

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HANNAH SABATA, et al.,

Plaintiffs,

vs.

NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES, et al.,

Defendants.

4:17-CV-3107

ORDER

This matter is set for oral arguments on all pending motions ([Filing 125](#); [Filing 176](#); [Filing 223](#); [Filing 247](#); [Filing 270](#); [Filing 280](#); [Filing 292](#); [Filing 395](#); [Filing 420](#)) on January 13, 2020, at 9:00 AM CST. The purpose of this Order is to set a schedule for oral arguments and to outline additional requested briefing.

Oral Argument Schedule

The Court will address the motions and objections in the following order with the following time limitations:

- A. Plaintiffs' Motion for Class Certification. [Filing 247](#).
 1. Argument Schedule
 - i. Plaintiffs: 30 minutes
 - ii. Defendants: 30 minutes
 - iii. Plaintiffs' rebuttal: 20 minutes
 - iv. Defendants' rebuttal: 20 minutes
 - v. Additional argument at the discretion of the Court
 2. Issues to Be Addressed at Argument

- i. Whether the alleged NDCS class, the alleged isolation subclass, and alleged disability subclass meet the prerequisites for class certification, particularly the commonality requirement pursuant to Fed. R. Civ. P. 23(a)(2), and Defendants' response;
- ii. Evidence submitted by Plaintiffs regarding restrictive housing and whether the same is authoritative;
- iii. Acts or omissions constituting Defendants' alleged deliberate indifference;
- iv. Level of treatment necessary to satisfy "constitutionally adequate" medical, dental, and mental health care;
- v. The precise action or result requested by Plaintiffs of this Court;
- vi. Other issues as addressed by the Court at the time of the hearing.

B. Motion to Strike Expert Affidavits. [Filing 176](#).

1. Defendants: 10 minutes
2. Plaintiffs: 10 minutes
3. Defendants' rebuttal: 5 minutes
4. Plaintiffs' rebuttal: 5 minutes

C. Defendants' Motion for Partial Summary Judgment regarding Plaintiffs' failure to exhaust administrative remedies. [Filing 125](#).

1. Defendants: 10 minutes
2. Plaintiffs: 10 minutes
3. Defendants' rebuttal: 5 minutes
4. Plaintiffs' rebuttal: 5 minutes
5. The Parties should be prepared to address:

- i. Whether, pursuant to the passage of time and current procedural status of the case, any part of the Motion for Summary Judgment, [Filing 125](#), no longer needs to be decided depending upon the outcome of other pending motions;
 - ii. Whether the requirements for NDCS's system for administrative remedies has or has not been met by Plaintiffs, and by which of the named Plaintiffs;
 - iii. Whether any decision of the Court to certify the class or subclass impacts the need to decide this motion, or alternatively any argument this motion must be decided prior to the decision on certification.
- D. Defendants' Motions to Dismiss and Suggestions of Mootness as to plaintiffs Brandon Sweetser and Zoe Rena. [Filing 280](#); [Filing 420](#). Each side will be allowed 10 minutes. No rebuttal unless requested by the Court.
- E. Defendants' Motion for Partial Summary Judgment as it relates to plaintiffs Curtright, Griswold, and Gunther's claims against Julie Micek and the Board of Parole and plaintiffs Galle and Rena's Eighth Amendment claims. [Filing 292](#). Defendant Julie Micek's Motion for Summary Judgment. [Filing 223](#). Each side will be allowed 10 minutes. No rebuttal unless requested by the Court.
- F. At the close of the hearing, both parties will have 15 minutes to offer closing remarks and suggest the priority of the pending motions. **During closing remarks, Plaintiffs are to state, with precision, exactly what relief they are requesting from this Court in this lawsuit.**
- G. For all pending motions, the parties should be able to point to specific portions of the record that support their positions.

Additional Briefing

The Court has reviewed the Parties' briefing in this case and the court counts approximately 1,143 pages of briefing submitted to this Court on the pending motions. Upon review of the briefing in support of and in opposition to the motions filed, the Court respectfully finds some of the submissions lack focus.

In order to assist the Court, Plaintiffs are ordered to submit a supplemental brief in support of their Motion for Class Certification, [Filing 247](#), on or before December 17, 2019. Defendants are allowed to submit a brief in opposition to class certification, on or before January 8, 2020.

Further, Defendants are to submit a single supplemental brief in support of any or all of their Motions, [Filing 125](#); [Filing 176](#); [Filing 223](#); [Filing 280](#); [Filing 292](#); [Filing 395](#); [Filing 420](#), by December 17, 2019. Plaintiffs are allowed to respond to Defendant's supplemental brief on their Motions with a single brief or before January 8, 2020.

Each brief in support of or in opposition is limited to 20 pages, which shall be double-spaced, with one-inch margins on all four sides and 12-point font. The parties should limit their discussion to the most important points the parties wish the Court to consider. The parties should cite to previous evidentiary filings and briefing submissions where appropriate. No additional evidence may be submitted without leave of the Court. No reply briefs will be allowed.

Finally, due to the extensive nature of the pending motions before the Court, the pretrial conference scheduled for February 28, 2020, and the trial set for March 9, 2020, are cancelled.

Dated this 26th day of November, 2019.

BY THE COURT:



Brian C. Buescher
United States District Judge