation of Berry's constitutional rights, all in an amount to be established at trial, but not less than \$10 million; (b) pursuant to 42 U.S.C. § 1983, enter one or more orders to establish a Federal Receiver for managing the affairs of CVRJ until such time as the CVRJ Counties establish and maintain a plan for providing proper medical care for their inmates at CVRJ; (c) pursuant to 42 U.S.C. § 1988(b), award Thornhill reasonable attorneys' fees and costs, including any expert fees, for bringing and maintaining this action; and (d) award Thornhill such other and/or alternative relief as justice may require.

**COUNT II**  
**Wrongful Death: Va. Code § 8.01-50**

65. Thornhill hereby incorporates by reference, as if fully set forth in this Paragraph, Paragraphs 1 through 61 of her Complaint.

66. Thornhill is the Administrator of Berry's Estate, and therefore has standing to pursue an action for wrongful death pursuant to Virginia Code § 8.01-50.

67. At all times relevant hereto, Defendants, and each of them, had a duty to provide Berry with proper and prompt health care for his serious medical needs.

68. At all times relevant hereto, Defendants, and each of them, had a duty to exercise reasonable care in providing Berry with health care for his serious medical needs, and they had a duty to refrain from acting with utter disregard of prudence amounting to complete neglect of Berry's safety, health, and welfare while Berry was in Defendants' custody.

69. Defendants, and each of them, failed to exercise such care.

70. As a proximate result of Defendants' dereliction of duty, they caused Berry's death on August 9, 2014, and had Berry's death not ensued as a result of Defendants' dereliction,

Berry would have been entitled to maintain an action against Defendants, and each of them, for their wrongful act, neglect or dereliction.

**WHEREFORE**, Thornhill respectfully requests that this Court: (a) enter judgment in favor of Thornhill (i) for compensatory damages in the amount of \$2.15 million with respect to Defendants deemed to be health care providers within the meaning of Virginia Code § 8.01-581.15; (ii) for compensatory damages in an amount to be established at trial, but not less than \$10 million, with respect to other Defendants; and (iii) for punitive damages in the amount of \$350,000; (b) award Thornhill reasonable attorneys' fees and costs, including any expert fees, for bringing and maintaining this action; and (c) award Thornhill such other and/or alternative relief as justice may require.

**JURY TRIAL DEMAND**

Thornhill hereby demand a trial by jury as to all issues so triable.

Dated: June 2, 2015

Respectfully submitted,

**WILSON LAW PLC**

/s/ Robert O. Wilson  
Robert O. Wilson (VSB 77791)  
2 South Main Street, Suite B  
Harrisonburg, VA 22802  
Phone: (540) 430-0122  
Email: robert@thewilsonlaw.com

Counsel for Plaintiff Sherry Lynn Thornhill

**OF COUNSEL:**

Mitchell J. Rotbert  
(pro hac vice motion forthcoming)  
**ROTBERT BUSINESS LAW P.C.**  
1050 Connecticut Avenue, N.W.  
10th Floor  
Washington, DC 20036

Phone: (240) 600-6467

Fax: (888) 913-207

Email: [mitch@rotbertlaw.com](mailto:mitch@rotbertlaw.com)

Counsel for Plaintiff Sherry Lynn Thornhill