

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

COUNTESS CLEMONS,

Plaintiff,

v.

Case No. \_\_\_\_\_  
JURY DEMANDED

CORRECTIONS CORPORATION OF AMERICA, INC.;  
HAMILTON COUNTY, TENNESSEE;  
PAUL JENNINGS;  
DANIEL GARCIA;  
JUANITA MONTGOMERY;  
TERESA SMITH; and  
(FIRST NAME UNKNONWN –FNU) BADGER.

Defendants.

COMPLAINT

COMES NOW Plaintiff, Countess Clemons, by Counsel, and files this Complaint against Defendants Corrections Corporation of America, Inc. (hereinafter "CCA"), Hamilton County, Tennessee, Paul Jennings, Daniel Garcia, Juanita Montgomery, Teresa Smith, and (First Name Unknown – FNU) Badger, both jointly and severally, and respectfully states as follows:

**I. PRELIMINARY STATEMENT**

1. Plaintiff's claims under 42 U.S.C. § 1983 and state law arise out of Defendants' failure to provide proper medical treatment to Plaintiff which resulted in serious physical and emotional injuries to Plaintiff and the death of her infant son, Roland Lebron Clemons, and deprived Plaintiff of her clearly established rights guaranteed under the Constitutions and laws of the United States and State of Tennessee. Defendants violated the rights of the Plaintiff under the First, Eighth and Fourteenth Amendments of the United States Constitution and the laws of Tennessee when they knowingly and with deliberate indifference to her constitutional rights denied her and her child reasonable medical treatment for serious medical conditions, thereby causing her extensive physical and emotional pain and suffering and the death of her

son. All Defendants acted under color of state and proximately caused the deprivation of Plaintiff's federally protected and state law rights.

### Parties, Jurisdiction and Venue

2. Plaintiff Countess Clemons is a citizen and resident of Chattanooga, Hamilton County, Tennessee, and was, at the time of the actions and omissions which form the basis of this complaint, serving a misdemeanor sentence imposed by Hamilton County, Tennessee and was in the custody of Defendants Hamilton County, Tennessee and Corrections Corporation of America, Inc. at the Silverdale Detention Facility ( "Silverdale"), located at 7609 Standifer Gap Road, Chattanooga, Tennessee 37422. At the time of the filing of this Complaint, Plaintiff Countess Clemons is not currently incarcerated at Silverdale or any other correctional facility.

3. Defendant Corrections Corporation of America, Inc. is a for-profit Maryland corporation whose principal office is located at 10 Burton Hills Boulevard, Nashville, Davidson County, Tennessee 37215 and whose registered agent for service of process is CT Corporation System, 800 Gay Street, Suite 2021, Knoxville, Tennessee 37929. As part of CCA's business, CCA owns/operates jail, prisons and other correctional facilities throughout the United States under contract with various governmental entities. At all times relevant to this action, CCA conducted business within Hamilton County, Tennessee when operating the Silverdale Detention Facility. CCA operates the Silverdale Detention Facility with the full authority of the government of the State of Tennessee pursuant to Tenn. Code Ann. §41-24-101, *et seq.* and/or Tenn. Code Ann. §41-8-101, *et seq.*, and therefore acts under color of state law. CCA is the entity charged by the laws of the State of Tennessee with authority to maintain the Silverdale Detention Facility and has a non-delegable duty to ensure that the conditions of confinement and health and safety of persons incarcerated at Silverdale, including the Plaintiff, are protected and in compliance with the Constitutions and laws of the United States and the State of Tennessee. Defendant CCA is responsible for the implementation of policies, procedures, practices and customs, as well as the acts and omissions, challenged by this suit. Defendant

CCA is also responsible for ensuring that all of its facilities, including Silverdale Detention Facility, are in compliance with the Constitutions and laws of the United States and the State of Tennessee.

4. At all pertinent times mentioned herein, CCA was a state actor in the state of Tennessee and performing the state governmental function of operating a prison in the State of Tennessee, and had a non-delegable duty to ensure the proper and safe operation of Silverdale Detention Facility. In its operation of the Silverdale Detention Facility, Defendant CCA utilizes employees, agents or contractors who perform services, including professional medical services, under color of state law and within the course and scope of their employment, agency, apparent authority or contract with CCA. CCA is liable for its own conduct and the acts and omissions of its servants, employees, agents and contractors by virtue of the fact that they acted in conformity with the policies, practices and customs of CCA and pursuant to the doctrines of agency, apparent agency, implied agency, employer/employee relations, joint and several liability, respondeat superior, vicarious liability, contract and as a result of CCA's non-delegable duty to ensure the health and safety of the persons held in custody at Silverdale.

5. Defendant Hamilton County, Tennessee is the governmental entity ultimately responsible for the care, custody, health and well-being of Plaintiff and her child while she was a prisoner at all times relevant to this complaint. Hamilton County is liable for its own conduct and the acts and omissions of its servants, employees, agents and contractors by virtue of the fact that they acted in conformity with the policies, practices and customs of Hamilton County and pursuant to the doctrines of agency, apparent agency, implied agency, employer/employee relations, joint and several liability, respondeat superior and vicarious liability. Further, Hamilton County, Tennessee, which contracts with CCA to operate the Silverdale Detention Facility, had non-delegable constitutional duties to ensure that Plaintiff and her child received adequate medical care and that its designated contractor, Defendant CCA and its agents, employees and subcontractors, provided constitutionally adequate medical care to plaintiff and her child.

6. Defendant Paul Jennings was at all times relevant to this complaint employed by CCA as the warden of CCA's Silverdale Detention Facility, and at all times relevant hereto was personally responsible for Plaintiff's care, custody, health and well-being. At all times material hereto, Paul Jennings acted under color of state law and in the course and scope of his employment with CCA.

7. Defendant Daniel Garcia was at all times relevant to this complaint an agent or employee of CCA who worked at the Silverdale Detention Facility. At all times material hereto, Daniel Garcia acted under color of state law and in the course and scope of his employment with CCA.

8. Defendant First Name Unknown (FNU) Badger was at all times relevant to this complaint an agent or employee of CCA who worked as a guard at the Silverdale Detention Facility. At all times material hereto, Defendant Badger acted under color of state law and in the course and scope of her employment with CCA.

9. Defendant Teresa Smith, LPN was at all times relevant to this complaint an agent or employee of CCA who worked as a Licensed Practical Nurse at the Silverdale Detention Facility. At all times material hereto, Defendant Smith acted under color of state law and in the course and scope of her employment with CCA.

10. Defendant Juanita Montgomery was at all times relevant to this complaint an agent or employee of CCA who worked at the Silverdale Detention Facility. At all times material hereto, Defendant Montgomery acted under color of state law and in the course and scope of her employment with CCA.

11. Plaintiff Countess Clemons was a prisoner in CCA's custody in the jurisdiction of Hamilton County at all times relevant to the events giving rise to this cause of action.

12. The incident which gives rise to this cause of action occurred within this jurisdiction and within one year of the filing of this Complaint and this Court accordingly has jurisdiction.

13. Venue is proper pursuant to 28 U.S.C. § 1391, as all Defendants conduct business in this district and/or all the acts or omissions which give rise to this cause of action occurred within this district. Jurisdiction is proper in this Honorable Court pursuant to federal question jurisdiction, 28 U.S.C. Section 1331, 28 U.S.C. § 1343(a)(3)(4) and 42 U.S.C. § 1983 & 1988. Plaintiff further invokes the pendent and supplemental jurisdiction of this Court to hear and decide claims arising under state law pursuant to 28 U.S.C. § 1367.

#### Facts

14. This is an action to recover damages against Defendants for intentional, reckless and negligent acts resulting in substantial harm to Plaintiff and the death of infant son, Roland Lebron Clemons, and for violations of Plaintiff's state and federal constitutional rights while in the care and custody of Defendants, who were all acting under color of state law at all times relevant hereto.

15. CCA owns and operates jails, prisons and other correctional facilities for governmental entities throughout Tennessee and the United States. Prior to Ms. Clemons' incarceration, CCA had a custom and/or practice of failing to provide pregnant inmates with proper medical treatment, which was made known to CCA through previous claims and/or incidents wherein pregnant inmates were denied proper medical care while housed at CCA facilities. Therefore, the treatment of Plaintiff by Defendant CCA is not an isolated incident and it is believed that other similar incidents have occurred and CCA had a pattern, practice, custom and policy as the motivating force behind the deprivation of constitutional rights and deliberate indifference to the serious medical needs of pregnant inmates, including Plaintiff, as evidenced by the following incidents:

- a. Jennifer Bozeman, 26, who gave birth in the jail infirmary at the CCA-operated Bay County Jail in Florida after she complained of labor pains for over four hours. The baby was airlifted to a hospital and was treated for birth defects. CCA released a 32-page report that documented mistakes and policy violations the night that Bozeman went into labor;

- b. Meredith Manning, 23, gave birth during her incarceration at the CCA-Metro Detention Facility in Nashville. She was left bleeding for three days in a solitary room and allegedly ignored by CCA staff. Her baby was born after she was finally taken to a hospital, and lived for only three hours. A nurse employed at the same CCA facility contemporaneously with Plaintiff's incarceration decided to find employment elsewhere, as she could not work in an environment where inmates with medical needs — particularly female inmates — were routinely treated so poorly by CCA medical staff;
- c. Another inmate imprisoned in the same CCA facility as Ms. Manning and at the same time, named Jessica Elkins was, upon information and belief, denied medical care by Defendant CCA, and also lost her unborn child.
- d. Rosalyn Bradford, 23, suffered from an undiagnosed ectopic pregnancy at CCA Silverdale; according to news reports she was left screaming in pain in her cell for almost 12 hours before she was taken to a hospital, where she died.

16. Despite these prior claims and incidents, CCA failed to ensure that pregnant inmates and their babies, including Plaintiff and her infant son Roland Lebron Clemons, received proper care and treatment, as evidenced by the following facts of this case.

17. Upon her incarceration at Silverdale Detention Facility, Ms. Clemons, then 18 years old, had an Initial Health Screening on 9/11/10, which was performed by Defendant Teresa Smith, LPN. The Initial Health Screening noted that Ms. Clemons was pregnant which was confirmed through a UA test. The Initial Health Screening also noted that Ms. Clemons was 5 foot five inches tall and weighed 204 pounds. Further, the Initial Health Screening noted that Ms. Clemons had used alcohol and marijuana in the last month. A Tuberculosis Symptom Screening and Methicillin-resistant *Staphylococcus aureus* (MRSA) Screening form were completed but it is unclear whether Ms. Clemons was actually tested for either Tuberculosis or MRSA at this time. The Initial Health Screening Form noted that Ms. Clemons was scheduled for an Initial Health Assessment within 14 days.

18. On 9/14/10, an Inmate/Resident Health Appraisal was completed by Cathey Davis, FNP. The Inmate/Resident Health Appraisal indicates that Ms. Clemons was having chest pain and pressure, constipation and vaginal discharge and odor. The Inmate/Resident Health Appraisal notes: "unable to auscultate fetal heart tones... small amount of tan vaginal

discharge, no strong odor.” The Inmate Resident/Health Appraisal also indicates in the Problem List: pregnancy/obesity. The Inmate/Resident Health Appraisal includes under Plan of Care: pre-natal vitamins, pregnancy diet and consult OB if remains at facility.

19. A Comprehensive Mental Health Evaluation was performed on September 15, 2010, indicating that Ms. Clemons had suffered injuries to her stomach in 2008.

20. CCA’s own policies recognize the special medical needs of pregnant women in its Special Needs Treatment Plan policy, #13-82. The Special Needs Treatment Plan Policy reads in pertinent part as follows:

**13.82.1 – POLICY:**

Each special needs inmate/resident will have a written individualized treatment plan, developed by a physician or other qualified health care provider, specifying the particular course of therapy in carrying out short and long-term goals.

**13-82.3 – DEFINITIONS.**

Special Needs Patients/Inmates. - Patient inmate/residents who require **close medical supervision** and/or multidisciplinary care due to a health condition. In the majority of special needs cases, the health condition results in significant impairment in their ability to function effectively in a correctional facility, or the need for assistance in activities of daily living. The following may be included among special needs patients:

\* \* \* \* \*

- \* Pregnant

**13.82.4 PROCEDURES**

A. IDENTIFICATION.

1. Once a patient inmate/resident is identified as having special needs, a 13-82B Special Needs Treatment Plan will be completed manually or electronically by the appropriate QHCP and placed in the medical record.
2. The patient inmate/resident will be placed on a Master Special Needs List maintained by the HSA or designee.
3. All special needs that are identified will be documented on the 13-58E Master Problem List.

\* \* \* \* \*

C. TREATMENT PLANS

1. The 13-82B Special Needs Treatment Plan will be developed by an LIP or QMHP at the time a condition is identified and updated when warranted. The individualized treatment plan will contain the following required elements:
  - a. Frequency of follow-up for medical/mental health evaluation and adjustment of treatment modality;
  - b. Type and frequency of diagnostic testing and therapeutic regimens;
  - c. When appropriate, instructions about diet, exercise, adaptation to the correctional environment, and medication; and
  - d. Pain management (for terminally ill patient inmates/residents only).
  
2. Individualized treatment plans should include:
  - a. Input from various disciplines;
  - b. Identify assessed needs;
  - c. State long-term and short term goals;
  - d. State methods which will be used to accomplish the goals (to include services which may be accessed by the patient inmate/resident); and
  - e. Will be revised based on periodic review and changes in the patient inmate/resident's condition.

21. Despite this policy, there is no record that CCA or any other Defendant completed a Special Needs Treatment Plan for Ms. Clemons. Based on her pregnancy and medical condition upon presentation to Silverdale, Ms. Clemons should have been classified as a high risk patient who would require a substantially greater level of vigilance, precaution and treatment than in a normal, uncomplicated pregnancy to ensure the health and safety of both Ms. Clemons and her child. Under these circumstances, Defendants were required to provide for proper nutrition, daily pre-natal vitamins, routine assessments and timely response to any medical complaints.

22. After the above assessments, there is no documentation of any medical treatment or assessment until September 28, 2010. The Medication Administration Records (MAR) indicate that Ms. Clemons was provided with Calcium Antacid 500 MG Tablets from 9/14/10 to 9/28/10. However, there does not appear to be an actual physician order for this



medication. Further, the MAR indicates this medication was only given sporadically and not given on numerous occasions. Further, the Initial Assessments indicated that Ms. Clemons was required to be placed on pre-natal vitamins. However, the MAR during this period of time indicates that Ms. Clemons was not receiving her pre-natal vitamins on a daily basis as ordered, as the MAR notes that Ms. Clemons did not receive her prenatal vitamins on 9/15/10, 9/20/10, 9/22/10, 9/23/10, 9/24/10, 9/26/10, 9/27/10 and 9/28/10. The failure to provide daily pre-natal vitamins constituted a failure to provide proper medical treatment to Ms. Clemons and her child.

23. On 9/26/10, Ms. Clemons submitted a Sick Call Request which indicated that “My legs been hurting real bad, I’m pregnant. It hurt to the point where I cry myself to sleep.” This Sick Call Request indicates that it was not received until September 28, 2010. Given that Ms. Clemons was a high risk pregnancy, she should have been seen immediately and the delay in seeing Ms. Clemons for two days amounted to a failure to provide proper medical treatment to Ms. Clemons and her child.

24. On 9/28/10, a Progress Note completed by Cathy Davis, N.P. indicates that Ms. Clemons’ Current Meds are: 1) Calcium Antacid 500 MG Tablet Chewable; 2) Prenatal 28-0.8 MG Tablet daily; 3) Milk of Magnesia; and 4) Docu Soft 100 MG Capsules. During this assessment, Ms. Clemons informed Ms. Davis, N.P. that: 1) she feels “bubbles popping” in lower abdomen; 2) she was constipated; 3) she felt sharp pain in right upper quadrant occasionally; and 4) burning pain in her right leg. The objective findings indicate that Ms. Davis was unable to auscultate fetal heart tones. The plan indicated that Ms. Clemons was “to see OB if remains at facility.” Based on this assessment, Ms. Clemons should have been immediately referred to an OB/GYN to evaluate her complaints of pain and popping in her abdomen. However, no referral to a physician was made at this time. The failure to refer Ms. Clemons for an evaluation amounted to a failure to provide proper medical treatment to Ms. Clemons and her child.

25. On 9/29/10, Ms. Clemons completed a Sick Call Request which indicates: "Brown recluse bite on my left thigh and is swelling badly. I'm also pregnant and the pain is spreading to my stomach." Based on these complaints, Ms. Clemons was required to be immediately evaluated by a physician to rule out infection and/or to identify the bacterial source of the infection. Part B to the Sick Call Request indicates that Ms. Clemons was seen on 9/30/10 and notes "Medical Observation in Alpha 5, Contact Isolation, House Alone and Follow-up with Provider."

26. Progress Note – 9/30/10 at 1715 completed by Donna BeShears, L.P.N. indicates Ms. Clemons was moved to "Alpha 5 clinic, contact isolation, house alone, new orders per provider and follow-up with provider in clinic." The Assessment indicates "consider furuncle." A furuncle is a skin infection which is generally caused by the bacteria *Staphylococcus aureus* which can lead to MRSA. Given the institutional setting at Silverdale which presents a greater risk of MRSA, and Ms. Clemons' high risk pregnancy, the standard of care required that Ms. Clemons' furuncle be cultured and assessed by a physician. However, medical staff at CCA failed to culture the furuncle which amounted to a failure to provide proper medical treatment to Ms. Clemons and her child.

27. Without having Ms. Clemons' condition evaluated by a physician, medical staff at CCA apparently attempted to place Ms. Clemons on its MRSA protocol. In the Progress Note under Orders, it indicates that Ms. Clemons was placed on Clindamycin HCL 150 MG. However, there does not appear to be a physician assessment or prescription for this medication. A Progress Note from 9/30/10 at 2231 completed by Defendant Teresa Smith, LPN indicates that Ms. Clemons did not have any complaints and that she was to be continued "on MRSA protocol". An Observation Monitoring Form completed on 9/30/10 indicates the reason for observation was to rule out MRSA.

28. Progress Note – 10/4/10 completed by Dana Vital-Herne, LPN at 1224 indicates no complaints and to continue on meds. Progress Note – 10/4/10 completed by Jennifer

Dittmar, APN at 1328 and amended by Donna Beshears, LPN at 1746 indicates that Ms. Clemons' current medications are Calcium Antacid, Prenatal 28-0.8 MG Tablet, Docu Soft 100 MG Capsule and Clindamycin HCL 150 MG Tablet. The subjective notes indicate that Ms. Clemons: 1) has furuncle in her inner left thigh which is improving; 2) is approximately 12 weeks pregnant with an expected due date of 4/13/11; 3) not nauseated or vomiting on a regular basis but food makes her nauseated; and 4) her weight has decreased from 204 to 198 pounds. Fetal heart tones were not auscultated. The Assessment Notes: 1) prison admission which is resolved; and 2) screening for pulmonary Tuberculosis which is resolved. The Plan noted that Ms. Clemons was to clear medical observation, finish antibiotics, return to clinic in 4 weeks for follow-up and see OB/GYN for check up. Progress Note – 10/10/10 completed by April Lanham, LPN (which is a later entry for 10/3/10) indicates that patient being housed in A5 due to isolation precautions r/t MRSA protocol. The Plan indicates to continue medical observation and prescriptions per the MRSA protocol.

29. Ms. Clemons was supposed to be evaluated by a physician after her complaints on 9/29/10, which did not occur. Instead Ms. Clemons was evaluated by an LPN on 9/30/10. After this evaluation, Ms. Clemons was placed on Clindamycin HCL 150 mg. However, there is no physician order or prescription in her chart indicating the frequency and length that Ms. Clemons was supposed to take this medication. The MAR records note that Ms. Clemons received a 300 mg dose of Clindamycin on 9/30/10, 10/1/10, 10/2/10, 10/3/10, 10/4/10, 10/7/10, 10/9/10, 10/11/10, 10/12/10 and 10/13/10. Further, the MAR indicates that Ms. Clemons did not receive at least one of her doses of Clindamycin on 9/30/10, 10/1/10, 10/2/10, 10/5/10, 10/6/10, 10/7/10, 10/8/10, 10/9/10, 10/10/10, 10/11/10, 10/12/10 and 10/13/10. Given that Ms. Clemons was a high-risk pregnancy, Defendants were under an affirmative duty to ensure that she received all of her prescribed medications and the failure of Defendants to provide Ms. Clemons with all of her required antibiotics amounted to a failure to provide proper medical treatment to Ms. Clemons and her child.

30. There are no treatment or observation records from 10/4/10 through 10/20/10.

However, a Medical Transport Form completed on 10/4/10 indicates the following:

18 year old pregnant inmate. First pregnancy, without child. **Positive HC Urine. Fetal Heart Rate not detected. Furuncle to thigh. Antibiotics. Per provider, inmate needs OB/GYN follow up ASAP. Faxed to HC Rep. 10-4-10.**

31. Robin Tilley, Office Supervisor from Hamilton County Correction, approved the OB/GYN visit on 10/5/10 at 10:22 a.m. However, Mr. Clemons was not provided with an appointment with an OB/GYN until 10/20/10.

32. Because Ms. Clemons was a high-risk pregnancy, she should have been evaluated by an OB/GYN immediately after she began complaining of pain in her abdomen on 9/28/10 to rule out any possible problem or infection. Further, while Ms. Clemons' records indicate that she was placed on Clindamycin, Defendants failed to provide her with all of her antibiotics. Defendants' failure to have Ms. Clemons assessed by an OB/GYN until 10/20/10 (when that referral was requested ASAP on 10/4/10 and approved on 10/5/10) amounted to a failure to provide timely and proper medical treatment to Ms. Clemons and her child and is inexcusable, especially because Ms. Clemons was thought to have an infection and placed on antibiotics which were not administered in a proper manner. As Defendants failed to properly have Ms. Clemons assessed by an OB/GYN and failed to properly administer antibiotics, this substantially increased her risk of developing an infection or complications which can lead to premature labor.

33. On 10/20/10, Ms. Clemons was transported to UT Erlanger OB/GYN where she was seen by Dr. Stacia Moyer. There is no indication in Dr. Moyer's record that Defendants informed Dr. Moyer of Ms. Clemons' prior complaints and/or treatment while housed at Silverdale. In particular, Defendants should have provided Dr. Moyer with Ms. Clemons' medical history, complaints and treatment while at Silverdale, which should have included, at a minimum, that Ms Clemons had: 1) complaints of abdominal pain and 2) complaints of being bitten by a spider for which she was placed on a MRSA protocol involving antibiotic treatment

with Clindamycin. Further, Defendants should have informed Dr. Moyer that Ms. Clemons did not receive a full regimen of antibiotics. The failure to provide Dr. Moyer with this information amounted to a failure to provide proper medical treatment to Ms. Clemons and her child.

34. Despite these failures, Dr. Moyer performed tests for Chlamydia and Gonorrhea, which were negative. Dr. Moyer's examination indicated that the baby's fetal heart rate was 154 and the baby's status was reassuring. A urinalysis test indicated elevated LEU – WBC/ul. Dr. Moyer estimated the baby's age at 15 weeks "per early scan by Dr. Seeber." Dr. Moyer prescribed prenatal vitamins daily and ordered a sickle cell screen to be performed. However, based on the MAR, CCA failed to ensure that Ms. Clemons was provided pre-natal vitamins on a daily basis.

35. On 10/28/10, Ms. Clemons submitted a Sick Call Request which indicated: "I been staying cold a lot. I need [some] iron pills. My baby draining me." The Sick Call Request indicates that it was received on 11/1/10. Given that Ms. Clemons was a high-risk pregnancy and the history of her complaints and treatment, Ms. Clemons should have been evaluated by a physician. At a minimum, this information should have been communicated to her OB/GYN. However, there is no documentation in Ms. Clemons' records that this information was communicated to her OB/GYN, which amounted to a failure on the part of Defendants to provide proper medical treatment to Ms. Clemons and her child.

36. A Medical Transport Form completed on 10-29-10 notes: "18 year old pregnant inmate. GI. 10-20-10 IUP was 15 weeks per OB/GYN. Inmate had sickle cell screen at that time and vaginitis. Trans-abdominal ultrasound. Recommended follow up in 4 weeks. Fax to HC Rep. – 10-29-10." Robin Tilley, Office Supervisor from Hamilton County Correction, approved the follow-up visit on 11/1/10 at 10:08 a.m. Ms. Clemons' medical chart does not indicate that she received any medical treatment for her vaginitis which can also lead to infection and premature labor.

37. Ms. Clemons returned to Erlanger Hospital for her second OB/GYN visit on November 17, 2010. An ultrasound was performed which indicated that Ms. Clemons had a normal appearing anatomy. Plaintiff learned at this time that her child was a boy. She received a "photograph" of the baby, which the guards allowed her to keep. Ms. Clemons' baby's fetal heart rate was 138 and appeared normal on ultrasound.

38. At approximately 5:00 p.m. on 11/19/10, Ms. Clemons began complaining to Defendant Badger, the CCA guard in her housing unit, about abdominal pain and vaginal bleeding, which constituted a serious medical condition for a woman who is pregnant which would be obvious to any reasonable person. Ms. Clemons' medical needs were obvious and serious, and the risks associated with vaginal bleeding are grave. To deny medical care to a pregnant woman who is bleeding vaginally and complaining of abdominal pain is clearly deliberate indifference to serious medical needs and violates contemporary standards of care and decency. Given Ms. Clemons' high-risk pregnancy and her medical history, Defendants were required to provide Ms. Clemons with an immediate medical assessment of her condition by her OB/GYN and/or immediate transportation to the hospital by ambulance.

39. However, Defendant Badger failed to obtain medical care for Ms. Clemons and did not have her immediately assessed by any health care provider. In addition to Ms. Clemons' complaint, numerous other inmates made repeated complaints to Defendant Badger about Ms. Clemons' condition and the need to have her evaluated by a physician or taken to the hospital. Defendant Badger failed to act upon these pleas for help; after several hours a shift change occurred and Defendant Badger left the unit, despite having knowledge that Ms. Clemons was pregnant, experiencing abdominal pain and bleeding vaginally. The failure to immediately provide medical assessments or treatment under these circumstances evinces a deliberate, callous and substantial disregard to the obvious health care needs of both Ms. Clemons and her child.

40. After the shift change another CCA employee finally allowed Ms. Clemons to see medical staff. Ms. Clemons, who was then in extreme pain, saw Defendant Teresa Smith, LPN, who had failed to see her earlier because Defendant Smith was distributing medication to other inmates. As previously noted, the standard of care required an immediate assessment of Ms. Clemons' condition and communication and/or transport to her OB/GYN or the hospital. However, there is no medical record of any evaluation or assessment of Ms. Clemons' condition at the time she was seen by Defendant Smith, which amounted to a failure on the part of Defendants to provide proper medical treatment to Ms. Clemons and her child.

41. Instead, a Medical Transport Form was completed by Defendant Smith at 7:43 p.m. on 11/19/2010 which indicated: "Lower abdominal pain/spotting. Verbal Order Dr. Stulz to Erlanger ER for further evaluation." A Physician Order Sheet completed by Defendant Smith and contained in Erlanger Hospital's medical records indicates that a Verbal Order was received at 7:43 p.m. to transport Ms. Clemons to Erlanger ER (Emergency Room) for further evaluation of lower abdominal pain/discharge.

42. However, Ms. Clemons was not immediately transported to the emergency room per the physician's orders. Instead, she was taken by Defendant Montgomery to an intake/discharge area at Silverdale Detention Facility known as R&D, and placed alone in a barren cell. While held in the R&D cell, Ms. Clemons continued to bleed vaginally, experienced contractions, vomited, was in great pain, and feared for her own well-being and that of her unborn child.

43. Ms. Clemons pleaded with Defendant Garcia for help with her medical condition, but Defendant Garcia refused to provide any help or obtain medical assistance for Ms. Clemons. Defendant Garcia stated that staff were conducting "count" or responding to "codes" at the facility, such as "Code Red" and "Code Blue," which apparently took precedence over obtaining timely and needed medical care for Ms. Clemons. Indeed, according to CCA's own policy and procedures as specified in post orders for Silverdale staff, "All inmate movement

within the facility will cease” when a Code Blue or Code Red is called. Further, CCA policy 9-13 and CCA’s count procedures state there will be “no movement” of inmates during count time. Said policies and procedures contain no apparent exception for inmates experiencing emergent medical conditions such as Ms. Clemons. Thus, CCA’s official policies and procedures directly contributed to a delay in medical care for Ms. Clemons and her unborn child.

44. Although Defendant Garcia was aware of Ms. Clemons’ serious medical condition, he did not provide her with medical treatment or assist her in obtaining such treatment. At some later point when Ms. Clemons was held in the R&D cell, Defendant Montgomery provided Ms. Clemons with a new pair of pants to replace the blood-soaked pants that Ms. Clemons had been wearing. Although Defendant Montgomery was aware of Ms. Clemons’ serious medical condition, she did not provide her with medical treatment or assist her in obtaining such treatment.

45. Despite a doctor’s order to transport Ms. Clemons to Erlanger’s Emergency Room, she remained in the R&D cell, bleeding, vomiting and experiencing contractions, pain and emotional distress for **almost three hours**. According to ambulance records from Hamilton County EMS, Defendants did not request an ambulance to transport Ms. Clemons to the hospital until 10:21 p.m. on November 19, 2010 – over five hours after Ms. Clemons first notified CCA staff that she was experiencing abdominal pain and vaginal bleeding, and almost three hours after Defendant Smith requested and received a physician order to transport Ms. Clemons to the emergency room.

46. The failure of the Defendants to ensure that Ms. Clemons received timely and adequate medical care, and the delay in requesting an ambulance to transport Ms. Clemons to the emergency room, evidenced deliberate indifference to Ms. Clemons’ serious medical needs. Further, the seriousness of Ms. Clemons’ medical condition – a pregnant woman who is having abdominal pain and vaginal bleeding – would be obvious to a layman with no medical training.



47. Erlanger Hospital records indicate that Ms. Clemons arrived at the hospital on 11/19/10 at 10:53 p.m. when a System Patient Form was completed. Upon admission to Labor and Delivery, the medical records note that Ms. Clemons was complaining of intermittent abdominal pain and vaginal bleeding. The Obstetrics Admitting Records from Erlanger note that Fetal Heart Rate was 149-155. Further, the Labor and Delivery records indicate that Ms. Clemons denied any gush of fluid and that the cervix was visually 4 centimeters with fetal head bulging through. As Ms. Clemons was not provided with medical treatment in a timely manner as a direct result of the Defendants' deliberate indifference and CCA's policies and procedures, the delivery of her child was inevitable and Ms. Clemons delivered a baby boy, Roland Lebron Clemons, who was born alive but died shortly after his birth.

48. Roland Lebron Clemons was issued a "live birth" birth certificate by the State of Tennessee, and was issued a Social Security Number. His death certificate indicates that he was born on 11/19/2010 and died on 11/20/2010.

49. As a result of the aforementioned acts and omissions of Defendants, including but not limited to Hamilton County, CCA and its agents, employees and contractors, Plaintiff sustained serious physical and emotional injuries from the failure to provide her with proper medical treatment and suffered the avoidable death of her infant son.

50. Based on the foregoing, the treatment provided (and failed or refused to be provided) to Ms. Clemons and her child by CCA and the other Defendants fell well below the recognized standards of professional practice and constituted deliberate indifference to the serious medical needs of both Ms. Clemons and her child. Defendants had sufficient information to allow them to understand that Ms. Clemons was a high-risk pregnancy and there were signs of infection that were not properly addressed and treated. On November 19, 2010, Defendants were informed that Ms. Clemons was experiencing abdominal pain and vaginal bleeding but failed to provide her with any vaginal examination, delayed in providing her with medical care and delayed in transporting her to the emergency room. Further, Defendants failed

to have her evaluated by a physician, failed to have her immediately admitted to a hospital, failed to perform a vaginal exam to determine dilation and effacement, and completely failed to offer any care for her vaginal bleeding and pregnant condition. Further, even after Ms. Clemons was finally seen by an LPN (who did not even provide a written assessment of her condition), Defendants delayed almost three hours before getting her to the hospital for medical treatment despite a physician's order to transport her to the emergency room. Under these circumstances, there was deliberate indifference to the serious medical needs of both Ms. Clemons and her child.

51. Based on Ms. Clemons' history and her complaints of preterm labor, it is more probable than not that with proper and timely treatment and care, Ms. Clemons' preterm labor could have been avoided and/or arrested and that with the arrest of labor Ms. Clemons' child would have been delivered at a later date without serious risk of mortality or morbidity.

52. Therefore, the acts or omissions on the part of Defendants caused injuries to Ms. Clemons and the death of Ms. Clemons' child and which would not have otherwise occurred. Ms. Clemons' baby was born alive but lived for only a short time. As a result of the injuries to Ms. Clemons and the death of her child, Ms. Clemons experienced severe emotional distress, anxiety, depression, pain, fear and anguish over losing her child. She was placed on psychotropic medication and had counseling sessions with a grief counselor as a result of the failure to provide her timely medical treatment and the avoidable death of her infant son. Therefore, Ms. Clemons sustained both serious physical and mental injuries as a result of the improper care and treatment provided by Defendants to both her and her child.

53. After this incident, Ms. Clemons filed formal grievances with CCA with respect to CCA's failure to provide her with proper medical treatment which resulted in serious physical and emotional injuries to Ms. Clemons and the death of her child, and exhausted all administrative dispute resolution procedures of CCA.

54. During the grievance process, Assistant Warden Mike Quinn indicated that he “reviewed the video concerning the allegation and interviewed staff issuing medical care.” Significantly, Defendant CCA has lost or destroyed this video after being placed on notice by counsel of a potential claim by Ms. Clemons. Despite the obvious failure to provide Ms. Clemons with proper medical care, CCA found that Ms. Clemons “received standard pre-natal care,” determined that there was no “staff malfeasance” and indicated that there would be no “changing any current medical policies pertaining to medical treatment concerning pregnant females.” These findings were upheld by Defendant Jennings.

55. Defendant CCA is liable for the actions of its employees, agents and contractors because they acted pursuant to the policies, practices and customs of CCA which is evidenced by the fact that CCA exonerated its employees from wrongdoing in its response to Ms. Clemons’ grievance and, therefore, ratified, condoned and approved the conduct of its employees in all respects.

56. As a result of the aforementioned acts and omissions, Ms. Clemons’ civil rights were violated and she suffered severe and significant physical and emotional injuries for which the Defendants are jointly and severally liable.

Count I  
Federal Constitutional Claims

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

57. At all times relevant herein, CCA and its employees, agents and contractors were performing a traditional governmental function in operating a correctional facility and were state actors. All the actions and omissions of CCA and its employees, agents and contractors, as alleged herein, were performed under color of state law.

58. At all times relevant to the events giving rise to this cause of action, Plaintiff was an inmate in the custody of Hamilton County and Defendant CCA at the Silverdale Detention

Facility and under the direct supervision of Defendant Jennings. Defendant Hamilton County was responsible for Plaintiff's well-being as the contracting government agency responsible for overseeing and monitoring CCA's operation of Silverdale Detention Facility. As the Plaintiff was in the custody and control of Hamilton County and CCA and its agents and employees, Plaintiff did not have the ability to obtain medical treatment on her own to provide for her own well-being and the well-being of her child. Therefore, Defendants were under a constitutional duty to provide the Plaintiff with the basic necessities of life which include, but are not limited to, food, shelter and proper medical care.

59. Defendants' acts and omissions as alleged more specifically herein breached this constitutional duty and violated the Plaintiff's clearly established rights under the First, Eighth and/or Fourteenth Amendment to the United States Constitution, as the Defendants were deliberately, consciously and intentionally indifferent to the Plaintiff's obvious, serious medical needs.

60. The Defendants' actions and omissions alleged herein were consciously, deliberately and intentionally indifferent to the serious medical needs of the Plaintiff. As a direct and proximate cause of this indifference, the Plaintiff has suffered tremendous emotional and physical injury, and the death of her infant child.

61. Upon incarceration, Defendants were aware that Ms. Clemons was pregnant and required proper nutrition, vitamins, medical assessments and treatment. Despite Defendants' knowledge of the Plaintiff's condition, Defendants deliberately and intentionally failed to provide Ms. Clemons with these basic necessities and failed to complete a Special Needs Treatment Plan for Ms. Clemons and her child.

62. Defendants, with knowledge of Plaintiff's serious and obvious medical needs and with deliberate indifference to such medical needs, have acted or failed to act in such a way as to deprive Plaintiff and her child of necessary and adequate medical care, thereby endangering Plaintiff and her child's health and well-being. Such acts and omissions of Defendants violated

the rights secured to the Plaintiff by the First, Eighth and/or Fourteenth Amendment to the United States Constitution.

63. Defendants, including CCA, its agents and employees, with knowledge of Plaintiff's serious medical needs and with deliberate indifference to such medical needs, have acted or failed to act in such a manner as to prevent Plaintiff (and her baby) from obtaining timely and adequate medical treatment and to prevent needed medical treatment and care from reaching the Plaintiff (and her baby), thereby endangering the health and well-being of Plaintiff and her child. Such acts and omissions by Defendants violate rights secured to the Plaintiff by the First, Eighth and/or Fourteenth Amendment to the United States Constitution.

64. Defendants, including CCA, its agents and employees, with knowledge of Plaintiff's serious medical needs, had a constitutional duty under the Eighth and/or Fourteenth Amendment to the United States Constitution to provide needed medical care to inmates at the Silverdale Detention Facility, including Plaintiff, in conformity with the standards for delivery of such medical care in the State of Tennessee.

65. Defendants, knowing of the Plaintiff's serious medical needs and knowing also of the inadequacies and deficiencies in CCA's medical facilities, staffing and procedures at Silverdale Detention Facility, had a constitutional duty to establish and implement policies, practices and procedures designed to assure that Plaintiff received medical care and treatment in conformity with the standards of delivery of such medical care and treatment in the State of Tennessee.

66. Defendants, knowing of the serious medical needs of the Plaintiff, and with deliberate indifference to the inadequacies and deficiencies in CCA's medical facilities, staffing and procedures at Silverdale Detention Facility, failed and neglected to establish and implement policies, practices and procedures designed to assure that the Plaintiff received proper medical care and treatment.

67. Defendants, knowing of the serious medical needs of the Plaintiff, had a constitutional duty to instruct, supervise and train their employees and agents to assure the delivery of medical care to Plaintiff consistent with the standards of medical care in the State of Tennessee, and have failed and neglected to establish and implement proper training, supervision and monitoring programs designed to assure that the Plaintiff received proper medical care and treatment.

68. Defendant CCA is under a constitutional duty to ensure that its jails, prisons and other correctional facilities, including Silverdale, are operated in a lawful manner, preserving to prisoners the rights, privileges and immunities guaranteed to them by the Constitutions and laws of the United States of America and the State of Tennessee.

69. Defendants permitted, encouraged, tolerated and/or knowingly acquiesced to an official pattern, policy or practice of Defendants' employees, agents and contractors violating the constitutional rights of inmates, including Ms. Clemons. The actions of the Individual Defendants and other agents, employees and contractors of CCA complained of herein were unjustified, unreasonable and unconstitutional, and constituted a violation of Plaintiff's clearly established rights, privileges and immunities guaranteed to her by the First, Eighth and/or Fourteenth Amendment to the United States Constitution which include but are not limited to the following:

- a. Freedom from cruel and unusual punishment;
- b. Freedom from deprivation of life and liberty without due process of law;
- c. Freedom from confinement without the provision for adequate medical care and treatment;
- d. Freedom from arbitrary government action which is so outrageous as to shock the conscience of a civilized society;
- e. Freedom from intentional discrimination on the basis of physical and mental impairment; and
- f. Unconstitutional termination and infringement of Plaintiff's right to familial association with her son, Roland Lebron Clemons.

70. Defendants are directly liable for the violation of Ms. Clemons' civil rights due to the following policies, practices or customs of Defendants which were in effect at the time of this incident and which were the underlying cause of Plaintiff's injuries and damages:

- a. Defendants Hamilton County, CCA and Jennings failed to adequately and properly train and educate their employees, agents and contractors with respect to the proper care and treatment of pregnant inmates, responding to medical complaints of pregnant inmates, evaluating medical complaints of pregnant inmates, seeking emergency medical treatment for pregnant inmates and handling persons with disabilities, with deliberate indifference and reckless disregard to the welfare of inmates, including Ms. Clemons;
- b. Defendants Hamilton County, CCA and Jennings failed to adequately monitor and evaluate the performance of their agents, employees and contractors with respect to the proper care and treatment of pregnant inmates, responding to medical complaints of pregnant inmates, evaluating medical complaints of pregnant inmates, seeking emergency medical treatment for pregnant inmates and handling persons with disabilities, with deliberate indifference and reckless disregard to the welfare of inmates, including Ms. Clemons;
- c. Defendants Hamilton County and CCA failed to properly fund and staff Silverdale Detention Facility, to ensure an appropriate amount of licensed, trained and qualified medical professionals are present to provide proper medical treatment to pregnant or other high-risk patients, with deliberate indifference and reckless disregard to the welfare of inmates, including Ms. Clemons;
- d. Defendants Hamilton County, CCA and Jennings have a policy, practice or custom of exonerating their employees, agents and/or contractors of wrongdoing and/or misconduct in order to escape liability, and thereby create an atmosphere where illegal and unconstitutional behavior is condoned, tolerated or approved, with deliberate indifference and reckless disregard to the rights of inmates, including Ms. Clemons; and
- e. Defendant CCA has established official policies and procedures that result in a delay of timely and needed medical care for inmates with serious medical needs when the need for such medical care conflicts with routine "counts" and security "codes" at Silverdale Detention Facility, with deliberate indifference and reckless disregard to inmates, including Ms. Clemons.

71. Alternatively, Defendants Hamilton County, CCA and Jennings are liable for the actions of their employees, agents and contractors by virtue of the fact that they investigated this incident and found that all employees, agents and contractors acted in compliance with the policies, practices and customs of the Defendants and, therefore, ratified, condoned and

approved the conduct of the Individual Defendants and other employees, agents and contractors in this matter in all respects.

72. Alternatively, Defendants Hamilton County, CCA and Jennings are liable for the actions of their employees, agents and contractors under the doctrines of agency, vicarious liability, employer-employee relations, master-servant, respondeat superior, joint venture, contract and as a result of their non-delegable duty to comply with the constitution and laws of the United States and the State of Tennessee.

73. Defendants CCA, Hamilton County and Jennings have maintained and exhibited a pattern, practice, custom and policy of deliberate indifference to the serious medical needs of Plaintiff and her child which was the motivating force behind the Plaintiff's deprivation of constitutional rights under the First, Eighth and Fourteenth Amendment rights and, accordingly, she is entitled to recovery from these Defendants.

Count II  
Violation of Tennessee Constitution, Article I, §16 and §32

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

74. In Article I, §16, the Constitution of the State of Tennessee provides that no cruel or unusual punishment shall be inflicted.

75. Article I, §32 the Constitution of the State of Tennessee, requires the "humane treatment of prisoners."

76. While the Plaintiff has alleged in Count I that the conduct of Defendants violated the Plaintiff's federal constitutional rights, Plaintiff further alleges that the same conduct violated Plaintiff's rights under §§ 16 and 32 of the Tennessee Constitution.

Count III  
Violation of Tennessee Code Annotated §§ 41-21-201 and 204

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.



77. Tennessee Code Annotated §41-21-201 states that "the warden [here, CCA's facility administrator Defendant Paul Jennings] is charged with the duty of treating the prisoners with humanity and kindness, and protecting them from harsh and cruel treatment and overwork." (emphasis added). Clearly, Plaintiff was not treated with humanity and kindness, nor even a degree of human decency, amounting to harsh and cruel treatment in direct violation of this statute. Plaintiff submits that she was in the class of persons that this statute was designed to protect.

78. CCA's employees committed unlawful acts and violations as set forth in the body of this Complaint, all of which directly and proximately contributed to the injuries of Plaintiff and her child.

79. Tennessee Code Annotated §41-21-204 states in part that "Any inmate who is ill shall receive proper medical treatment." (emphasis added). Defendants denied Plaintiff proper medical treatment in direct violation of this statute. Plaintiff submits that she was in the class of persons that this statute was designed to protect.

80. Tennessee Code Annotated §41-21-201 and 204 creates a duty, the breach of which by Defendants constitutes negligence per se. The negligence, reckless and wanton acts of Defendants, in direct violation of these statutes, proximately caused injuries to the Plaintiff and the untimely birth and death of Plaintiff's child, and she is entitled to recover for her injuries therefrom.

81. The actions and omissions of the Individual Defendants and other agents, employees and contractors of the Defendants set forth herein were committed in the course and scope of their employment by Defendants and constitute negligence, recklessness, malice and intentional misconduct, supporting an award of punitive damages.

Count IV  
Intentional Infliction of Emotional Distress

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

82. "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Restatement (Second) of Torts, §46(1). "Intentional infliction of emotional distress and outrageous conduct are not two separate torts, but are simply different names for the same cause of action." *Moorhead v. J.C.Penney Co. Inc.*, 555 S.W.2d. 713, 717 (Tenn. 1977).

83. "[In Tennessee] there are three essential elements to [such a] cause of action: (1) the conduct complained of must be intentional or reckless; (2) the conduct must be so outrageous that it is not tolerated by civilized society; and (3) the conduct complained of must result in mental injury." *Id.* and *Johnson v. Woman's Hospital*, 527 S.W.2d. 133, 144 (Tenn. App. 1975). Plaintiff submits that Defendants' conduct as alleged herein is so egregious as to constitute intentional infliction of emotional distress.

84. Plaintiff suffered severe emotional trauma as a result of Defendants' reckless, intentional and outrageous conduct which was the proximate cause of the premature birth and death of her son, and is entitled to recovery therefrom.

85. Further, "the tort of outrageous conduct is one in which punitive damages may be allowed." *Johnson* at 142. Plaintiff is entitled to punitive damages for Defendants' reckless, intentional and outrageous conduct.

Count V  
Ordinary Negligence

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

86. While the Plaintiff has alleged that the acts and omissions set forth herein violated her constitutional rights, Plaintiff alternatively pleads that the conduct alleged herein constitutes at least ordinary negligence under the laws of the State of Tennessee. This claim for ordinary negligence and does not involve a decision, act or omission based on medical science or specialized training or skill. The acts or omissions complained of herein may be assessed by the trier of fact based on common, everyday experiences. The acts or omissions complained of herein involve mere custodial neglect and not medical malpractice.

87. Defendants owed a duty to prisoners in their custody to provide custodial care, treatment, and services within accepted custodial standards of jails, prisons and other correctional facilities, including Silverdale Detention Facility. Defendants Hamilton County, CCA and Jennings owed a duty to the prisoners in their custody to hire, train, supervise and provide a sufficient number of employees to deliver custodial care and services to prisoners in a safe and adequate manner at Silverdale Detention Facility.

88. Defendants breached the duties owed to prisoners in their custody and were negligent in their non-medical, ordinary care and treatment of Ms. Clemons by and through their acts or omissions, which were within the understanding of an ordinary lay person and did not require medical training, assessment or diagnosis, including but not limited to the following:

- (a) Failure to provide sufficient numbers of certified nursing assistants or other persons to meet the custodial needs of Plaintiff;
- (b) Failure to administrate the facility in such a manner so as to provide the facility with adequate resources to ensure sufficient non-medical (CNA) staffing and supplies to care for all prisoners;
- (c) Failure to provide a sufficient number of non-licensed staff to prevent Plaintiff's needs from being ignored and to ensure that Plaintiff's health care plans and/or medical orders could be complied with by such non-licensed staff;
- (d) Failure to provide adequate supervision and oversight to non-licensed personnel to ensure that Plaintiff received adequate and proper care;
- (e) Failure to provide adequate training and supervision of non-medical staffing to comply with their duties and the health care plans and/or medical orders of prisoners;

- (g) Failure by the members of the governing body of CCA to comply with and/or discharge their legal and lawful obligation by:
  - (1) ensuring that the rules and regulations designed to protect the health and safety of prisoners as promulgated by the Tennessee Legislature were consistently complied with on an ongoing basis;
  - (2) ensuring that the prisoner medical care policies for the facility were consistently in compliance on an ongoing basis; and
  - (3) responsibly ensuring that appropriate corrective measures were implemented to correct problems concerning inadequate prisoner care (non-medical).
- (h) Failure to provide basic and necessary non-medical care and supervision during Plaintiff's incarceration; and
- (i) Failure to protect Plaintiff from abuse and neglect during her incarceration.

89. The injuries and damages described in this Complaint were a direct and proximate result of the acts or omissions set forth above, singularly or in combination.

90. Plaintiff's injuries also were the result of the administrative decisions of Defendants Hamilton County, CCA and Jennings, including a failure to adequately train, supervise and staff Silverdale, which affected all prisoners housed at Silverdale Detention Facility.

91. As a direct and proximate result of the aforementioned negligence, Plaintiff suffered mental anguish, pain and suffering, and physical injuries and injuries to her dignity.

Count VI  
Negligent Infliction of Emotional Distress

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

92. In Tennessee, a claim for negligent infliction of emotional distress is analyzed under general principles of negligence and must result in a "serious or severe" emotional injury "where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case." (*Camper v. Minor*, 915 S.W.2d 437 at 446, (Tenn. 1996) quoting *Rodrigues v. State, et al*, citations omitted).

93. Further, "recovery for emotional injuries suffered as a result of injury to a third party must establish that the injury to the third party was, or reasonably was perceived to be, serious or fatal," and "the very nature of the relationship between the plaintiff and the victim ... makes the emotional reaction experienced by the plaintiff so poignant." (*Ramsey v. Beavers*, 931 S.W.2d 527, at 531, 532 (Tenn. 1996)).

94. "When emotional damages are a 'parasitic' consequence of negligent conduct that results in multiple types of damages, there is no need to impose special pleading or proof requirements that apply to 'stand-alone' emotional distress claims." *Estate of Amos v. Vanderbilt University*, 62 S.W.3d 133 at 137 (Tenn. 2001).

95. Here, Plaintiff's emotional injuries result both from the incredible physical and mental anguish she suffered as a result of Defendants' actions, and from the unnecessary and untimely death of her son, Roland Lebron Clemons, proximately caused by Defendants' gross and wantonly reckless negligence.

96. Plaintiff's desperate and repeated pleas for help and assistance went unheeded and her child died. As a result, Plaintiff suffered severe emotional distress which required medication and counseling as a result of her treatment by Defendants and her observation of her child's untimely death. Plaintiff suffered substantial emotional trauma as a result of Defendants' intolerably cruel deliberate indifference and negligence, in addition to her physical harm.

Count VII  
Punitive Damages

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

97. The actions and omissions of Defendants, including but not limited to CCA and its employees, agents and contractors complained of herein, were unlawful, shocking to the conscience and unconstitutional, and performed maliciously, recklessly, fraudulently,

sadistically, intentionally, willfully, wantonly and in such a manner as to entitle Plaintiff to a substantial award of punitive damages.

### **DAMAGES**

Plaintiff hereby incorporates, in its entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

98. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff's constitutional rights were violated and she was injured and damaged. The injuries and damages for which Plaintiff seeks compensation from Defendants, both jointly and severally, under both state and federal law, include, but are not limited to, the following:

- a. Physical pain and suffering;
- b. Emotional pain and suffering;
- c. Loss of enjoyment of life;
- d. Fright, shock, anxiety and humiliation;
- e. Permanent injuries;
- f. Loss of consortium and services of her child, Roland Lebron Clemons.
- g. Punitive damages;
- h. Pre- and post-judgment interest;
- i. Statutory and discretionary costs;
- j. Attorney's fees and costs pursuant to 42 U.S.C. Section 1988;
- k. A declaratory judgment that the acts and conduct herein was unconstitutional;
- l. Injunctive relief precluding CCA from engaging in the conduct complained of herein in the future and requiring CCA to provide proper policy, training and supervision of its employees and holding them accountable for their misconduct;
- m. All such further relief, both general and specific, to which she may be entitled under the premises.

### **PRAYERS FOR RELIEF**

Plaintiff hereby incorporates, in its entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

99. WHEREFORE, PREMISES CONSIDERED, Plaintiff Countess Clemons prays that this Honorable Court enter a judgment against Defendants for compensatory damages for the injuries and damages sustained by her in an amount to be determined by a jury as reasonable. While the Plaintiff objects to requesting a specific dollar amount in the Complaint as the amount of compensatory damages sustained by Plaintiff is left to the sound discretion of

the jury, to the extent a specific dollar amount is required by law to be set forth in the Complaint, the amount of compensatory damages should not exceed Twenty-Five Million (\$25,000,000.00) Dollars and for all such further relief, both general and specific, to which she may be entitled under the premises, including all reasonable costs, interest and attorney fees.

100. WHEREFORE, PREMISES CONSIDERED, Plaintiff Countess Clemons prays that this Honorable Court enter a judgment against Defendants for punitive damages in an amount to be determined by the jury as fair and reasonable to punish Defendants and to deter others from engaging in similar misconduct. While the Plaintiff objects to requesting a specific dollar amount in the Complaint as the amount of punitive damages necessary to punish and deter future misconduct is left to the sound discretion of the jury, to the extent a specific dollar amount is required by law to be set forth in the Complaint, the amount of punitive damages should not exceed One Hundred Million (\$100,000,000.00) Dollars and for all such further relief, both general and specific, to which she may be entitled under the premises, including all reasonable costs, interest and attorney fees.

**THE PLAINTIFF RESPECTFULLY DEMANDS A JURY TO TRY THE ISSUES ONCE JOINED.**

Respectfully submitted,

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