

DONTÉ BLUE, Esq. (SBN 295108)

donte.blue@lawyer.com

Law Firm of Donté Blue

PO Box 785

El Cerrito, CA 94530-0785

Attorneys for Plaintiff

Hector AGUILUZ-PINEDA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HECTOR AGUILUZ-PINEDA

Plaintiff,

vs.

UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT; MARIO
PALLANTE, an individual; CORE
CIVIC, INC.,
GLAXOSMITHKLINE
CONSUMER HEALTHCARE
HOLDINGS (US) LLC; and DOES
1-30, Inclusive,

Defendants.

CASE NO.:

**PLAINTIFF HECTOR AGUILUZ-
PINEDA'S COMPLAINT FOR
DAMAGES**

- 1. BIVENS-POLICY OF
DELIBERATE
INDIFFERENCE**
- 2. BIVENS- INDIVIDUAL
CONSTITUTIONAL
VIOLATION**
- 3. FEDERAL TORT CLAIMS
ACT- NEGLIGENCE**
- 4. FEDERAL TORT CLAIMS
ACT-INTENTIONAL
INFLECTION OF
EMOTIONAL DISTRESS**
- 5. NEGLIGENCE**
- 6. PRODUCTS LIABILITY-
STRICT**
- 7. PRODUCTS LIABILITY-
NEGLIGENCE**
- 8. MEDICAL MALPRACTICE**

JURY TRIAL DEMANDED

Plaintiff HECTOR AGUILUZ-PINEDA ("Plaintiff") complains
against UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

1 (the “ICE”), CORE CIVIC, INC (“Core Civic”), GLAXOSMITHKLINE
2 CONSUMER HEALTHCARE HOLDINGS (US) LLC (“Glaxo”), MARIO
3 PALLANTE, and DOES 1-30, Inclusive, and demands a trial by jury of all issues
4 and for causes of action alleged:

5 6 INTRODUCTION

7 1. This is a personal injury and products liability action filed pursuant to
8 the Federal Tort Claims Act and *Bivens v. Six Unknown Named Agents*, 403 U.S.
9 388 (1971) (“*Bivens*”). The Court has jurisdiction under 28 U.S.C. § 1346 (claim
10 against United States) and 28 U.S.C. § 1343(3) civil rights (federal question).
11 Venue lies in the Central District of California, the judicial district where the
12 Plaintiff resides pursuant to 28 U.S.C. § 1402 (b).

13 2. Plaintiff’s claims against DOES 1-30, Mario Pallante, Core Civic and
14 Glaxo are within the supplemental jurisdiction of the Court, as authorized by 28
15 U.S.C. § 1367 as the claims form part of the same controversy.

16 17 PARTIES

18 3. At all relevant times, Plaintiff was an individual, detained by the
19 United States on immigration charges, who originally resided in and currently
20 resides in Orange County, California.

21 4. At all relevant times herein, ICE was and is an agency of the United
22 States and is and was duly authorized to conduct business in California. Does 1-10
23 were employees and/ or agents of ICE acting who at all relevant times acted in the
24 scope of their agency and/ or employment with ICE.

25 5. At all relevant times, Glaxo was a limited liability company with a
26 principal place of business in New Jersey. On information and belief, Glaxo is the
27 successor company to GlaxoSmithKline LLC and succeeded to all of
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1 GlaxoSmithKline's debts and liabilities. has sufficient minimum contacts in that it
2 markets in products in California and/ or has offices in California. Does 11-20
3 were employees and/ or agents of Glaxo acting who at all relevant times acted in
4 the scope of their agency and/ or employment with Glaxo.

5 6. At all relevant times, CoreCivic (formerly known as Corrections
6 Corporation America) was a private corrections management company which
7 manages prisons, jails, and detentions facilities including Otay Mesa Detention
8 Center where Plaintiff was detained. Does 21-30 were employees and/ or agents of
9 CoreCivic acting who at all relevant times acted in the scope of their agency and/
10 or employment with CoreCivic.

11 7. At all relevant time, Mario Pallante was a nurse practitioner employed
12 by ICE. Additionally, at all times Mario Pallante was acting within the scope of his
13 employment.

14 8. In doing the acts and failing and omitting to act as hereinafter
15 described, Defendants ICE and its agents and employees were acting on the
16 implied and actual permission and consent of CoreCivic.

17 9. At all times mentioned herein, each and every employee of defendant
18 CoreCivic was the agent of ICE and ICE Defendant had the legal duty to oversee
19 and supervise the hiring, conduct and employment of each and every CoreCivic
20 employee.

21 10. Plaintiff is unaware of the true names and capacities of those
22 Defendants named herein as DOES 1-30 Defendants. Plaintiff will amend this
23 Complaint to allege said Defendants' true names and capacities when that
24 information becomes known to Plaintiff. Plaintiff is informed and believes, and
25 thereon alleges that these DOES 1-30 are legally responsible and liable for the
26 incident, injuries, and damages hereinafter set forth, and that each of said
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1 Defendants proximately caused the injuries and damages by reason of negligent,
 2 careless, deliberately indifferent, intentional, willful, or wanton misconduct,
 3 including the negligent, careless, deliberately indifferent, intentional, willful, or
 4 wanted misconduct in creating and otherwise causing the incidents, conditions, and
 5 circumstances hereinafter set forth, or by reason of direct or imputed negligence or
 6 vicarious fault or breach of duty arising out of the matters herein alleged. Plaintiff
 7 will seek to amend this Complaint to set forth said true names and identities of the
 8 unknown named DOE Defendants when they are ascertained.

9 JURISDICTION

10 11. This civil action is brought for the redress of alleged deprivations of
 11 constitutional rights as protected by *Bivens v. Six Unknown Named Agents*, 403
 12 U.S. 388 (1971), and the Fourth, Fifth, Eighth, and Fourteenth Amendments of the
 13 United States Constitutions. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343,
 14 and 1367.

15 12. Venue is proper in this Court under 28 U.S.C. § 1391(b), (c), & (e),
 16 because the United States is a Defendant, and Plaintiff resides in the Central
 17 District of California of the United States District Court.

18 13. Plaintiff timely filed a Federal Tort Claim for damages and has
 19 exhausted all administrative remedies.

21 FACTS COMMON TO ALL CAUSES OF ACTION

22 14. Plaintiff repeats and realleges each and every allegation in paragraphs
 23 1 through 13 of this Complaint with the same force and effect as if fully set forth
 24 hercin.

25 15. On or about December 12, 2008 through May of 2015, Plaintiff was
 26 detained by defendants. Plaintiff was first detained in Mira Loma Detention Center
 27 before being transferred to Otay Mesa Detention Center. The detention centers
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1 were managed, controlled, and or/ owned by Defendants. Prior to entering the
2 detention centers, Plaintiff was in good health. As a result of the mismanagement,
3 negligence, deliberate indifference and deplorable conditions, Plaintiff suffers and
4 continues to suffer from various injuries and inflictions.

5 16. At the time Plaintiff was in the detention center, particularly, the Otay
6 Mesa Detention Center, the employees and/or agents of ICE and CoreCivic knew
7 Plaintiff was a detainee in their custody, and they had a duty to provide him with
8 an adequate level of care that met his medical needs.

9 17. Although Plaintiff had no reported or diagnosed history of depression,
10 did not request psychotropic medication, and did not have a history of taking
11 psychotropic medicine, on or about November of 2010, employees and/or agents of
12 ICE and CoreCivic forced Plaintiff to take psychotropic medicine including Paxil.
13 Prior to being forced to take these medications, Defendants ICE and CoreCivic did
14 not adequately assess whether Plaintiff actually needed pharmaceutical treatment,
15 or sufficiently monitor the effects that such medication had on Plaintiff.

16 18. After taking Paxil, Plaintiff began developing physical and/or
17 neurological ailments including, but not limited to, problems with his mouth and
18 tongue. Plaintiff made numerous complaints about problems with his mouth and
19 tongue to agents and/or employees of Defendants ICE and CoreCivic. These
20 Complaints were ignored. Additionally, agents of Defendants ICE and CoreCivic
21 knew or should have known that Plaintiff's medication regiment was causing the
22 developing physical and/or neurological ailments.

23 19. Additionally, employees and agents of Defendants ICE and CoreCivic
24 did not provide Plaintiff with any of the warnings or explanation of any side effects
25 of the medications.
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1 20. Further, employees and agents of Defendants ICE and CoreCivic
2 provided inadequate living conditions to Plaintiff including, but not limited to,
3 providing expired and stale food, not providing Plaintiff with food, having living
4 conditions full of bugs and rats, ignoring Plaintiff's complaints.

5 21. On or about 2014, Plaintiff suffered a fall because Defendants ICE
6 and CoreCivic allowed a dangerous condition to develop on the ground. Plaintiff
7 suffered significant and painful injury to his neck and lumbar spine. Plaintiff
8 repeatedly complained about the pain to his neck and back but was repeatedly
9 ignored by DOES 1-20 and employees and/ or agents of ICE and CoreCivic.
10 DOES 1-20 and employees and/ or agents of ICE and CoreCivic's failure to
11 provide medical care to Plaintiff caused Plaintiff significant injury and increased
12 and/or exacerbated Plaintiff's injuries. On information and belief, these
13 Defendants' failure to provide care worsened the Plaintiff's physical condition.

14 22. Several times in his detention Plaintiff also complained about the
15 psychotropic medication Paxil, and informed Defendant ICE and Defendant
16 CoreCivic that he no longer wanted to take the medication because of how it made
17 him feel. Instead of honoring the Plaintiff's request, or lowering Plaintiff's dosage
18 of Paxil, DOES 1-20 and Mario Pallante failed to investigate a link between
19 Plaintiff's reportedly increasing physical and/ or neurological ailments and the
20 medication he was using, and thereby increased their administration and Plaintiff's
21 dosage of Paxil. Additionally, when Plaintiff responded his complaints being
22 ignored by hiding the Paxil medication in his cell that was given to him because he
23 no longer wanted to take the medication, DOES 1-20 segregated Plaintiff from
24 other detained individuals for an extended time as a punishment for this form of
25 resistance, and then again increased his dosage of Paxil, the drug he attempted to
26 avoid.
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1 23. During Plaintiff's detention, Plaintiff developed mouth throat and
2 tongue concerns that included, but not limited to, TMJ, a tonsillectomy, tongue
3 swelling, swelled salivary glands his tongue darting out of his mouth, and inability
4 to control his tongue.

5 24. After Plaintiff's detention ended, Plaintiff's tongue condition
6 worsened. On or around October or November 2016, Plaintiff was diagnosed with
7 the medical condition dystonia/ dyskinesia. Further, the various physicians stated
8 that this condition was likely caused by medication taken while in the custody of
9 Defendant ICA and Defendant CoreCivic, including Paxil, which Plaintiff was
10 forced to take in increasing amounts despite his protestations.

11 25. Due to Plaintiff's medical condition dystonia/ dyskinesia, Plaintiff is
12 disabled. Plaintiff's condition is debilitating as his condition renders Plaintiff
13 unable to speak or carry on a conversation as he has little to no control of his
14 tongue. Additionally, the condition affects Plaintiff's ability to eat food and
15 disturbs Plaintiff's ability to breathe and sleep. As a result of the condition,
16 Plaintiff's livelihood and earnings have also been affected. Plaintiff's condition
17 also causes and continues to cause him sadness, frustration, mental anguish, stress,
18 and pain and suffering including emotional distress; public embarrassment;
19 uncontrollable muscle spasms; headaches; choking; gagging; swelling; regurgitation
20 of food; and the daily reminder of his inability to effectively verbalize his needs,
21 thoughts, feelings, and ideas to others.

22 26. Plaintiff continues to suffer from loss of relationships at his
23 employment and loss of opportunity at work due to his medical condition which
24 was caused by Defendants. Moreover, Plaintiff has incurred and continues to incur
25 further medical treatment and medical expenses.
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FIRST CAUSE OF ACTION

**Bivens – *Monell Liability*-Deliberate Indifference to Medical Need Policy of
Delaying Medical Assistance to Inmates and Failure to Properly Observe and
Treat Inmates
(Plaintiff Hector Aguiluz-Pineda against all Defendant ICE and DOES 1-10,
inclusive)**

27. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 26 of this Complaint with the same force and effect as if fully set forth herein.

28. At the time Plaintiff was detained by ICE, Plaintiff maintained a policy or de facto unconstitutional custom or practice of permitting, ignoring and condoning its officers, doctors, and medical personnel to delay in providing adequate medical assistance for the protection of the health of individuals in its custody, failing to properly observe and treat individuals in its custody. Specifically, ICE maintained the following policies, customs, or practices, which fell below any acceptable standard of care: (1) Failure to provide follow-up care and to monitor inmates with known medical needs; (2) Failure to provide medical care to inmates with serious medical needs; (3) Failure to have medical examinations conducted by qualified medical personnel; (4) Failure to maintain adequate medical records; and (5) Failure to provide medical records and a complete medical history to outside hospitals rendering acute care for inmates.

29. Numerous cases have found or determined that a plaintiff stated a prima facie case against ICE for failure to provide medical care. *See, e.g., Baires v. United States*, 2011 U.S. Dist. LEXIS 141940, *1, 2011 WL 6140998, *Yoon v. Lee*, 2015 U.S. Dist. LEXIS 58868. Additionally, the United States Supreme Court has indicated that *Monell* liability is applicable to *Bivens* claims. Specifically, in

1 *Ashcroft v. Iqbal*, U.S., 129 S.Ct. 1937, 1940, 173 L. Ed. 2d 868 (2009), the
2 Supreme Court cited *Monell* for the proposition that vicarious liability is
3 inapplicable to Bivens claims as well as Section 1983 claims, indicating that
4 *Monell* is applicable to Bivens claims.

5 30. The unofficial custom and practice utilize by ICE deprived Plaintiff of
6 proper medical care and attention. Plaintiff repeatedly made requests for medical
7 treatment which were ignored. Additionally, unqualified medical personnel
8 examined Plaintiff and forced Plaintiff despite his protestations to take medications
9 which caused him to suffer dystonia and/or dyskinesia. Further, if and when
10 Plaintiff treated with an outside facility, the outside facilities were provided with
11 an incomplete history such that any care likely would be ineffective. ICE knew its
12 policies and custom would lead to deplorable medical conditions where detainees
13 such as Plaintiff were provided constitutionally deficient treatment. Indeed, ICE's
14 repeated failures with Plaintiff and with its other detainees establishes the
15 unconstitutional practice/ policy. This policy/practice was the moving force in
16 Plaintiff ultimately being diagnosed, and ultimately disabled by dystonia and/or
17 dyskinesia.
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19 31. As a result of ICE's unconstitutional policy/practice, Plaintiff's
20 livelihood and earnings have also been affected. Plaintiff's condition also suffers
21 and continues to suffer from sadness, frustration, mental anguish, stress, and pain
22 and suffering. Plaintiff also continues to suffer from loss of relationships at his
23 employment and loss of opportunity at work due, lost wages, and loss of earning
24 capacity. Moreover, Plaintiff has incurred and continues to incur further medical
25 treatment, medical expenses, and attorney's fees.
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SECOND CAUSE OF ACTION

Bivens- Individual Violation of 5th and 14th Amendment

(Plaintiff Hector Aguiluz-Pineda v. against all Defendant Mario Pallante and DOES 1-20, inclusive)

32. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 31 of this Complaint with the same force and effect as if fully set forth herein.

33. During his detainment with ICE, Plaintiff repeatedly complained to Mario Pallante and DOES 1-20 about his medical problems including, but not limited to, his tongue problems, continuing tongue swelling, losing control over his tongue and increasing inability to eat and/or articulate. Plaintiff repeatedly requested medical aid and did not receive medical aid. Additionally, Plaintiff repeatedly asked that Mario Pallante and DOES 1-20 to stop forcing him to take Paxil and other drugs. Mario Pallante and DOES 1-20 were unqualified to treat Plaintiff, and despite their lack of competence and Plaintiff's protestations, continued to force Plaintiff to take Paxil and increased Plaintiff's dosage. When Plaintiff tried not to take the drugs, Mario Pallante and DOES 1-20 segregated Plaintiff and increased his dosage. Mario Pallante and DOES 1-20 also delayed Plaintiff's treatment.

34. Axiomatically, "an inmate with a potentially serious problem repeatedly requesting medical aid, receiving none, and then suffering a serious injury" is "the prototypical case of deliberate indifference." *See Hudson v. McHugh*, 148 F.3d 859, 864 (7th Cir. 1998) (citation omitted). *See also Weygand v. Okst*, 101 F.3d 845, 857 (2d Cir. 1996) (jury could find official deliberately indifferent after he was informed of plaintiff's condition and then denied him care); *Lancaster v. Monroe Cty*, 116 F.3d 1419, 1425 (11th Cir. 1997) ("an official acts

1 with deliberate indifference when he or she knows that an inmate is in serious need
2 of medical care, but he fails or refuses to obtain medical treatment") (internal
3 citations omitted); *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999)
4 ("Even where medical care is ultimately provided, a prison official may
5 nonetheless act with deliberate indifference by delaying the treatment of serious
6 medical needs, even for a period of hours, though the reason for the delay and the
7 nature of the delay is relevant in determining what type of delay is constitutionally
8 intolerable.") (internal citations omitted); *cf. Wakefield v. Thompson*, 177 F.3d
9 1160, 1164-65 (9th Cir. 1999) ("prison official acts with deliberate indifference
10 when he ignores the instructions of the prisoner's treating physician or surgeon.");
11 *Dennis v. Thurman*, 959 F. Supp. 1253 (C.D. Cal. 1997) ("Deliberate indifference
12 to an inmate's serious medical needs may be manifested . . . when prison officials
13 deny, delay or intentionally interfere with medical treatment"). The conduct of
14 Mario Pallante and DOES 1-20 evinces deliberate indifference.

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16 35. As a direct and proximate cause of Mario Pallante and DOES 1-20's
17 actions, Plaintiff's livelihood and earnings have also been affected. Plaintiff's
18 condition also suffers and continues to suffer from sadness, frustration, mental
19 anguish, stress, and pain and suffering. Plaintiff also continues to suffer from loss
20 of relationships at his employment and loss of opportunity at work due, lost wages,
21 and loss of earning capacity. Moreover, Plaintiff has incurred and continues to
22 incur further medical treatment, medical expenses, and attorney's fees.

THIRD CAUSE OF ACTION**Federal Tort Claims Act - NEGLIGENCE**

**(Plaintiff Hector Aguiluz-Pineda against Defendants Mario Pallante, ICE and
DOES 1-20)**

36. Plaintiff repeats and reallege each allegation in paragraphs 1 through 35 of this Complaint with the same force and effect as if fully set forth herein.

37. Mario Pallante and DOES 1-10 were employees and/or agents of ICE. Federal Law Enforcement Officials have a duty to act with reasonable care and to not subject individuals to personal injury during the course of their duties. Additionally, Federal Law Enforcement Officials have duties to adequately train and supervise their subordinates and to establish and enforce policies and practices that prevent the occurrence of unconstitutional and tortious actions by their subordinates.

38. ICE, who is vicariously liable through its employees and/or agents Mario Pallante and DOES 1-20, breached its duties by providing substandard living conditions to Plaintiff, failing to treat Plaintiff for his medical conditions when Plaintiff requested treatment, employing personnel who were unqualified and incompetent to treat Plaintiff. Further breaches occurred by failing to monitor the drug's effects on Plaintiff and failing to warn Plaintiff of the side effects of the medication.

39. Further, Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendant, with deliberate indifference, gross negligence, and reckless disregard for the safety, security, and constitutional and statutory rights of Plaintiff.

40. As a direct and proximate cause of Defendant's actions, Plaintiff's livelihood and earnings have been affected. Plaintiff's also suffers and continues to

1 suffer from sadness, frustration, mental anguish, stress, and pain and suffering.
 2 Plaintiff also continues to suffer from loss of relationships at his employment and
 3 loss of opportunity at work due, lost wages, and loss of earning capacity.
 4 Moreover, Plaintiff has incurred and continues to incur further medical treatment,
 5 medical expenses, and attorney's fees.

7 **FOURTH CAUSE OF ACTION**

8 **Federal Tort Claims Act—Intentional Infliction of Emotional Distress** 9 **(Plaintiff Hector Aguiluz-Pineda against Defendants Mario Pallante, ICE, and** 10 **DOES 1-20, inclusive)**

11 41. Plaintiff repeats and realleges each and every allegation in paragraphs
 12 1 through 41 of this Complaint with the same force and effect as if fully set forth
 13 herein.

14 42. Defendants intentionally inflicted emotional distress by repeatedly
 15 ignoring Plaintiff's grievances and complaints despite knowing Plaintiff was in
 16 significant pain, discomfort, and suffering problems including, but not limited to,
 17 problems with his tongue. Defendants also intentionally inflicted emotional
 18 distress by forcing Plaintiff to take drugs despite Plaintiff's protestations including,
 19 but not limited to, Paxil which caused Plaintiff to develop dystonia/dyskinesia. ICE
 20 is vicariously liable through its employees and/or agents.

22 43. As a direct and proximate cause of the aforementioned acts of
 23 Defendants, Plaintiff was injured as set forth above. Plaintiff's injuries entitle him
 24 to compensatory and punitive damages according to proof as to Mario Pallante and
 25 compensatory damages as to ICE.

FIFTH CAUSE OF ACTION

Negligence

(Plaintiff Hector Aguiluz-Pineda against CoreCivic and DOES 1-20)

44. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 44 of this Complaint with the same force and effect as if fully set forth herein.

45. On information and belief, CoreCivic had responsibility in the ownership, maintenance, control, supervision, monitoring, and management of the detention center where Plaintiff was housed. CoreCivic had a duty to conduct these responsibilities in such a way as to not cause injury to Plaintiff. CoreCivic breached its duty to Plaintiff by providing substandard living conditions which resulted in Plaintiff suffering, amongst other things, a major fall which caused injury, not monitoring its agents and/or employees who, as a result, violated Plaintiff's rights, and managing the Otay Mesa Detention Center in a way that caused Plaintiff to suffer injury.

46. Further, Plaintiff is informed and believes, and based on such information and belief alleges, that Defendant, with deliberate indifference, gross negligence, and reckless disregard for the safety, security, and statutory rights of Plaintiff and all persons similarly situated, maintained, enforced, tolerated, permitted, acquiesced in, and applied policies, practices, or customs of, among other things.

47. As a direct and proximate cause of Defendant's actions, Plaintiff's livelihood and earnings have been affected. Plaintiff suffers and continues to suffer from sadness, frustration, mental anguish, stress, and pain and suffering. Plaintiff also continues to suffer from loss of relationships at his employment and loss of

1 opportunity at work due, lost wages, and loss of earning capacity. Moreover,
 2 Plaintiff has incurred and continues to incur further medical treatment, medical
 3 expenses, and attorney's fees.

4 **SIXTH CAUSE OF ACTION**
 5 **STRICT PRODUCTS LIABILITY**

6 **(Plaintiff Hector Aguiluz-Pineda against Glaxo and DOES 20-30)**

7 48. Plaintiff repeats and realleges each and every allegation in paragraphs
 8 1 through 47 of this Complaint with the same force and effect as if fully set forth
 9 herein.

10 49. Plaintiff was harmed by the pharmaceutical products including, but
 11 not limited to, Paxil which was manufactured, created, and/or distributed by Glaxo
 12 and DOES 21-30.

13 50. These pharmaceutical products were defectively designed or
 14 contained a manufacturing defect or both. Specifically, these pharmaceutical drugs,
 15 including but not limited to Paxil, caused Plaintiff to suffer debilitating injury and
 16 caused Plaintiff's dystonia and/or dyskinesia. Defendants did not adequately warn
 17 this condition could arise from the use of the product and no reasonable consumer
 18 would have expected that the use of the pharmaceutical products including, but not
 19 limited to Paxil, would cause Plaintiff to suffer from dystonia or dyskinesia.

20 51. Plaintiff began taking Paxil on or around 2010 or until 2014 or 2015.
 21 On information and belief, Glaxo recalled Paxil in between 2010 and 2015 due to
 22 its dangerousness. On or about October or November of 2016, a medical
 23 professional told Plaintiff that his dystonia and/or dyskinesia was caused by Paxil
 24 and/or other Pharmaceutical drugs which Plaintiff was forced to take during his
 25 detention. A reasonable manufacturer would have recalled the product sooner
 26 and/or provided adequate warning.
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1 from loss of relationships at his employment and loss of opportunity at work due,
 2 lost wages, and loss of earning capacity. Moreover, Plaintiff has incurred and
 3 continues to incur further medical treatment and medical expenses.

4 **EIGHTH CAUSE OF ACTION**

5 **FEDERAL TORT CLAIMS ACT- MEDICAL MALPRACTICE**

6 **(Plaintiff Hector Aguiluz-Pineda against Mario Pallante, ICE and DOES 1-20)**

7 57. Plaintiff repeats and realleges each and every allegation in paragraphs
 8 1 through 56 of this Complaint with the same force and effect as if fully set forth
 9 herein.

10 58. While Plaintiff was detained by Defendants and being treated by the
 11 ICE's Medical Staff including but not limited to Mario Pallante and DOES 1-10,
 12 ICE owed Plaintiff a duty to use reasonable skill, prudence and diligence in
 13 treating Plaintiff as required or conducted by other members of the medical
 14 industry and medical profession. Mario Pallante, ICE, and DOES 1-10.

15 59. Plaintiff's treaters at ICE consisting of, but not limited to purported
 16 doctors, nurses, and physicians' assistants, failed to use the level of skill,
 17 knowledge and care in the diagnosis and treatment of Plaintiff. Mario Pallante and
 18 DOES 1-10, of whom ICE is vicariously liable, forced Plaintiff to take
 19 psychotropic and/ or antiemetic medicine including, but not limited to, Paxil
 20 without properly determining whether Plaintiff needed Paxil. On information and
 21 belief, agents of ICE prescribed Plaintiff these medications simply because he was
 22 detained and not because Plaintiff actually needed the medication. Furthermore,
 23 these agents forced Plaintiff to take this medication without properly viewing
 24 Plaintiff's medical history and with knowledge that Plaintiff's medical history
 25 suggested dependency problems. Further, when Plaintiff began manifesting
 26 symptoms attributable to the Paxil and other medication, the medical staff and
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1 agents ignored the symptoms. A reasonable medical professional in the position of
2 the medical staff of ICE would have known that the drugs were the impetus of
3 Plaintiff's condition or conducted an inquiry into whether the drugs were causing
4 Plaintiff's condition. Instead, the medical staff of ICE kept increasing Plaintiff's
5 dosage and kept pushing back the end date on the medication so as to keep Plaintiff
6 perennially on the medication. A reasonable medical professional would have
7 monitored Plaintiff and performed updates to determine whether the psychotropic
8 and/or antiemetic medication was still needed and whether Plaintiff was suffering
9 side effects of the psychotropic and/or antiemetic medication. The medical staff of
10 ICE failed to do so.

11 60. ICE, Mario Pallante, and DOES 1-10 did not warn Plaintiff that the
12 Paxil and other psychotropic and/or antiemetic medication could cause him to
13 suffer dystonia and/or dyskinesia and the other neurological and tongue ailments
14 which Plaintiff has suffered as a result of the medication. The Medical staff at ICE
15 also failed to treat Plaintiff for injury to his back from a fall. The failure to treat has
16 resulted in permanency of injury to Plaintiff's back.

17 61. Defendants also failed to refer Plaintiff to a specialist. Plaintiff was
18 treated, examined, evaluated and prescribed medication by non-specialists who
19 were not equipped to treat, examine, and evaluate Plaintiff. These employees
20 provided inept, deficient, and horrendous treatment including, but not limited to,
21 forcing Plaintiff to take Paxil despite Plaintiff's protestations, punishing Plaintiff
22 when Plaintiff did not take the medication, determining Plaintiff had to take Paxil
23 and other drugs despite lacking qualification to do so. If Plaintiff had seen a
24 specialist, the specialist would have not prescribed the medication and/or would
25 have taken Plaintiff off the medication or tapered the medication upon examining
26 Plaintiff including withdrawal.
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WHEREFORE, Plaintiff requests relief as hereinafter provided.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury.

Dated: July 23, 2018

LAW FIRM OF DONTE BLU

By: 

DONTE BLUE

Attorneys for Plaintiff

HECTOR AGUILUZ-PINEDA