

**Fill in this information to identify the case:**

Debtor Tehum Care Services, Inc.

United States Bankruptcy Court for the: Southern District of Texas  
(State)

Case number 23-90086

**Official Form 410  
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>Amy Fehr</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	Amy Fehr Atty Amy Fehr 45 S Rock Hill Rd 8182 Maryland Ave., 15th Floor SAINT LOUIS, MO 63119, United States	
	Contact phone <u>3145055432</u>	Contact phone _____
	Contact email <u>fehr@capessokol.com</u>	Contact email _____
	(see summary page for notice party information) Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. How much is the claim? \$ 10,000,000. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Lawsuit filed in Eastern District of Missouri; Cause No. 4:18-cv-01045-JMB

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/17/2023  
MM / DD / YYYY

/s/Amy Fehr  
Signature

Print the name of the person who is completing and signing this claim:

Name Amy Fehr  
First name Middle name Last name

Title Attorney for Brandon Swallow

Company Capes Sokol Goodman and Sarachan PC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0491 | International 001-424-236-7244

<b>Debtor:</b> 23-90086 - Tehum Care Services, Inc.		
<b>District:</b> Southern District of Texas, Houston Division		
<b>Creditor:</b> Amy Fehr Atty Amy Fehr 45 S Rock Hill Rd 8182 Maryland Ave., 15th Floor SAINT LOUIS, MO, 63119 United States <b>Phone:</b> 3145055432 <b>Phone 2:</b> 3144943434 <b>Fax:</b>  <b>Email:</b> fehr@capessokol.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> Betty Hughes 604 North 9th Street Desoto , MO, 63020 <b>Phone:</b> 3146501596 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> betty.hughes@coreandmain.com		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Lawsuit filed in Eastern District of Missouri; Cause No. 4:18-cv-01045-JMB	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 10,000,000	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Amy Fehr on 17-Jul-2023 11:34:18 a.m. Eastern Time <b>Title:</b> Attorney for Brandon Swallow <b>Company:</b> Capes Sokol Goodman and Sarachan PC		

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

BRANDON SWALLOW,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	Cause No. 4:18-cv-1045-JMB
	)	
DR. WILLIAM MCKINNEY,	)	
DR. KAREN DUBERSTEIN,	)	
CORIZON HEALTH, INC.,	)	
GEORGE LOMBARDI,	)	
ANNE L. PRECYTHE,	)	
CINDY GRIFFITH,	)	
STANLEY PAYNE, <i>and</i>	)	
MISSOURI DEPARTMENT OF	)	
CORRECTIONS,	)	
	)	
<i>Defendants.</i>	)	

**FIRST AMENDED COMPLAINT**

**I. PRELIMINARY STATEMENT**

1. This is a civil action for compensatory and punitive damages and for declaratory relief. While incarcerated at Potosi Correctional Center (“Potosi”) and Eastern Reception, Diagnostic and Correctional Center (“ERDCC”), Plaintiff’s constitutional rights were violated by Defendant Missouri Department of Corrections (“MDOC”), Defendant Corizon Health, Inc. (“Corizon”), Defendant George Lombardi, Defendant Anne L. Precythe, Defendant Cindy Griffith, and Defendant Stanley Payne (MDOC, Corizon, Lombardi, Precythe, Griffith, and Payne, the “Institutional Defendants”), and Defendants Dr. William McKinney and Dr. Karen Duberstein (the “Individual Defendants”) (collectively, “Defendants”). Defendants have demonstrated a deliberate indifference to Plaintiff’s serious medical needs and need for the basic necessities of life, which has resulted in Plaintiff being subjected to cruel and unusual

punishment in violation of the protections guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

2. Upon information and belief, the deprivations and violations of Plaintiff's constitutional rights have been carried out pursuant to the rules, regulations, customs, policies and/or practices of the Institutional Defendants.

3. Defendants, acting under color of state law, knowingly have caused Plaintiff to be deprived of his federal constitutional rights.

4. Plaintiff requests this Court declare the acts and omissions by Defendants unconstitutional under the United States Constitution. Plaintiff also requests an award of compensatory and punitive damages to compensate him for the violations of his constitutional rights and deter Defendants from further participation in such acts and/or omissions.

## **II. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 for violations of the Eighth and Fourteenth Amendments.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because Plaintiff resides at Missouri Eastern Correctional Center, which is located in this judicial district, and a substantial number of events and omissions giving rise to Plaintiff's claims occurred in this district.

## **III. PARTIES**

7. Plaintiff is and was at all times mentioned herein an adult, United States citizen, resident of the State of Missouri, and inmate at Potosi, ERDCC, or Jefferson City Correctional Center ("JCCC").

8. Defendant MDOC is a state agency that operates Potosi, ERDCC, and JCCC, which is located at 11593 State Highway O, Mineral Point, MO 63660. MDOC is headquartered in Jefferson City, Missouri.

9. Defendant Corizon is a limited liability company headquartered at 103 Powell Court, Brentwood, TN 37027. Upon information and belief, Defendant Corizon has a contractual agreement with the State of Missouri to provide medical services to offenders in the Missouri Department of Corrections. At all times pertinent hereto, Corizon has held itself out as a professional healthcare provider with specialized expertise in providing medical care in correctional facilities and was under contract to provide medical services to inmates at Potosi, ERDCC, and JCCC, including Plaintiff. At all times mentioned herein, Defendant Corizon has acted individually and by and through its agents, servant, and employees.

10. Defendant Anne L. Precythe is sued in her individual capacity and official capacity as the current Director of MDOC. Upon information and belief, Defendant Precythe was appointed as Director on December 23, 2016, and directs the operation of 21 adult correctional facilities in Missouri, including Potosi and ERDCC, with responsibility for overseeing 11,000 correctional staff and 33,000 inmates.

11. Defendant George Lombardi is sued in his individual and official capacity as the former Director of MDOC. Upon information and belief, Defendant Lombardi served as Director and was responsible for the operation of correctional facilities in Missouri, including Potosi and ERDCC, and was responsible for MDOC correctional staff and inmates, during all times discussed herein until December 2016.

12. Defendant Cindy Griffith is sued in her individual and official capacity as the former Warden of Potosi. Upon information and belief, Defendant Griffith was Warden of Potosi

at all relevant times herein. As Warden, Defendant Griffith was responsible for facility policies, the management and oversight of the Potosi facility's safety and security, management of all facility staff, monitoring of activities for compliance with state regulations, and the proper treatment of inmates, including Plaintiff. Upon information and belief, the position of Warden is currently vacant at Potosi.

13. Defendant Stanley Payne is sued in his individual and official capacity as the Warden of ERDCC. Upon information and belief, Defendant Payne was Warden of ERDCC at all relevant times herein. As Warden, Defendant Payne was responsible for facility policies, the management and oversight of the ERDCC's safety and security, management of all facility staff, monitoring of activities for compliance with state regulations, and the proper treatment of inmates, including Plaintiff.

14. Defendant Dr. William McKinney is sued in his individual capacity and official capacity as a doctor for Defendant Corizon. Upon information and belief, Defendant McKinney is responsible for providing health and medical services to people in the custody of Potosi and for ensuring that all prisoners under his jurisdiction and medical care received timely and adequate medical treatment.

15. Defendant Dr. Karen Duberstein is sued in her individual capacity and official capacity as a doctor for Defendant Corizon. Upon information and belief, Defendant Duberstein is responsible for providing health and medical services to people in the custody of ERDCC and for ensuring that all prisoners under her jurisdiction and medical care receive timely and adequate medical treatment.



#### **IV. ALLEGATIONS COMMON TO ALL COUNTS**

##### **a. Background**

16. Plaintiff is an offender in the custody of MDOC. Plaintiff is currently incarcerated at Missouri Eastern Correctional Center in Pacific, Missouri.

17. From January 2014 until January 2017, Plaintiff was incarcerated at Potosi. During this time, Plaintiff had several brief stays at either ERDCC or JCCC while in recovery from medical procedures conducted while incarcerated at Potosi.

18. Prior to January 2014, Plaintiff was incarcerated at ERDCC. In January 2017, Plaintiff was incarcerated at ERDCC and remained incarcerated at ERDCC through at least March 2018.

19. Upon information and belief, Defendant Corizon has a contractual agreement with the State of Missouri to provide medical services to offenders of MDOC.

20. As an inmate at Potosi and ERDCC, Plaintiff is therefore under the medical supervision and care of Defendant Corizon, its employees, agents, and servants, including Defendants Dr. William McKinney and Dr. Karen Duberstein.

21. While incarcerated at both Potosi and ERDCC, Defendants consciously refused to provide for, or were deliberately indifferent to, Plaintiff's serious medical needs and need for the basic necessities of life, which violated Plaintiff's Eighth and Fourteenth Amendment right to be free from cruel and unusual punishment. As a result of this violation of Plaintiff's constitutional rights, Plaintiff was damaged by unnecessary and prolonged pain and suffering, loss of body parts, and living in unsanitary, unhygienic, and unfit conditions for human life.

**b. Ulcerative Colitis Diagnosis and Worsening Symptoms at Potosi**

22. In December 2012, following approximately one month of diarrhea and blood in his stool, an emergency consultation with a nurse practitioner at ERDCC resulted in the Plaintiff's transportation to University of Columbia Hospital in Columbia, Missouri, where he was hospitalized and diagnosed with Ulcerative Colitis.

23. Ulcerative Colitis is an inflammatory bowel disease that causes long-lasting inflammation and ulcers in the digestive tract.

24. Following discharge, Plaintiff was transported back to the chronic care unit at ERDCC and began medication.

25. In January 2014, Plaintiff was transferred to Potosi and put under the care of Dr. William McKinney of Corizon.

26. Though Plaintiff's Ulcerative Colitis was initially managed with the medication prescribed at ERDCC, in September 2015, his symptoms worsened to include gastro-intestinal distress, severe gas, rectal bleeding, diarrhea, abdominal pain and weight loss.

27. In September 2015, due to the constant and worsening symptoms, Plaintiff filed a Medical Service Request ("MSR") and self-declared a medical emergency.

28. After a nurse took his vitals, Plaintiff was left in his cell with a recommendation to see the doctor.

29. Plaintiff's visit with the doctor was delayed, and Plaintiff had to file several additional MSR's and self-declared medical emergencies before Dr. McKinney saw him.

30. Upon seeing Dr. McKinney, the doctor dismissed Plaintiff's worsening symptoms, remarked that they were caused by stress, and increased Plaintiff's medication.

31. The increased medication temporarily relieved some but not all of Plaintiff's worsening symptoms, including weight loss and deteriorating body condition.

32. Over the next several months, Plaintiff filed several more MSR's and self-declared medical emergencies related to the symptoms, now including tearing pains in his abdomen, but was denied further treatment by Dr. McKinney who told Plaintiff to give the increased medication a chance to work.

33. During this time, Plaintiff's requests regarding appointments for additional medical testing, including bloodwork, were likewise denied by Dr. McKinney.

34. Then, from December 2015 to May 2016, Plaintiff's symptoms worsened again, including continued weight loss, deteriorating body condition, frequent stools, severe diarrhea, defecation of blood, vomiting and severe abdominal pain.

35. During this period, Plaintiff requested and was denied reprieve from working in the prison kitchen where he washed dishes and prepared food. He was told to continue working and given adult diapers.

36. During this period, Plaintiff began experiencing difficulty swallowing.

37. Plaintiff's body weight plummeted from approximately 155-165 lbs. to approximately 100 lbs.

38. During this period, Plaintiff was prescribed iron for anemia due to blood loss, was unable to swallow, was prescribed Ensure for weight loss, was severely malnourished, suffered hair loss, jaundice, and was too weak to walk to recreation or throughout the housing unit.

39. Plaintiff continued to file MSR's and self-declare medical emergencies due to his deteriorating condition.

40. Plaintiff lived in a cell with feces on his toilet and walls due to uncontrollable diarrhea and was unable to properly clean the feces due to his condition, and he partially relied on help from other inmates to address the odor and cleanliness of the cell.

41. While Plaintiff saw Dr. McKinney on several occasions between December 2015 and May 2016, there was no change in medical treatment except to order extra toilet paper and prescribe Prednisone and Mesalamine enemas which Plaintiff indicated he could not tolerate effectively due to his inability to “hold” the Mesalamine solution as required.

42. Dr. McKinney indicated Plaintiff would be scheduled for bloodwork, but none was scheduled or taken.

43. Plaintiff requested to see a gastrointestinal specialist, which was denied by Dr. McKinney.

44. In May 2016, Plaintiff advised Dr. McKinney that he intended to report the doctor’s failure to properly treat him, to which Dr. McKinney responded, “Go ahead.”

45. Plaintiff’s mother called the medical unit at Potosi and demanded that additional treatment actions be taken, at which time Plaintiff was committed to the Transitional Care Unit (“TCU”) due to his critical condition.

46. On or about May 18, 2016, a few days after commitment to the TCU, Plaintiff was taken to Jefferson City for a colonoscopy with Dr. Reggie Vaden, a contracted doctor for Corizon.

47. Upon examination, Dr. Vaden immediately admitted Plaintiff to St. Mary’s Hospital in Jefferson City (“St. Mary’s”).

**c. St. Mary's Hospital in Jefferson City, MO and colon rupture**

48. St. Mary's records indicate that Plaintiff was admitted on May 18, 2016 due to severe colitis and Plaintiff's appearance upon arrival.

49. Upon admission to St. Mary's Hospital, Plaintiff was treated with IV anti-biotics, IV steroids, IV nutritional supplements, and given a unit of blood and painkillers.

50. Testing revealed that Plaintiff suffered from extensive disease of the bowels, including possible non-viable areas, anemia, sepsis, malnutrition, peritonitis, and peritoneal abscess.

51. Testing further revealed that Plaintiff suffered from severe bacterial and fungal infection, including fungal infection of the esophagus and Clostridium Difficile ("C-Diff"), a highly contagious and sometimes deadly bacterial infection.

52. Due to the extremely poor condition of his colon and bowels, Plaintiff was advised he may lose the colon.

53. On or about May 23, 2019, days after hospitalized at St. Mary's, Plaintiff's colon ruptured.

54. As a result, Plaintiff underwent a total colectomy with ileostomy, a procedure whereby the colon is entirely removed and a section of small intestine is routed to a surgically incised stoma, or hole, on the surface of the abdomen where waste is expelled and collected in an external bag.

55. Plaintiff's recovery time for the surgery was estimated at 8-12 weeks.

56. During his hospitalization at St. Mary's, Plaintiff lost more weight, dropping to approximately 90 lbs. and received nourishment through a feeding tube.

57. While at Potosi, Dr. McKinney never ordered a fecal sample or tested for pathogens, infection, or other diseases.

58. Dr. McKinney's conduct and denial of access to outside specialists caused Plaintiff to go without necessary treatment for serious medical conditions, which ultimately culminated in unnecessary and severe pain and suffering, as well as the loss of Plaintiff's colon.

59. In June 2016, Plaintiff was released from St. Mary's and sent to the TCU at JCCC for his initial recovery.

**d. Recovery from colectomy and "J-Pouch" procedure**

60. After his return to JCCC, Plaintiff required assistance in most daily activities such as showering, dressing, or moving from sitting to laying position.

61. Within a few weeks, Plaintiff was cleared to return to Potosi, initially returning to confinement in a cell in the medical unit.

62. Upon returning to Potosi, Plaintiff's pain medication was reduced, which caused him to experience constant pain.

63. At this time, Plaintiff's surgery incisions were persistently draining, which required frequent dressing changes.

64. By approximately the end of July or early August, Plaintiff was cleared to return to general population.

65. Dr. Vaden recommended that, after Plaintiff's abdomen healed, he undergo a "J Pouch" procedure, which is a two-part procedure whereby the ileum is first formed into a pouch to collect waste, then a follow-up surgery is performed where the small intestine is reconnected to the newly formed "J Pouch" and the earlier ileostomy is reversed.

66. In October 2016, Dr. Vaden performed the first part of the J Pouch procedure at St. Mary's, and Plaintiff was sent to ERDCC for recovery then back to Potosi.

67. In January 2017, the second part of the J Pouch procedure, the ileostomy take down, was performed at Jefferson City Medical Group, and Plaintiff was returned to ERDCC where he stayed.

**e. Surgery complications while incarcerated at ERDCC**

68. Upon returning to ERDCC, Plaintiff began experiencing painful swelling on the abdominal incision created during his surgeries.

69. After filing an MSR, a nurse, Pamela Arnold, R.N., responded and said it was normal scar tissue.

70. A few days later, the swollen incision ruptured and released a foul-smelling green discharge. A nurse checked on Plaintiff and referred him to a Nurse Practitioner.

71. After accusing Plaintiff of self-harm and indicating she could refuse treatment, Nurse Practitioner Sutton ordered a swab of the open abscess, three daily dressing changes, and oral antibiotics.

72. The wound never healed, continued to drain and get bigger, and the drainage began to look and smell like feces.

73. In March or early April 2017, there was additional swelling and pain near Plaintiff's ileostomy bag, and Plaintiff declared a "code 16 (inmate down)."

74. That day, two nurses took vitals, declared that everything was fine and left.

75. Later that night, Plaintiff's mother called ERDCC's medical unit on Plaintiff's behalf, and medical personnel arrived to take vitals. This time, the doctor was called after the Plaintiff was found with a temperature of 102.5 degrees.

76. Plaintiff was put in the TCU at ERDCC and later rushed to the emergency room where his temperature reached 104 degrees. He was returned to ERDCC and lived under camera surveillance for three weeks due to accusations of self-harm by ERDCC personnel.

77. During this time, Dr. Karen Duberstein accused Plaintiff of self-harm, including rubbing feces in his wound, and bandage manipulation.

78. To the contrary, an MRI later revealed that Plaintiff had developed internal fistulas, or tunnels, that were leaking feces into his wounds and to the surface of his skin.

79. Additionally, Plaintiff was not manipulating bandages but was purposely washing his wound to remove the burning sensation caused by the discharge, because the medical staff at ERDCC were changing the dressings on his profusely leaking wound only once per day.

80. Upon return to ERDCC, Plaintiff's wound continued to drain through the internal fistulas, which discharged a feces-like substance. This discharge was witnessed by the medical staff at ERDCC.

81. During this period, Plaintiff still suffered from weight loss and inability to keep food down.

82. In May 2017, after a 30 day liquid diet, Plaintiff experienced continued drainage, weight loss, dizziness, fatigue and weakness.

83. After the 30 day liquid diet, ERDCC medical staff refused to order a special diet for Plaintiff, despite Plaintiff's intolerance of most standard prison food.

84. Eventually, Plaintiff began controlling and/or alleviating the drainage from his fistulas by administering his own frequent dressing changes, which the medical staff were not doing as ordered with few exceptions.



85. It took three months before, in August 2017, Plaintiff saw another Nurse Practitioner.

86. At this time, Plaintiff had been placed in administrative segregation and could no longer control his diet or change his dressings.

87. Medical staff did not increase the frequency of Plaintiff's dressing changes or make accommodations to allow Plaintiff to change his own dressings.

88. Prison staff routinely ignored the call button or refused to contact the medical unit, and the medical unit would not respond when Plaintiff requested a dressing change.

89. As a result of this conduct, the discharge from Plaintiff's fistulas continued and Plaintiff experienced burns where the substance was discharged.

90. Because Plaintiff was refused adequate supplies to care for his wounds, Plaintiff was forced to use sheets, towels, pillowcases and rags as dressings.

91. As a result, ERDCC staff cited Plaintiff for "conduct violations" for "destroying state property" and kept Plaintiff in administrative segregation.

92. During this time, flies and gnats lived in Plaintiff's cell, which were attracted to the used and discarded dressings and the smell of his cell.

93. During this time, Plaintiff was only permitted to shower every three days.

94. Plaintiff requested daily showers and dressing changes as needed, but both requests were denied by medical staff.

95. This treatment continued until October 2017, when Nurse Practitioner Andrea Adams finally put Plaintiff on a renal diet and gave him dressings to keep in his cell so he could change them as needed.

96. In October 2017, a new surgeon, Dr. Light, also ordered treatment Plaintiff needed for the burns and discharge from his wounds until his release from administrative segregation in mid-January 2018.

97. On February 20, 2018, Plaintiff was transported to Jefferson City for surgical repair of the fistulas, at which time more damaged intestine was removed.

98. In March 2018, a follow-up doctors visit revealed no drainage, no foul-smell, and that the surgery wound was healing well.

99. As of March 2018, Plaintiff was in the TCU at ERDCC recovering from the additional surgeries and was still being accused of self-harm and dressing manipulation by medical staff.

100. Defendants' conduct and refusal to provide necessary dressing changes, cleanings, dietary changes, sanitary conditions, and treatment resulted in Plaintiff's prolonged pain and suffering and further caused Plaintiff to live in unsanitary, unhygienic, and unfit conditions for human life.

**f. Policies, practices, and customs of Defendants Corizon and MDOC**

101. Upon information and belief, the Institutional Defendants have policies and/or have engaged in repeated, persistent, and systematic actions, which are customs, patterns, and practices that permeate the respective Institutional Defendants, including the prison facilities under their direction, supervision, and control, and shape the way medical treatment is administered to incarcerated individuals at Potosi and ERDCC.

102. Upon information and belief, these policies, customs, and systematic actions are defined by Institutional Defendants' primary focus on financial considerations, instead of focus on healthcare outcomes.

103. As a result of this financial focus, employees and agents of the Institutional Defendants consistently refuse comprehensive medical treatment, medical supplies and appointments, additional testing, access to outside specialists and providers; delay time-consuming or costly treatment in hope that less appropriate or effective solutions address health issues, thus subjecting incarcerated persons to unnecessary pain and suffering and exposing them to substantial risk of harm; and ignore self-reported symptoms and concerns from incarcerated individuals.

104. Upon information and belief, these policies, customs, and systematic actions are further defined by a pervasive prison culture, which exists in facilities run by the Institutional Defendants, such as Potosi and ERDCC, and which defines and treats incarcerated individuals as less than human, with little dignity, and cultivates an atmosphere where the Institutional Defendants' employees and agents automatically disbelieve or dismiss self-reported health symptoms and concerns, the severity of health issues and discomfort, and poor living conditions without due consideration or concern.

105. Moreover, upon information and belief, the Institutional Defendants have been on notice of acts of deliberate indifference by Corizon, its employees, and agents against Plaintiff and other inmates for many years, but have knowingly, intentionally, maliciously, wantonly, grossly negligently, recklessly and deliberately ignored the constitutional, civil and other federally guaranteed rights of Plaintiff.

106. The Institutional Defendants have failed to implement additional or different policies, auditing, training, disciplinary practices, hiring and firing practices, or provide effective supervision and correct past misconduct by Corizon, its employees, and agents, such as Defendants Dr. McKinney and Dr. Duberstein and other prison employees.

107. This failure to discipline or further supervise and instruct against such misconduct reinforces the misconduct, and the Institutional Defendants' unresponsiveness to the prison healthcare epidemic and is an effective adoption of policy in support of misconduct such as that alleged herein.

108. Upon information and belief, despite the frequent notice of acts of deliberate indifference by Corizon, its employees, and agents against inmates across the United States, MDOC, for which Defendant Lombardi was and Defendant Precythe is responsible, continues to contract with Corizon to provide medical services to offenders in the Missouri Department of Corrections, entrusted to their custody and care.

109. Upon information and belief, MDOC has contracted with Corizon since 1992 and has most recently extended its contract in 2016. MDOC's continued contractual relationship with Corizon is an effective adoption of policy in support of the misconduct of Corizon's employees and agents, Corizon's profit-centric approach to healthcare at the expense of inmate well-being, and deliberate indifference to serious medical conditions and well-being of inmates, including Plaintiff.

110. The Institutional Defendants, therefore, authorize their employees', agents', and subordinates' misconduct, consistent with such policies, customs, and/or repeated, persistent, and systematic actions, in a manner that results in wanton and unnecessary infliction of pain upon prisoners.

## **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

111. Plaintiff has exhausted all administrative remedies and/or grievance procedures available to him.

112. In addition to filing grievances and making verbal requests to MDOC personnel, Plaintiff filed an Informal Resolution Request (“IRR”) in September 2016, pursuant to 42 U.S.C. 1983, by hand delivery from his attorney, Bevis W. Shock, which, upon information and belief, was destroyed by the warden in charge of grievances.

113. Upon refileing, the IRR was denied as “ABANDONED” because it was deemed filed seven (7) days past the required deadline. All of Plaintiff’s grievances and requests were either denied or ignored.

114. Plaintiff has exhausted the highest level of the grievance process available to him prior to filing the instant action.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I Deliberate Indifference to Serious Medical Needs Under the Eighth and Fourteenth Amendments (42 U.S.C. § 1983)**

#### **(All Defendants)**

115. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

116. Under the Eighth and Fourteenth Amendments of the United States Constitution, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.

117. Plaintiff had a serious illness, injury and overall medical condition, i.e. poorly controlled Ulcerative Colitis, and suffered from other conditions including extreme weight loss, inability to swallow and eat, vomiting, diarrhea, bloody stool, frequent bowel movements, loss of bowel control, weakness and fatigue, anemia, sepsis, severe bacterial and fungal infection, unviable bowel sections, and related pain and discomfort from the same.

118. After Plaintiff's colon ruptured in May 2016, and the resulting colectomy and ileostomy, Plaintiff began suffering from multiple fistulas, profuse drainage of his unhealed and inflamed surgery wounds, burns and burning sensations caused by the drainage, fever, and related pain and discomfort from the same.

119. Defendants were aware of Plaintiff's serious need for medical care and had actual knowledge that Plaintiff faced a substantial risk of harm and unnecessary infliction of pain from his Ulcerative Colitis and the other conditions set forth above.

120. Defendants have a duty under the Eighth and Fourteenth Amendments to the United States Constitution to provide necessary medical care to inmates of Potosi and ERDCC, including Plaintiff, in conformity with the standards for delivery of such medical care in the State of Missouri as a whole.

121. Defendants, with deliberate indifference to the illness, injury, and medical condition of Plaintiff, failed to provide medical care to Plaintiff in conformity with the standard for delivery of such medical care in the State of Missouri as a whole, and in fact have provided medical care that does not meet such standards, thus endangering Plaintiff's health and well-being.

122. Moreover, Defendants, with deliberate indifference to the illness, injury, and medical condition of Plaintiff, have consciously refused to take reasonable steps to address Plaintiff's Ulcerative Colitis and other conditions, including extreme weight loss, inability to swallow and eat, vomiting, diarrhea, bloody stool, frequent bowel movements, loss of bowel control, weakness and fatigue, anemia, sepsis, severe bacterial and fungal infection, unviable and perforated bowels, surgery wound drainage, fistulas, burns resulting from the drainage, fever and related pain and discomfort. This includes, but is not limited to, Defendants' providing grossly

negligent care, denying and delaying necessary and appropriate care, and their repeated refusals to complete testing, evaluation, care, treatment, or referrals to outside specialists based on Corizon, MDOC, or facility policies, customs, and practices.

123. The ineffective treatment provided to Plaintiff per these policies, customs, and practices has resulted in Plaintiff's loss of body parts, significant pain, continued discomfort and general loss of ability to live a normal life, and has exacerbated other underlying conditions.

124. The Institutional Defendants have policies, customs, and/or have engaged in repeated, persistent, and systematic actions—including, but not limited to, failing to conduct additional testing; failing to properly treat and manage Plaintiff's pain levels; failure or delay in properly treating Plaintiff's serious medical conditions; and failing and refusing to refer to outside specialists, even when Plaintiff's medical condition worsened and became dire—that inflict injury actionable under 42 U.S.C. Section 1983.

125. Institutional Defendants employ actors who represent and implement such official policies, customs, and practices and/or have engaged in repeated, persistent, and systematic actions; their actions therefore also inflict injury actionable under 42 U.S.C. Section 1983.

126. Institutional Defendants authorize their subordinates' misconduct, consistent with such official policies, customs, practices and/or repeated, persistent, and systematic actions, in a manner that results in wanton and unnecessary infliction of pain upon prisoners.

127. Defendants' acts, omissions, and deliberate indifference to Plaintiff's serious medical needs and Defendants' official policies and customs have deprived Plaintiff of necessary and adequate medical care, thus endangering his health and well-being, and violating his rights under the Eighth and Fourteenth Amendments to the United States Constitution.

128. Defendants, knowing of the medical needs of Plaintiff, and with deliberate indifference to the inadequacies and deficiencies in the official policies and customs, medical facilities, staffing, and procedures at ERDCC, have failed and neglected to establish and implement policies, practices, and procedures designed to ensure that Plaintiff receives medical treatment and care at the standards in the State of Missouri as a whole, or have adopted policies, practices, and procedures, which they knew, or reasonably should have known, would be ineffective in delivering medical treatment and care at such standards.

129. Defendants, knowing of the medical needs of Plaintiff, have a duty under the Eighth Amendment of the United States Constitution to implement policies and instruct, supervise, and train their employees and agents to ensure the delivery of medical care to Plaintiff is consistent with the standards of medical care in the State of Missouri as a whole.

130. Defendants have failed to implement such policies and instruct, supervise, and/or train their employees and agents in a manner that ensures the delivery of medical care to Plaintiff is consistent with the standards of medical care in the State of Missouri as a whole.

131. Defendants' actions and/or omissions have been committed under color of state law and/or pursuant to policies, customs, practices, rules, regulations, ordinances, or statutes of the State of Missouri, the Department of Social Services and Housing ("DSSS") of the State of Missouri, the Corrections Division of DSSH, and/or the Missouri Community Correctional Center.

132. As a direct and proximate result of the above-described actions and omissions of Defendants and their deliberate indifference to Plaintiff's serious medical needs, Plaintiff has suffered injuries and damages as set forth herein.



133. The above-described actions and omissions have resulted in embarrassment, humiliation, mental anguish, pain and suffering, discomfort, and infection, and have exacerbated other underlying conditions.

134. Plaintiff may seek remedies for the injuries and damages caused by such Constitutional violations pursuant to 42 U.S.C. Section 1983.

135. Attorneys' fees and costs may be awarded in this action pursuant to 42 U.S.C. Section 1988.

136. Defendants' conduct, acts, and omissions have been recklessly indifferent to Plaintiff's serious medical needs, thereby justifying the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. A declaration that the acts and practices complained of herein are in violation of 42 U.S.C. § 1983;
2. Compensatory damages in an amount to be determined at trial;
3. Punitive damages;
4. Legal costs and expenses incurred in bringing this action, including a reasonable provision for Plaintiff's attorneys' fees; and
5. Any other and further relief as the Court deems appropriate.

**COUNT II**  
**Deprivation of the Minimal Civilized Measure of Life's Necessities Under the Eighth and Fourteenth Amendments**  
**(42 U.S.C. § 1983)**

**(All Defendants)**

137. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

138. From September 2015 until approximately April 2016, while incarcerated at Potosi, Plaintiff was forced to wear a diaper and continue working in the prison kitchen, despite loss of bowel control, frequent bowel movements, and severe diarrhea.

139. During this period, Plaintiff also lived in abhorrent conditions, including fecal matter on the walls of his cell, due to loss of bowel control, frequent bowel movements, and severe diarrhea, while too weak to sanitize his own living space.

140. From early February 2017 until approximately October 2017, while incarcerated at ERDCC, Plaintiff received infrequent dressing changes and showers while his surgery wound drained foul-smelling, feces-like discharge, which caused him to spend substantial time in badly soiled wound dressings and clothing and attracted flies and gnats to his cell due to the foul smell.

141. These conditions of confinement were inhumane and resulted in a serious deprivation of Plaintiff's basic human needs.

142. During all relevant times, Defendants had actual knowledge, or acted with deliberate indifference to the fact, that as a result of Plaintiff's medical conditions and draining surgery wound, he needed assistance with respect to wound dressings, clothing, sanitation, and hygiene.

143. On many occasions, Plaintiff has been denied basic necessities related to his wound dressings, clothing, sanitation, and hygiene. He has been forced to sit in his own fecal matter and/or wound discharge, or in a prison cell covered in the same, for prolonged periods of time until Defendants infrequently assisted him by changing his wound dressings, allowing him a shower, or providing sanitary aid. Likewise, Plaintiff developed burns, inflammation, and his wounds were delayed in healing as a result of his prolonged exposure to these conditions.

144. For a portion of this period, Plaintiff was placed in administrative segregation, confined to a small space in his soiled dressings for nearly the entire day, as punishment for cleaning and dressing himself with bed sheets, blankets, towels and other items that became available to provide relief from the filth and discomfort.

145. Defendants have a duty under the Eighth and Fourteenth Amendments to the United States Constitution to provide “minimal civilized measure[s] of life’s necessities” to inmates of Potosi and ERDCC, including Plaintiff.

146. Defendants have failed to provide these basic necessities to Plaintiff, and in fact have provided care that deprives Plaintiff of these necessities, thus endangering his health and well-being.

147. Defendants consciously refused to take reasonable steps to ensure Plaintiff received adequate dressing changes, showers, sanitation, hygiene supplies, and dietary changes that could have eased his discomfort and unsanitary living conditions caused by wound drainage and other medical conditions. This includes, but is not limited to, providing grossly negligent care and failing to provide Plaintiff with basic necessities based on facility policies or customs of the Institutional Defendants.

148. The Institutional Defendants have policies, customs, and/or have engaged in repeated, persistent, and systematic actions—including, but not limited to, failing to allow reprieve from kitchen duty; failing to timely change Plaintiff’s wound dressings and soiled clothing; failing to allow Plaintiff showers more than three times per week; failing to properly treat and manage Plaintiff’s skin burns from the wound drainage; failing to adjust Plaintiff’s diet despite inability to eat a normal prison diet and increased wound drainage; and failing to properly sanitize Plaintiff’s cell—that inflict injury actionable under 42 U.S.C. Section 1983.

149. Institutional Defendants employ actors who represent and implement such official policies, customs, and practices and/or have engaged in repeated, persistent, and systematic actions; their actions therefore also inflict injury actionable under 42 U.S.C. Section 1983.

150. Institutional Defendants authorize their subordinates' misconduct, consistent with such official policies, customs, practices and/or repeated, persistent, and systematic actions, in a manner that results in wanton and unnecessary infliction of pain upon prisoners.

151. Defendants' acts, omissions, and deliberate indifference to Plaintiff's serious medical needs and Defendants' official policies and customs have deprived Plaintiff of life's basic necessities, thus violating his rights under the Eighth and Fourteenth Amendments to the United States Constitution.

152. Defendants have failed and neglected to establish and implement policies, practices, and procedures designed to ensure that Plaintiff receives care and attention at the standards necessary to provide him with access to life's basic necessities, or have adopted policies, practices, and procedures, which they knew, or reasonably should have known, would be ineffective in delivering care at such standards. Thus, Plaintiff has been deprived of the "minimal civilized measure of life's necessities."

153. Defendants have a duty under the Eighth and Fourteenth Amendment of the United States Constitution to instruct, supervise, and train their employees and agents to ensure Plaintiff has access to life's basic necessities.

154. Defendants have failed to implement such policies and instruct, supervise, and/or train their employees and agents in a manner that ensures the delivery of medical care to Plaintiff is consistent with the standards of medical care in the State of Missouri as a whole.

155. Defendants' actions and/or omissions have been committed under color of state law and/or pursuant to policies, customs, practices, rules, regulations, ordinances, or statutes of the State of Missouri, the Department of Social Services and Housing ("DSSS") of the State of Missouri, the Corrections Division of DSSH, and/or the Missouri Community Correctional Center.

156. As a direct and proximate result of the above-described actions and omissions of Defendants, and their deliberate indifference to Plaintiff's physical condition and basic needs, Plaintiff has been deprived of the minimal and basic necessities of life, especially as they relate to clothing, sanitation, and hygiene, and has suffered injuries and damages as set forth herein.

157. Plaintiff may seek remedies for the injuries and damages caused by such Constitutional violations pursuant to 42 U.S.C. Section 1983.

158. Attorneys' fees and costs may be awarded in this action pursuant to 42 U.S.C. Section 1988.

159. Defendants' conduct, acts, and omissions were recklessly indifferent to Plaintiff's physical limitations and basic needs, thereby justifying the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. A declaration that the acts and practices complained of herein are in violation of 42 U.S.C. § 1983;
2. Compensatory damages in an amount to be determined at trial;
3. Punitive damages;
4. Legal costs and expenses incurred in bringing this action, including a reasonable provision for Plaintiff's attorneys' fees; and
5. Any other and further relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial.

Dated: December 13, 2019

Respectfully Submitted,

**CAPES, SOKOL, GOODMAN & SARACHAN, PC**

By: /s/ Amy L. Fehr  
Amy Fehr, #60033(MO)  
7701 Forsyth Boulevard, 12<sup>th</sup> Floor  
St. Louis, Missouri 63105  
(314) 721-7701  
(314) 721-0554 (Facsimile)  
[fehr@capessokol.com](mailto:fehr@capessokol.com)

*Attorneys for Plaintiff Brandon Swallow*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all attorneys of record via the courts electronic filing system this 13th day of December, 2019, and via U.S. Mail, postage prepaid to:

Brandon Swallow, DOC #1140694  
Missouri Eastern Correctional Center  
18701 Historic Rte 66  
Pacific, MO 63609

*Plaintiff*

/s/ Amy L. Fehr