

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

THE NATIONAL FEDERATION OF	)	
THE BLIND OF VIRGINIA, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 3:23-cv-127
	)	
	)	
VIRGINIA DEPARTMENT OF	)	
CORRECTIONS, et al.	)	
	)	
Defendants.	)	

Case No.: 3:23-cv-127

**DEFENDANT VITALCORE’S ANSWER TO COMPLAINT**

Defendant VitalCore Health Strategies (“VitalCore”), by counsel, hereby submits this Answer to the Complaint, pursuant Federal Rule of Civil Procedure 12, and this Court’s Pretrial Scheduling Order (ECF No. 74), and states as follows:

1. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 1.
2. VitalCore denies the allegations in Paragraph 2.
3. VitalCore denies the allegations in Paragraph 3.
4. VitalCore denies the allegations in Paragraph 4.
5. VitalCore denies the allegations in Paragraph 5.
6. Regarding Paragraph 6, VitalCore does not dispute subject matter jurisdiction regarding the listed Constitutional provisions and statutory laws. However, VitalCore denies that this matter arises from the Americans with Disabilities Act (“ADA”), the U.S. Constitution, or any other cited statute. The Plaintiffs’ claims as alleged constitute medical negligence, to which

VitalCore denies all liability regarding same.

7. The allegations set forth in Paragraph 7 are not alleged against VitalCore; therefore, no response is required. To the extent a response is required, VitalCore denies same.

8. VitalCore denies the allegations in Paragraph 8. VitalCore requests that the Court decline to exercise supplemental jurisdiction as negligence claims brought alongside § 1983 claims have the potential to substantially confuse the jury due to the different applicable standards of care. *Sawyer v. Stolle*, 2011 U.S. Dist. LEXIS 146230, \*10 (E.D. Va. 2011).

9. Regarding Paragraph 9, VitalCore does not contest venue.

10. VitalCore admits the allegations in Paragraph 10.

11. VitalCore admits the allegations in Paragraph 11.

12. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 12, and, therefore, denies same.

13. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 13, and, therefore, denies same.

14. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 14, and, therefore, denies same.

15. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 15, and, therefore, denies same.

16. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 16, and, therefore, denies same.

17. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 17, and, therefore, denies same.

18. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 18, and, therefore, denies same.

19. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 19, and, therefore, denies same.

20. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 20, and, therefore, denies same.

21. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 21, and, therefore, denies same.

22. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 22, and, therefore, denies same.

23. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 23, and, therefore, denies same.

24. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 24, and, therefore, denies same.

25. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 25, and, therefore, denies same.

26. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 26, and, therefore, denies same.

27. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 27, and, therefore, denies same.

28. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 28, and, therefore, denies same.

29. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 29, and, therefore, denies same.

30. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 30, and, therefore, denies same.

31. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 31, and, therefore, denies same.

32. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 32, and, therefore, denies same.

33. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 33, and, therefore, denies same.

34. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 34, and, therefore, denies same.

35. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 35, and, therefore, denies same.

36. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 36, and, therefore, denies same.

37. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 37, and, therefore, denies same.

38. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 38, and, therefore, denies same.

39. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 39, and, therefore, denies same.

40. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 40, and, therefore, denies same.

41. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 41, and, therefore, denies same.

42. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 42, and, therefore, denies same.

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45. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 45, and, therefore, denies same.

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47. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 47, and, therefore, denies same.

48. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 48, and, therefore, denies same.

49. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 49, and, therefore, denies same.

50. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 50, and, therefore, denies same.

51. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 51, and, therefore, denies same.

52. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 52, and, therefore, denies same.

53. VitalCore denies the allegations in Paragraph 53.

54. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 54, and, therefore, denies same.

55. Regarding Paragraph 55, VitalCore admits the nature upon which the National Federation of the Blind of Virginia asserted its claims, and denies the remaining allegation.

56. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 56, and, therefore, denies same.

57. Regarding Paragraph 57, VitalCore admits the nature upon which the National Federation of the Blind of Virginia asserted its claims, and denies the remaining allegation.

58. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 58, and, therefore, denies same.

59. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 59, and, therefore, denies same.

60. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 60, and, therefore, denies same.

61. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 61, and, therefore, denies same.

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65. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 65, and, therefore, denies same.

66. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 66, and, therefore, denies same.

67. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 67, and, therefore, denies same.

68. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 68, and, therefore, denies same.

69. Regarding Paragraph 69, VitalCore admits Armor Correctional Health Services, Inc. previously contracted with the Virginia Department of Corrections (VDOC) to provide on-site medical services to prisoners housed in VDOC correctional facilities. VitalCore is without sufficient knowledge or information to admit or deny the remaining allegations.

70. Vitalcore admits the allegations in Paragraph 70.

71. Regarding Paragraph 71, VitalCore admits that Dr. Vincent Gore was an employee of VitalCore and provided medical services at Greensville, and treated various prisoners, including Plaintiff Courtney. Denied as to the remaining allegations.

72. Regarding Paragraph 72, VitalCore admits that Dr. Harris was an employee of VitalCore and provided medical services at Deerfield, and treated various prisoners, including Plaintiff Stravitz. Denied as to the remaining allegations.

73. VitalCore admits the allegations in Paragraph 73.

74. VitalCore admits the allegations in Paragraph 74.

75. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 75, and, therefore, denies same.

76. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 76, and, therefore, denies same.

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257. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 257, and, therefore, denies same.

258. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 258, and, therefore, denies same.

259. VitalCore is without sufficient knowledge or information to admit or deny the allegations in Paragraph 259, and, therefore, denies same.

**FIRST CLAIM FOR RELIEF:  
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT  
42 U.S.C. § 12131 *et seq.*  
(All Plaintiffs against VDOC and VDOC Defendants, in their official capacities)**

260. VitalCore incorporates its responses to Paragraphs 1-259 as if fully set forth herein.

261. The allegations set forth in Paragraphs 260-270 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**SECOND CLAIM FOR RELIEF:  
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT  
42 U.S.C. § 12131 *et seq.*  
(Nacarlo Courtney against Defendant VDOC, and Defendants Clarke, Marano, Talbott,  
and Punturi, in their official capacities)**

262. VitalCore incorporates its responses to Paragraphs 1-270 as if fully set forth herein.



263. The allegations set forth in Paragraphs 271-275 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**THIRD CLAIM FOR RELIEF:  
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT  
29 U.S.C. § 794  
(All Plaintiffs against VDOC and VDOC Defendants, in their official capacities)**

264. VitalCore incorporates its responses to Paragraphs 1-275 as if fully set forth herein.

265. The allegations set forth in Paragraphs 276-287 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**FOURTH CLAIM FOR RELIEF:  
VIOLATION OF THE VIRGINIANS WITH DISABILITIES ACT  
Va. Code Ann. § 51.5-40  
(All Plaintiffs against VDOC and VDOC Defendants, in their official capacities)**

266. VitalCore incorporates its responses to Paragraphs 1-287 as if fully set forth herein.

267. The allegations set forth in Paragraphs 288-298 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**FIFTH CLAIM FOR RELIEF:  
BREACH OF MINISTERIAL DUTY TO PROCURE ACCESSIBLE TECHNOLOGY  
Va. Code Ann. § 2.2-2012  
(Mandamus Relief)  
(All Plaintiffs against Defendants VDOC and VITA, and Defendants Clarke, Miller, and Punturi, in their official capacities)**

268. VitalCore incorporates its responses to Paragraphs 1-298 as if fully set forth herein.

269. The allegations set forth in Paragraphs 299-308 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**SIXTH CLAIM FOR RELIEF:  
VIOLATION OF THE INFORMATION TECHNOLOGY ACCESSIBILITY ACT  
Va. Code Ann. § 2.2-3500 *et seq.*  
(Mandamus Relief)  
(All Plaintiffs against Defendants VDOC and VITA, and Defendants Clarke, Miller, and Punturi, in their official capacities)**

270. VitalCore incorporates its responses to Paragraphs 1-308 as if fully set forth herein.

271. The allegations set forth in Paragraphs 309-323 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**SEVENTH CLAIM FOR RELIEF:  
VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION  
AND 42 U.S.C. § 1983  
(Nacarlo Courtney against Defendants VDOC, Edmonds, Punturi, Marano, Talbott,  
Armor, VitalCore, and Dr. Gore)**

272. VitalCore incorporates its responses to Paragraphs 1-323 as if fully set forth herein.

273. The allegations set forth in Paragraphs 324-332 are no longer directed at VitalCore; therefore, no response is required. Plaintiffs withdrew Count VII as to VitalCore via their Opposition to VitalCore's Motion to Dismiss (ECF No. 56, at 5). To the extent a response is required, denied.

**EIGHTH CLAIM FOR RELIEF:  
VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION  
AND 42 U.S.C. § 1983  
(William Stravitz against Defendants VDOC, Miller, Williams, Armor, VitalCore, Dr.  
Harris, Nurse Lester, and Dr. Gupta)**

274. VitalCore incorporates its responses to Paragraphs 1-332 as if fully set forth herein.

275. The allegations set forth in Paragraphs 333-343 are no longer directed at VitalCore; therefore, no response is required. Plaintiffs withdrew Count VII as to VitalCore via their Opposition to VitalCore's Motion to Dismiss (ECF No. 56, at 5). To the extent a response is required, denied.

**NINTH CLAIM FOR RELIEF  
Violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983  
(Nacarlo Courtney against Defendants Punturi, Talbott, and Smith, in their individual  
capacities)**

276. VitalCore incorporates its responses to Paragraphs 1-343 as if fully set forth herein.

277. The allegations set forth in Paragraphs 344-352 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**TENTH CLAIM FOR RELIEF:  
GROSS NEGLIGENCE  
(All Plaintiffs against VDOC Defendants and Defendants Edmonds, Williams, and Smith in  
their individual capacities)**

278. VitalCore incorporates its responses to Paragraphs 1-352 as if fully set forth herein.

279. The allegations set forth in Paragraphs 353-360 are not directed at VitalCore; therefore, no response is required. To the extent a response is required, denied.

**ELEVENTH CLAIM FOR RELIEF:  
NEGLIGENCE  
(Nacarlo Courtney against Armor, VitalCore, and Dr. Gore)**

280. VitalCore incorporates its responses to Paragraphs 1-360 as if fully set forth herein.

281. Paragraph 361 is an incorporation clause to which no response is required. To the extent a response is required, denied.

282. VitalCore denies the allegations in Paragraph 362.

283. The allegations set forth in Paragraph 363 constitute legal conclusions to which no response is required. To the extent a response is required, denied.

284. VitalCore denies the allegations in Paragraph 364.

285. VitalCore denies the allegations in Paragraph 365.

286. VitalCore denies the allegations in Paragraph 366.

287. VitalCore denies the allegations in Paragraph 367.

**TWELFTH CLAIM FOR RELIEF:  
NEGLIGENCE  
(William Stravitz against Armor, VitalCore, Dr. Harris, Nurse Lester, and Dr. Gupta)**

288. VitalCore incorporates its responses to Paragraphs 1-367 as if fully set forth herein.

289. Paragraph 368 is an incorporation clause to which no response is required. To the extent a response is required, denied.

290. VitalCore denies the allegations set forth in Paragraph 369.

291. The allegations set forth in Paragraph 370 constitute legal conclusions to which no response is required. To the extent a response is required, denied.

292. VitalCore denies the allegations set forth in Paragraph 371.

293. VitalCore denies the allegations set forth in Paragraph 372.

294. VitalCore denies the allegations set forth in Paragraph 373.

295. VitalCore denies the allegations set forth in Paragraph 374.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted. The Complaint suffers from "shotgun" pleading against multiple Defendants without particularizing what these Defendants did that was wrongful and actionable, or when these Defendants acted wrongfully.

2. VitalCore is a private corporation and is not liable under § 1983 unless an official policy or custom of the corporation caused the alleged deprivation of rights. No such official policy or custom is alleged; nor can any such official policy or custom be alleged.

3. VitalCore was not deliberately indifferent to a serious medical need of either Mr. Courtney or Mr. Stravitz. A medical need serious enough to give rise to a constitutional claim involves a condition that places the inmate at a substantial risk of serious harm usually loss of life or permanent disability, or a condition for which lack of treatment perpetuates severe pain. Plaintiffs

must allege facts to support “a serious or significant physical or emotional injury resulting from the challenged conditions.” Neither cataracts nor keratoconus constitutes a serious medical need.

4. Plaintiffs’ claims for “negligence” arise out of the care and treatment rendered to a patient. Plaintiffs fail to assert a cause of action for medical malpractice pursuant to the Virginia Medical Malpractice Act (“VMMA”). VitalCore’s only role at the jail was to provide medical care under a contract with VDOC. Any negligent denial of medical care constitutes medical malpractice, and the only proper cause of action is for medical malpractice pursuant to the VMMA. Claims within the scope of medical malpractice may only be brought pursuant to the requirements of the VMMA and not brought as general negligence claims.

5. Any negligent denial of medical care constitutes medical malpractice. The only proper cause of action is for medical malpractice. Plaintiffs failed to comply with a condition precedent required by § 8.01-20.1 of the Code of Virginia. Plaintiffs had not obtained the necessary certifying expert opinion at the time Plaintiffs requested service of process upon VitalCore.

6. Plaintiffs’ damages for VitalCore’s liability, if any, are limited to the VMMA cap set forth in § 8.01-581.15 of the Code of Virginia, or otherwise under Virginia law. Claims within the scope of medical malpractice may only be brought pursuant to the requirements of the VMMA and not brought as general negligence claims.

7. VitalCore is entitled to immunity as an agent of the Commonwealth.

8. Plaintiffs failed to exhaust administrative remedies before filing this suit.

9. Plaintiffs themselves may have been negligent with respect to their own wellbeing.

10. Mr. Courtney’s condition is the result of preexisting injury or natural disease progression beyond the control of, and unrelated to, the acts, omissions, or conduct of VitalCore.

11. Mr. Stravitz's condition is the result of preexisting injury or natural disease progression beyond the control of, and unrelated to, the acts, omissions, or conduct of VitalCore.

12. Mr. Courtney's alleged injuries and/or damages are the result of superseding and/or intervening factors.

13. Mr. Stravitz's alleged injuries and/or damages are the result of superseding and/or intervening factors.

14. Mr. Courtney's alleged injuries and/or damages are a result of the negligence of third parties for whom VitalCore has no right or obligation to control and on whose behalf they are not obligated to pay damages.

15. Mr. Stravitz's alleged injuries and/or damages are a result of the negligence of third parties for whom VitalCore has no right or obligation to control and on whose behalf they are not obligated to pay damages.

16. Plaintiff National Federation of the Blind of Virginia lacks standing to assert some or all of the claims asserted.

17. Plaintiff National Federation of the Blind of Virginia is not the real party in interest with some or all of the claims asserted.

WHEREFORE, Defendant VitalCore Health Strategies demands that judgment be entered in their favor and against the Plaintiffs on the merits, with prejudice, and with all fees, costs, and disbursements and any other relief that this Court deems fair and equitable.

*[Remainder of page intentionally left blank]*

**JURY TRIAL DEMANDED.**

Dated: June 26, 2023

Respectfully submitted,

/s/ Gloria R. Cannon  
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*Counsel for Defendant VitalCore*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2023, I electronically filed the foregoing Answer to Plaintiffs' Complaint with the Clerk of Court using the CM/ECF system which will send email notification of such filing to the attorneys of records.

/s/ Gloria R. Cannon  
Gloria R. Cannon