

Macmillan  
Macmillan (VIA)  
Westport, CT 06880

IN THE COURT OF CLAIMS  
STATE OF OHIO

TERRI GARKO  
Dayton Correctional Institution  
4104 Germantown Street  
Dayton, OH 45417~

Plaintiff

-VS-

STATE OF OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTIONS)  
770 West Broad Street  
Columbus, OH 43222

Defendants

CASE NO.:

COMPLAINT FOR DAMAGES

AND INJUNCTIVE RELIEF

INTRODUCTORY STATEMENT

1. This is an action for damages and injunction sustained by the estate of a citizen of the United States against The State of Ohio operating through The Department of Rehabilitation and Corrections.

2. The Plaintiff is Terri Garko, who is an inmate at Dayton Correctional institution.

JURISDICTION

3. This court has jurisdiction pursuant to Ohio Revised Code 2743.03.

PARTIES

4. First Plaintiff is Terri Garko.

5. The Defendant, Department of Rehabilitation and Corrections is a Department of the State of Ohio and, at all relevant times, it was responsible for the correctional facility at which Ms. Garko was an inmate.

### **FACTUAL ALLEGATIONS**

6. On or about February 14, 2017, Terri Garko was an inmate within the Ohio Reformatory for Women, a State Prison run by the Ohio Department of Corrections.
7. Beginning February 14, 2017, Ms. Garko was physically abused by the correctional officers and other guards employed by the Ohio Department of Corrections.
8. During the same period of time Ms. Garko was sexually abused by the guards employed by the Ohio Department of Corrections. This included both physical sexual abuse and continued verbal sexual abuse.
9. Ms. Garko has previously used the prisoner grievance process to make complaints about this alleged behavior.
10. Ms. Garko was routinely placed under various security restrictions in retaliation for her use of the grievance procedure about the abuse she received from the employees of the Defendants.
11. That abuse continued through September of 2018.
12. On June 11, 2019, Ms. Garko was evaluated for eye injuries and had no recent traumatic injuries.
13. On June 19, 2019, Ms. Garko was diagnosed with a traumatic eye injury.
14. During the entire time between June 11, and June 19, 2019 Ms. Garko was in the custody of the Ohio Department of Rehabilitation and Correction.
15. The Defendant allowed the guards to continue this abuse over her entire incarceration at the Ohio Reformatory for Women.

16. The Defendant knew of the violent propensities, previous threats, and the risks posed by the guards that they allowed to supervise Ms. Garko.

17. As a result of the abuse Ms. Garko lost her vision in one eye. That loss of vision is permanent.

18. The State of Ohio failed to craft adequate policies to prevent this abuse.

19. The abuse to which Ms. Garko was subjected to was consistent with an institutionalized practice of the Ohio Reformatory for Women and the Ohio Department of Rehabilitation and Corrections, which was known to and ratified by the State of Ohio.

20. Throughout her incarceration Ms. Garko has been denied mail and various publications including books, magazines, and education materials in violation of her constitutional rights.

21. This was done specifically based on the political content of the publications and included topics specifically relevant to policing and the prison system. This specifically included the abolitionist and other works.

22. The publications censored were not advocating riot, violence, or other prohibited activities.

23. The publications did not include contraband.

#### **STATE LAW THEORIES OF RECOVERY**

24. The acts and conduct alleged above constitute actionable torts under the laws of the State of Ohio, including the tort of, assault, negligence, gross negligence, and recklessness, respondent superior.

25. The denial of publications and books violated Article 1 Section 11 of the Constitution of the State of Ohio and the First Amendment to the Constitution of the United States of America.

### **FEDERAL LAW THEORIES OF RECOVERY**

26. The plaintiff exhausted her remedies by filing the appropriate grievances with the Ohio Department of Corrections.
27. The acts and conduct alleged above constitute excessive force and cruel and unusual punishment under the Fourth, Eighth and Fourteenth amendment of the United States Constitution.
28. The denial of publications, books and educational materials is a violation of First Amendment to the United State's Constitution.
29. These are actionable under 42 U.S.C. 1983 et seq.

### **PRAYER**

Plaintiff demands the following relief:

- A. Compensatory damages in excess of \$25,000
- B. Punitive damages in excess of \$25,000.
- C. An injunction ordering that the Ohio Department of Corrections shall not be allowed to limit publications, periodicals, books, and educational materials based on political disagreements that do not specifically advocate for violence or prohibited conduct.
- D. An award of Plaintiff's costs of suit.
- E. All other relief that is appropriate under the circumstances.

Respectfully submitted,

**SLATER & ZURZ, LLP**

/s/ Sean C. Buchanan

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IN THE COURT OF CLAIMS OF OHIO

TERRI GARKO

Plaintiff,

-vs-

OHIO DEPARTMENT OF  
REHABILITATION AND  
CORRECTION,

Defendant.

:

: Case No. 2020-00369JD

: Judge Patrick McGrath

: Magistrate Holly True Shaver

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**ANSWER OF DEFENDANT**

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Now comes the Defendant, Ohio Department of Rehabilitation and Correction (DRC), by and through counsel, and for its Answer to Plaintiff's Complaint, states the following:

**FIRST DEFENSE**

1. Admit that The Department of Rehabilitation and Correction is a Department of the State of Ohio. Deny for lack of knowledge the citizenship of Plaintiff.

All remaining allegations are denied.

2. Admit the allegations in paragraph 2.

3. To the extent that paragraph 3 calls for a legal conclusion, no response is required.

4-6. Admit the allegations in paragraphs 4-6.

7-13. Deny the allegations in paragraphs 7-13.

14. Admit the allegations in paragraph 14.

15-23. Deny the allegations in paragraphs 15-23.

24-29. To the extent paragraphs 24-29 call for legal conclusions, no response is required. All remaining allegations in paragraphs 24-29 are denied.

30. Any remaining allegations not specifically admitted, denied, or denied for lack of knowledge are denied.

### **SECOND DEFENSE**

31. This Court lacks subject matter jurisdiction over all or part of the matters contained in Plaintiff's Complaint.

### **THIRD DEFENSE**

32. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

### **FOURTH DEFENSE**

33. The negligent and/or intentional acts of Plaintiff, or one or more persons for whose conduct Defendant is not liable, were the intervening, superseding, and active proximate causes of the injuries and damages alleged in the Complaint. Defendant hereby requests apportionment of any such negligence in accordance with Ohio law.

### **FIFTH DEFENSE**

34. Plaintiff's own negligence was the sole proximate or a major contributing cause of the injuries and damages described in the Complaint.

### **SIXTH DEFENSE**

35. Plaintiff's own negligence is greater than any negligence by the Defendant, which is specifically denied, and Plaintiff is therefore barred from recovery.

**SEVENTH DEFENSE**

36. Defendant is entitled to discretionary immunity from liability.

**EIGHTH DEFENSE**

37. Plaintiff's claims are barred by the applicable statute of limitations.

**NINTH DEFENSE**

38. Defendant provides notice that it intends to rely upon and utilize such other defenses as they become available and/or apparent during the course of discovery and hereby reserves the right to amend this Answer to assert such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully requests that this Court dismiss the Complaint in its entirety at Plaintiff's costs.

Respectfully submitted,

**DAVE YOST**

*Ohio Attorney General*

*/s/ Velda K. Hofacker; /s/ Lauren D. Emery*

**VELDA K. HOFACKER (0040676)**

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