

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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SAMUEL E., JOHNNY M., JAMELLE M. and  
RASHEEM T.,

Plaintiffs,

v.

THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF HEALTH, PRISON HEALTH  
SERVICES, MR. MARTIN F. HORN,  
COMMISSIONER OF THE NEW YORK CITY  
DEPARTMENT OF CORRECTION, DAVID  
HERSHBERGER AND BRUCE DAVID,

Defendants.

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x

Index No. 16423-07

Date Purchased: \_\_\_\_\_

Plaintiffs designate Bronx  
County as the place of  
trial.

The basis of the venue is  
that the events alleged in  
the Complaint occurred in  
Rikers Island Jail, located  
on Rikers Island, in Bronx  
County, New York

SUMMONS

Return  
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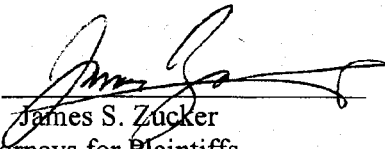
To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action  
and to serve a copy of your answer, or, if the complaint is not served with this summons,  
to serve a notice of appearance, on the Plaintiff's Attorney(s) within \_\_\_\_ days after the  
service of this summons, exclusive of the day of service (or within 30 days after the  
service is complete if this summons is not personally delivered to you within the State of  
New York); and in case of your failure to appear or answer, judgment will be taken  
against you by default for the relief demanded in the complaint.

N.T.

Dated: New York, New York  
June 18, 2007

HOGAN & HARTSON L.L.P.

By: 

James S. Zucker  
Attorneys for Plaintiffs  
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New York, New York 10022  
(212) 918-3000

BRONX COUNTY CLERK'S  
OFFICE

2007 JUN 18 A 11: 17

FILED

Defendants' address:

New York City Department of Correction  
Martin F. Horn, Commissioner  
60 Hudson Street  
New York, NY 10013

Mayor Michael R. Bloomberg  
City Hall  
New York, NY 10007

Montefiore Rikers Island Health Services Hospital  
15-00 Hazen St.,  
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New York City Health and Hospitals Corporation, Office of Correctional Health Services  
125 Worth St., Ste. 514  
New York, NY 10013

New York City Department of Health  
125 Worth Street  
New York, NY 10013

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Defendants.  
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Index No.

COMPLAINT

BRONX COUNTY CLERK'S  
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FILED  
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N.T.

Plaintiffs, by their attorneys, respectfully allege upon knowledge as to themselves  
and upon information and belief as to all other matters, the following:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action to seek damages arising from a new and draconian  
form of solitary and punitive confinement known as "No Harm Housing" implemented by the  
Department of Correction and New York City officials in Rikers Island on or about October 9,  
2005.

2. In October 2005, the Department of Correction transferred plaintiffs to No Harm  
Housing, ignoring each plaintiff's well-documented history of mental health problems. Three of  
the plaintiffs had already made multiple suicide attempts requiring them to be hospitalized on a

number of occasions. A fourth plaintiff entered Rikers soon after his best friend died in his arms, suffering from Post Traumatic Stress Disorder.

3. The Department of Correction precipitously and arbitrarily cut off No Harm Housing plaintiffs, who suffer from well documented psychological problems, from all psychological medication and any meaningful mental health treatment or consultation. Defendants' acts and omissions aggravated and worsened plaintiffs' mental health problems and caused them extreme emotional suffering.

4. Plaintiffs were injured by virtue of the defendants' failure to provide medical attention – and particularly medical attention for their mental health problems – as required under the relevant laws of the City and State of New York and the administrative code governing procedures in the Rikers Island jails.

5. The Department of Correction exacerbated plaintiffs' clearly documented psychological problems by intentionally and systematically subjecting them to cruel and unusual punishment, depriving them of routine human and legal rights.

6. For example, defendants humiliated plaintiffs. Defendants:

- Stripped plaintiffs naked;
- Ordered plaintiffs to wear diapers;
- Paraded plaintiffs naked and subjected them to strip-searches while they were clad only in diapers before fully-clothed inmates who insulted plaintiffs as “diaper babies”;
- Arbitrarily and immediately halted plaintiffs' access to psychotropic medications;

- Denied plaintiffs all reading materials, including their legal papers and religious books;
- Refused to provide plaintiffs with writing utensils;
- Refused to permit plaintiffs to communicate with counsel by telephone and correspondence;
- Refused to provide plaintiffs with meaningful access to the grievance process;
- Confined plaintiffs in overheated cells with sealed windows;
- Failed to provide plaintiffs access to regular exercise; and
- Failed to provide plaintiffs access to regular showers.

7. Defendants' actions and omissions violated (1) plaintiffs' right not to suffer cruel and unusual punishment under Article I § 5 of the New York State constitution; (2) New York Correction Law § 137(5), made applicable to local correctional facilities by Corr. Law §500-k, which provides "no inmate in the care or custody of the department shall be subjected to degrading treatment"; (3) plaintiffs' right to medical treatment, including treatment for mental illness pursuant to 40 RCNY § 2-01 *et seq.*; and (4) plaintiffs' due process rights under Article I § 6 of the New York State Constitution.

8. Defendants' acts and omissions also violated the clearly stated policies and procedures of the New York City Department of Correction for provision of mental health care to inmates set forth in the Mental Health Policy & Procedure Manual ("MHPPM").

9. Defendants' acts and omissions inflicted on plaintiffs severe physical and emotional pain.

## BACKGROUND

10. On October 5, 2005, a Rikers inmate allegedly slashed a correction officer across the cheek and jaw with a sharp piece of metal.

11. On information and belief, that prisoner had a history of treatment for mental health problems and had not served punitive segregation ("Bing Time") for infractions of Rikers rules because he, along with other prisoners, had been found by mental health staff to be at risk of decompensation if housed in the 23-hour lock-in of punitive segregation. Decompensation describes the syndrome of symptoms and illness that occurs when a patient is removed from treatment. Patients who "decompensate" frequently suffer greater distress than was the case prior to treatment.

12. Immediately after the slashing, several corrections officers retaliated by beating a number of inmates, including some of the above-named plaintiffs.<sup>1</sup>

13. On information and belief, in response to demands from correctional staff, department of correction authorities created in the central punitive segregation unit on Rikers Island, a new form of punitive segregation called "no harm housing" ("NHH"), and placed a number of prisoners there whose Bing Time had been deferred for mental health reasons. They did not place these prisoners in the "mental health assessment unit for infracted inmates" ("MHAUII") for prisoners serving Bing Time who have a history of mental health problems.

14. After the October 5, 2005 incident, supervisory officials in the Department of Correction, including Commissioner Martin Horn, and in the Department of Health and Mental Hygiene, including Dr. Bruce David and Dr. David Hirschberger, decided to transfer to punitive

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1. According to a newspaper report dated March 29, 2006, Officer Joseph Collins punched an inmate who was not involved in the slashing. The incident was recorded on videotape. On March 28, 2006, a Rikers inmate and two correction officers were indicted on charges stemming from an assault in a Rikers bathroom and at least two jail staff members are subject to pending criminal prosecution as a result of their involvement in this incident.

segregation a number of prisoners with mental illness, including some of the plaintiffs herein, who had been found guilty of institutional infractions, but who had not previously been transferred to segregation because of concerns about their mental health.

15. Prisoners with mental illness who were transferred to punitive segregation after the events of October 5, 2005 were assigned to a specific floor in the segregation unit, denominated as "no harm housing."

16. Prisoners with mental illness transferred to "no harm housing" received new diagnoses by mental health staff working under the supervision of defendants David and Hershberger, and were thereafter declared not to be mentally ill and no longer in need of care and treatment, which was abruptly halted. Rather, they, like the plaintiffs in this action, were characterized as "malingerers" and "fakers."

17. Since 1998, the Department of Correction has maintained a punitive segregation unit for prisoners with mental illness, the Mental Health Assessment Unit for Infracted Inmates ("MHAUII"). Prisoners in MHAUII have regular access to mental health professionals, whose offices are immediately adjacent to the unit, and are provided with ongoing treatment, including therapy and medication. Prisoners in MHAUII are monitored by mental health professionals to minimize the risk of decompensation, harm and injury.

18. On information and belief, corrections officials created NHH to punish those inmates suspected of faking mental illness with a new and draconian form of solitary confinement.

19. During October 2005, Defendants transferred, and in some cases, forcibly dragged, approximately fourteen inmates to NHH because, in the opinion of Rikers' officials, these inmates were faking mental illness to avoid serving Bing Time. Upon information and

belief, plaintiffs did not, prior to their assignment and transfer to NHH, receive any prior warning, pre-transfer medical and/or mental health assessment or a hearing.

20. Rikers' authorities abruptly cut off NHH inmates from their psychological medications and visits with mental health professionals.

21. Rikers' authorities also stripped plaintiffs naked, compelling grown men clad only in diapers to suffer "strip searches" on multiple occasions in view of female corrections officers and fully dressed inmates who taunted plaintiffs, calling them "diaper babies."

22. Rikers' Authorities required plaintiffs to wear "suicide smocks" similar in texture to pot-holders.

23. Rikers' Authorities sealed the windows in plaintiffs' NHH jail cells, removing all window handles, preventing plaintiffs from cooling their frequently over-heated cells by opening their jail-cell windows.

24. Further, defendants denied plaintiffs access to reading materials, including legal papers and religious material, including Bibles and/or Qu'ran. Rikers' Authorities also refused to give pencils, pens and paper to plaintiffs. Because plaintiffs had no pens or pencils, they could not write letters to members of their families or attorneys. Rikers' Authorities also refused to give plaintiffs proper bed-sheets and blankets.

25. Rikers' Authorities did not permit plaintiffs to get regular exercise.

26. Rikers' Authorities denied plaintiffs access to regular showers.

27. Rikers' Authorities denied plaintiffs regular access to legal counsel.

28. Rikers' Authorities denied plaintiffs meaningful access to any grievance process.

29. In late December, 2005, Rikers officials, together with Rikers medical personnel, appeared in NHH and offered NHH inmates a coercive "deal": if a NHH inmate self-certified



that he did not pose a risk of suicide or harm to himself, and further promised not to ask for psychotropic medication and visits with mental health professionals, then Rikers officials would agree to restore the basic human and legal rights they had denied to NHH inmates for more than two months.

30. Even after plaintiffs accepted the coercive "deal" defendants offered, the specter of mistreatment continued to loom: corrections officials threatened to put them 'back into pampers' if they misbehaved.

31. NHH's comprehensive and systematic denial of plaintiffs' human, legal and constitutional rights, together with Rikers' authorities violation of the requirements set forth in the MHPPM, reveals the purpose for which corrections officials created NHH: to not only punish, but also to degrade and humiliate those inmates Rikers' officials suspected of faking mental illness to avoid serving Bing Time and thereby intimidate and deter other inmates from trying to avoid Bing Time by feigning mental health problems.

32. Plaintiffs, therefore, bring this suit to seek money damages for the emotional pain and suffering they experienced due to defendants' illegal and unconstitutional policies and practices.

### **Plaintiffs**

#### **Samuel E.**

33. Samuel E. is 22 years old.

34. He has suffered from mental illness since he was eleven years old, when he was hospitalized for psychiatric problems.

35. One year later, when Samuel was 12 years old, his cousin committed suicide. In the months following his cousin's suicide, Samuel suffered from post-traumatic stress disorder ("PTSD").

36. Samuel reports that in the months following his cousin's suicide, he heard his cousin's voice calling him to join him in death.

37. Soon thereafter, Samuel attempted to commit suicide and was again hospitalized.

38. When he was hospitalized at the age of 13, Samuel received several diagnoses, including Attention-Deficit Hyperactivity Disorder, Impulse-Control Disorder, Oppositional Defiant Disorder and Depression. He was treated with medication for these disorders. After his release from the hospital, Samuel received counseling and continued to take antidepressant medications.

39. As an adult, before his incarceration, Samuel was hospitalized for depression. He received outpatient counseling until 2004.

40. In 2004, Samuel joined the Army Reserve and was sent to Fort Bragg for basic training. While he was at Fort Bragg, Samuel became depressed again and his drill sergeant referred Samuel to a psychiatrist for treatment. Samuel was prescribed antidepressant medications and was still taking those medications in March 2005, when he was first incarcerated at Rikers.

41. Shortly after his arrival at Rikers, Samuel received a mental health evaluation and received a variety of diagnoses, including dysthymia. He was continued on medication.

42. In addition, Samuel was prescribed antipsychotic medications after he reported both visual and auditory hallucinations. Samuel continued to be depressed and heard voices.

43. In June 2005, Samuel developed suicidal thoughts that required his transfer to a suicide observation cell in June 2005.

44. Thereafter, Samuel made multiple suicide attempts and was transferred to a suicide observation cell several times. On more than one occasion, Samuel was hospitalized for treatment at Bellevue Hospital.

45. Samuel continued to suffer from depression and experienced frequent thoughts of suicide throughout June, July and August of 2005. He was also reporting symptoms of Post Traumatic Stress Disorder consistent with the PTSD from which he suffered at the age of 13.

46. Rikers' medical personnel misdiagnosed Samuel because they failed to recognize that Samuel was suffering from PTSD, just as he had at the age of 13 after his cousin's suicide. Samuel's depression did not improve.

47. When Samuel's depression did not improve, Rikers' medical personnel failed to exercise professional judgment and concluded that Samuel was feigning illness for "secondary gain."

48. As a further consequence of their misdiagnosis, the medical personnel at Rikers halted Samuel's treatment and inserted a note in his medical chart stating that Samuel was malingering and faking symptoms. The medical history recorded by Rikers' medical personnel ignored critically important and relevant facts, namely: long before he was incarcerated at Rikers, Samuel had a long history of depression and Post Traumatic Stress Disorder. Rikers medical personnel also ignored medical records from Samuel's hospitalization in Bellevue Hospital in May 2005 noting that Samuel responded to anti-depressant medications and that such medications should be continued.

49. Prior to his transfer to NHH, Samuel E. was receiving Paxil.

50. In early October 2005, Samuel E. "owed" 120 days of Bing Time. On or about the evening of October 9, corrections officers stripped Samuel naked and, without any explanation, took him to NHH. No officer or any other Rikers official explained to Samuel the reasons for his transfer to NHH, nor did any Rikers official tell Samuel how long he would be confined in NHH.

51. Immediately upon confining Samuel in his NHH cell, defendants abruptly cut him off from his psychotropic medication and refused to provide him with visits with mental health professionals.

52. Samuel was left naked, with nothing to wear but a diaper and a suicide smock. While clad only in a diaper, in full view of other inmates who were fully clothed and in full view of female corrections officers, defendants ordered Samuel to stand outside his NHH cell and strip searched on various occasions. The fully-dressed inmates mocked and taunted Samuel and other plaintiffs, calling them "diaper babies."

53. Defendants refused to allow Samuel to shower regularly.

54. Defendants also refused to allow Samuel to have reading materials of any kind, denying him not only his legal papers, but also his Bible.

55. Defendants denied Samuel access to pens and pencils.

56. Even though Samuel suffers from asthma, defendants sealed the window in his NHH cell and removed the window handles. As a result, Samuel could not open his cell window to cool his cell. Although he was held in NHH during the winter months, the heating system often heated his cell to intolerably high temperatures. The extreme heat aggravated Samuel's asthma and, on at least one occasion in NHH, Samuel suffered an asthma attack and did not receive any medical attention for more than two hours.

57. While incarcerated in NHH, Samuel experienced intense flashbacks and suffered visual hallucinations. He also suffered from auditory hallucinations and heard a voice telling him he would be better off dead.

58. The flashbacks Samuel suffered are symptoms of longstanding Post Traumatic Stress Disorder.

59. After his removal from psychotropic medications, Rikers mental health professionals failed to provide Samuel with follow-up visits to evaluate his condition.

60. After Rikers medical personnel halted his psychotropic medications, Samuel lost his appetite and lost twenty (20) to twenty-five (25) pounds. Samuel's dramatic weight loss is itself a symptom of depression. Many months passed before Samuel's appetite returned.

61. Further, after Rikers' medical personnel halted his psychotropic medication, Samuel exhibited additional symptoms of severe depression, including insomnia. Samuel stayed awake all night for several consecutive nights. In addition, the crippling effects of Samuel's depression were so severe that he could not get out of bed in the morning and had no interest in partaking in any activity whatsoever. Samuel also suffered auditory hallucinations that were Mood-Congruent.

62. While incarcerated in NHH, Samuel attempted suicide two times.

63. Samuel's suicide attempts while confined in NHH were the product of Rikers' medical personnel's' misdiagnosis of his depression and Post Traumatic Stress Disorder and their decision to halt Samuel's psychotropic medication.

64. After each of the two suicide attempts, Samuel was brought to a medical clinic.

65. Upon information and belief, on at least one of his visits to the medical clinic after a suicide attempt while incarcerated in NHH, a doctor wanted to send Samuel to the hospital.

66. Nevertheless, Samuel was not sent to a hospital.

67. Samuel's condition during his incarceration in NHH is consistent with Major Depression with Psychotic Features and Post Traumatic Stress Syndrome.

68. In the week before Christmas, 2005, defendants offered Samuel the coercive choice between treatment for his psychological problems and the restoration of his basic human and legal rights, including access to reading materials, writing utensils, clothing, regular showers and window knobs to open his window to cool down his cell when it was overheated. To obtain the human and legal rights to which he was legally entitled, Samuel was required to represent that he would not harm himself and would no longer ask for psychotropic medication and visits with mental health professionals. Under these coercive conditions, Samuel represented that he would not harm himself and agreed to stop asking defendants for psychotropic medication and visits with mental health professionals.

69. For months after his release from NHH, Samuel did not regain all of the weight he lost while subjected to the harsh NHH regime. Neither did his sleep return. Samuel's continued suffering in the aftermath of his confinement in NHH is consistent with the extreme stress and unnecessary suffering inflicted upon him by Rikers' authorities.

**Johnny M.**

70. Johnny M. is 43 years old and has suffered from psychological illness since his uncle raped him when he was seven years old.

71. As a child, Johnny was diagnosed with chronic depression and anti-social behavior and placed in special education classes. For a time, Johnny was admitted to a mental hospital in his native Puerto Rico.

72. Johnny moved from Puerto Rico to New York in 1986. Upon his arrival, upon information and belief, Johnny received psychological counseling while living in the community.

73. In 1991, Johnny attempted suicide. He was confined in a strait jacket and admitted to Lincoln Hospital in New York City.

74. In 1994, while incarcerated, Johnny suffered from depression, heard voices and began to take psychiatric medications.

75. In 2002, Johnny returned to prison. He heard voices that commanded him to hurt himself. He attempted suicide by hanging.

76. After receiving parole in 2003, Johnny entered an out-patient program that provided mental health evaluation and medication.

77. In the summer of 2003, Johnny was hospitalized at St. Vincents hospital in New York City.

78. Prior to his confinement in NHH, Johnny made several suicide attempts.

79. He attempted to hang himself with a bed sheet. He tried to over-dose on medication. He slashed his wrists.

80. In May 2005, Johnny was involved in a fight between other inmates and, after a hearing, he was transferred to the Mental Health Center, unit "C71" at the Anna M. Kross Center located in the Rikers Island prison complex. C71 is the Mental Health Center.

81. Upon information and belief, Johnny was not incarcerated between the months of June and August, 2005. During this period, Johnny took medication for mental illness.

82. Upon information and belief, when inmates who owe Bing Time to Rikers authorities are released or transferred from Rikers to another correctional facility, Rikers

authorities maintain records of the Bing Time owed and, when the inmate returns to Rikers, Rikers will require the inmate to serve the previously accrued Bing Time.

83. Upon information and belief, Johnny returned to Rikers in August or September 2005.

84. Upon information and belief, immediately before his transfer to NHH, Johnny owed 50 days of Bing Time.

85. On October 31, 2005, while housed in C-71, corrections officers stripped Johnny naked and, without any explanation, took him to NHH. No officer or any other Rikers official explained to Johnny the reasons for his transfer to NHH, nor did any Rikers official tell Johnny how long he would be confined in NHH.

86. Immediately upon confining Johnny in his NHH cell, defendants abruptly cut off his psychotropic medication and visits with mental health professionals.

87. Johnny was left naked, leaving him with nothing to wear but a diaper and a suicide smock. While clad only in a diaper, in full view of other inmates who were fully clothed and in full view of female corrections officers, defendants ordered Johnny to stand outside his NHH cell and strip searched him on several occasions. The fully-dressed inmates mocked and taunted Johnny and other plaintiffs, calling them "diaper babies."

88. Defendants refused to allow Johnny to shower regularly, refused to allow Johnny to have reading materials of any kind, denying him not only his legal papers, but his Bible. Defendants denied Johnny access to pens and pencils. Johnny did not sleep for nine days and the voices in his head returned. Johnny ate and smeared his feces around his cell and cut himself. Johnny tried to hang himself and thought he was going to die in NHH.



89. Notwithstanding the behavior set forth above, on November 7, 2005, Johnny was discharged from mental health services.

90. On November 12, 2005, a physician wrote Johnny a referral to mental health services, stating that Johnny was "psychotic and hallucinating".

91. The next day, Johnny saw a psychiatrist. The psychiatrist found Johnny to be depressed and psychotic and restarted Johnny's psychological medications.

92. The very next day, a different psychiatrist discontinued Johnny's medications.

93. On December 5, 2005, Johnny went to court and returned with a court order requiring Johnny to receive a mental health evaluation.

94. On information and belief, Johnny did not receive the court-ordered mental health evaluation. Indeed, Johnny's medical records contain an entry from a clinical supervisor stating that Johnny was malingering and did not need mental health services.

95. In the week before Christmas, 2005, defendants offered Johnny the coercive choice between treatment for his psychological problems and the restoration of his basic human and legal rights, including access to reading materials, writing utensils, clothing, regular showers and window knobs to open his window to cool down his cell when it was overheated. To obtain human and legal rights to which he was legally entitled, Johnny had to self-certify that he would not harm himself and would no longer ask for psychotropic medication and visits with mental health professionals.

96. Under these coercive conditions, Johnny certified that he would not harm himself and agreed to stop asking defendants for psychotropic medication and visits with mental health professionals.

97. In late December Johnny was released from NHH. A few days after his release, on December 28, 2005, a psychiatrist assessed Johnny and found that he suffered from major depression with psychotic features. The psychiatrist restarted Johnny's medications.

98. Even after he left NHH, Johnny continued to suffer flashbacks and felt he was going to die. Johnny's flashbacks are symptomatic of Post Traumatic Stress Disorder.

99. In the Spring of 2007, Johnny again attempted suicide and was hospitalized in a psychiatric ward of Bellevue Hospital in New York City.

**Jamelle M.**

100. Jamelle M. is 25 years old and has suffered from psychological illness since childhood.

101. At approximately the age of 8, Jamelle's mother took him to see a psychiatrist.

102. As a child, Jamelle received psychotropic medication.

103. In 1996, while incarcerated at Rikers, Jamelle was severely depressed and heard voices. Jamelle attempted suicide. Jamelle received treatment for psychiatric illness, including medications, until his release in 1997.

104. After his release from Rikers in 1998, Jamelle received treatment for mental health problems.

105. In 1998, Jamelle was hospitalized because he was severely depressed and heard voices.

106. After his hospitalization, Jamelle received outpatient treatment, including medication.

107. In 2004, Jamelle stopped taking his medication. As a result, Jamelle became severely depressed. He heard voices. Jamelle attempted suicide. Jamelle was hospitalized for four months. Jamelle was discharged with medication.

108. In October 2004, Jamelle arrived at Rikers. He was evaluated by a psychiatrist and given a diagnosis of schizophrenia. The psychiatrist noted that Jamelle had been diagnosed with schizophrenia and made entries in Jamelle's chart of subjective symptoms Jamelle reported, including depression, hearing voices and thought broadcasting. The psychiatrist also made objective findings of abnormal mental status, including blunted affect, impoverished and tangential thought process. The psychiatrist prescribed antipsychotic medication.

109. Upon information and belief, inmates receiving antipsychotic medications are not permitted to take certain jobs within Rikers. Approximately one month after a psychiatrist at Rikers prescribed antipsychotic medication, Jamelle asked that the medication be discontinued so that he could get a job within Rikers.

110. In or about March 2005, Jamelle again became depressed and considered suicide. Jamelle was transferred to a suicide observation unit.

111. In or about June 2005, Jamelle began to receive an antidepressant medication. From June through October 2005, Jamelle's dosage of antidepressant medication gradually increased until the medication was abruptly halted in October 2005.

112. Upon information and belief, as of September 2005, Jamelle owed approximately 60 days of Bing Time.

113. On October 7, 2005, a clinical supervisor wrote in Jamelle's medical records that he was attempting to avoid responsibility for disciplinary infractions by reporting symptoms of mental illness. The note purports to dismiss Jamelle's mental health history by selectively

reporting, omitting and distorting information in Jamelle's medical records. The entry ignored Jamelle's history of hospitalizations for mental illness. Similarly, the note fails to include Jamelle's past diagnosis of paranoid schizophrenia – even though the diagnosis was made by a Rikers psychiatrist in October 2004. The clinical supervisor's note also distorted and minimized the 2004 report made by a psychiatrist who saw Jamelle at Rikers. Regarding Jamelle's intake evaluation, the clinical supervisor reported only that Jamelle was "alleged to have auditory hallucinations"; but the entry fails to describe the objective findings of serious mental illness that had been entered by a Rikers psychiatrist months earlier.

114. On October 9, 2005, Jamelle was housed in a Rikers Island jail facility known as "AMKC".

115. On October 10, 2005, only three days after the clinical supervisor found that Jamelle was feigning mental illness to avoid responsibility for disciplinary infractions, a Rikers psychiatrist examined Jamelle and indicated that Jamelle was suffering from depression and should continue to receive Zoloft.

116. Nevertheless, on October 11, 2005, corrections officers, without any explanation, took Jamelle to NHH. No officer or any other Rikers official explained to Jamelle the reasons for his transfer to NHH, nor did any Rikers official tell Jamelle how long he would be confined in NHH.

117. Immediately upon confining Jamelle in his NHH cell, defendants abruptly cut off his psychotropic medication and visits with mental health professionals.

118. After bringing Jamelle to NHH, officers stripped him naked, leaving him with nothing to wear but a diaper and a suicide smock. While clad only in a diaper, in full view of other inmates who were fully clothed and in full view of female corrections officers, defendants

ordered Jamelle to stand outside his NHH cell and strip searched him on various occasions. The fully-dressed inmates mocked and taunted Jamelle and other plaintiffs, calling them "diaper babies."

119. Defendants refused to allow Jamelle to shower regularly.

120. Defendants also refused to allow Jamelle to have reading materials of any kind, denying him not only his legal papers, but his Bible.

121. Defendants denied Jamelle access to pens and pencils.

122. Jamelle felt like he was going to die after Rikers' medical personnel halted his psychotropic medication. Jamelle could not sleep and stayed awake throughout the night.

123. On October 14, 2005, a different psychiatrist wrote that he/she saw Jamelle to determine whether Zoloft "can be discontinued". The psychiatrist's entry in Jamelle's records, however, failed to include important information about Jamelle's mental status, failing to even describe Jamelle's mood.

124. In the week before Christmas, 2005, defendants offered Jamelle the coercive choice between treatment for his psychological problems and the restoration of his basic human and legal rights, including access to reading materials, writing utensils, clothing, regular showers and window knobs to open his window to cool down his cell when it was overheated. To obtain human and legal rights to which he was legally entitled, Jamelle had to self-certify that he would not harm himself and would no longer ask for psychotropic medication and visits with mental health professionals.

125. Under these coercive conditions, Jamelle certified that he would not harm himself and agreed to stop asking defendants for psychotropic medication and visits with mental health professionals.

126. After his transfer to NHH, and after Rikers halted his medication, He could not sleep for one week. Jamelle became severely depressed. Jamelle thought he would die.

127. During 2006, Jamelle was transferred to Sing-Sing prison.

128. Upon information and belief, after his transfer to Sing-Sing prison, Jamelle returned to Rikers, was placed back into NHH and was again denied psychotropic medication.

**Rasheem T.**

129. Rasheem T. is 21 years old.

130. Prior to his incarceration, Rasheem T.'s close friend died in his arms.

131. Since his incarceration, Rasheem T. has experienced Post Traumatic Stress Disorder, including terrifying nightmares, flashbacks, depression, anxiety and severe insomnia. He hears the voice of his friend.

132. Since his incarceration in September 2004, Rasheem has received psychotropic medication for depression.

133. Beginning in January 2005, Rasheem medical officials at Rikers Island have several times diagnosed Rasheem as suffering from Post Traumatic Stress Disorder.

134. Although the medication helped Rasheem, he continued to suffer from significant symptoms of Post Traumatic Stress Disorder.

135. During September 2005, Rasheem saw a psychiatrist at least two times. The notes in his medical records reflect that Rasheem continued to suffer from PTSD and depression and that the treating doctors planned to continue Rasheem on medication because he continued to suffer from PTSD symptoms.

136. A "utilization review" dated October 2, 2005, states that Rasheem was "always" compliant with his medications.

137. On October 7, 2005, Rasheem saw a clinical supervisor. The supervisor's entry in Rasheem's medical records noted Rasheem's diagnosis and also noted that Rasheem continued to receive high doses of antidepressant and antipsychotic medications. In addition, the entry states that before his incarceration at Rikers, Rasheem had been treated for depression.

138. Only a few days later, on October 9, 2005, corrections officers took Rasheem to NHH without any explanation. No officer or any other Rikers official explained to Rasheem the reasons for his transfer to NHH, nor did any Rikers official tell Rasheem how long he would be confined in NHH.

139. Immediately upon confining Rasheem in his NHH cell, defendants abruptly cut off his psychotropic medication and visits with mental health professionals.

140. On October 10, 2005, a psychiatrist – who had never before made an entry in Rasheem's chart – indicated that Rikers should halt Rasheem's medications. In addition, the psychiatrist reported that Rasheem said he had not taken his medications for the preceding month and, further, that Rasheem denied experiencing symptoms of PTSD. The psychiatrist's entry does not reflect (1) a competent review of Rasheem's medical history, (2) an understanding of Rasheem's diagnosis, (3) the reasons for which Rasheem was taking antidepressant and antipsychotic medications, and (4) a consideration of the risks posed to Rasheem by discontinuing his medications.

141. Indeed, after Rikers halted his medications, Rasheem reports he experienced severe headaches and vomiting for several weeks.

142. Rasheem also suffered from severe insomnia, sleeping only 1 - 2 hours a day for several weeks.

143. Rasheem asked to see "mental health", but was told that NHH inmates were not permitted to see "mental health".

144. On October 28, 2005, a corrections officer made a "referral" to "mental health", stating that Rasheem appeared depressed and had asked for his medications.

145. A second note in Rasheem's medical records dated October 30, 2005, states that Rasheem reported that he needed his psychiatric medications.

146. Nevertheless, the only response from Rikers medical authorities reflected in Rasheem's medical records is a 2-page form entitled "Summary of Mental Health Evaluation/Recommendations". The two page form contains only eight lines and lacks any mental status examination. The space on the form for a mental status examination – the primary method for assessing and diagnosing a mental health complaint – is crossed out with a large "X". The "objective" findings state "Pt. is unremarkable". The "Assessment" states "Patient doesn't require M.H.tx". The "Plan" states "Patient will not receive MH tx at this time".

147. After bringing Rasheem to NHH, officers stripped him naked, leaving him with nothing to wear but a diaper and a suicide smock. While clad only in a diaper, in full view of other inmates who were fully clothed and in full view of female corrections officers, defendants ordered Rasheem to stand outside his NHH cell and strip searched him on various occasions. The fully-dressed inmates mocked and taunted Rasheem and other plaintiffs, calling them "diaper babies."

148. Defendants refused to allow Rasheem to shower regularly.

149. Defendants also refused to allow Rasheem to have reading materials of any kind, denying him not only his legal papers, but his Bible.

150. Defendants denied Rasheem access to pens and pencils.



151. In the week before Christmas, 2005, defendants offered Rasheem the coercive choice between treatment for his psychological problems and the restoration of his basic human and legal rights, including access to reading materials, writing utensils, clothing, regular showers and window knobs to open his window to cool down his cell when it was overheated. To obtain human and legal rights to which he was legally entitled, Rasheem had to self-certify that he would not harm himself and would no longer ask for psychotropic medication and visits with mental health professionals.

152. Under these coercive conditions, Rasheem certified that he would not harm himself and agreed to stop asking defendants for psychotropic medication and visits with mental health professionals.

153. After his discharge from NHH, Rasheem resumed treatment with psychotropic medication. His treating physician stated that Rasheem should never have been taken off of medication. Because Rasheem's medication had been halted, his symptoms became worse and it was necessary to increase the dosage of his medications over the levels that he had been receiving prior to his incarceration in NHH. The increased dosage is consistent with clinical literature finding that when left untreated, mental illness worsens with the passage of time.

#### **JURISDICTION AND VENUE**

154. The Court has jurisdiction over this action pursuant to Article I §§ 5 and 6 of the New York State Constitution.

155. Venue is proper pursuant to CPLR § 504(3).

#### **JURY DEMAND**

156. Plaintiffs demand trial by jury in this action.

**B. Defendants**

157. Defendants are the individuals, corporate bodies and public agencies responsible for providing mental health services in Rikers Island jails, specifically the No Harm Housing Unit located in “4-South” of the Central Punitive Segregation Unit (“CPSU”).

158. The City of New York (the “City”) is ultimately responsible for the welfare of inmates held in Rikers Island. Through the New York City Charter (“City Charter”), the City has delegated that responsibility to various agencies, including the New York City Department of Health. The New York City Department of Health has contracted with a private company, Prison Health Services, to provide medical services to inmates confined in New York City jails.

159. Section 556(k) of the City Charter requires the New York City Department of Health (the “Department of Health”), except as otherwise provided by law, to “promote or provide medical and health services for the inmates of prisons maintained and operated by the City.”

160. Section 626(d) of the City Charter states that the Board of Correction “shall establish minimum standards for the care, custody ... [and] treatment ... of all persons held ... [by] ... the department.”

161. Title 40 of the New York City Charter, section 2-01 et seq. require the New York Department of Corrections to Provide “[s]ervices for the detection, diagnosis and treatment of mental illness ... to those persons in the care and custody of the New York City Department of Correction.”

162. Section 2-04 of Title 40 further provides that “[a]dequate mental health care is to be provided to inmates in an environment which facilitates care and treatment, provides for maximum observation, reduces the risk of suicide, and is minimally stressful.”

163. Finally, § 2-06 of Title 40 provides that “restraints or seclusion shall not be used as punishment, for the convenience of staff, or as a substitute for treatment programs.”

C. **Rikers Island Jails’ Mental Health Policy & Procedures**

164. NHH is a punitive segregation unit.

165. Section V-C of the MHPPM, entitled “MENTAL HEALTH CLEARANCES FOR TRANSFER TO PUNITIVE SEGREGATION” requires that “any patient who has been treated on a mental observation unit *or is receiving psychotropic medication* must be evaluated to ascertain his/her ability to be housed in punitive segregation.”

166. The MHPPM clearly states “[i]nmates suffering from “Sever (*sic*) and Persistent Mental Illness” *shall not be admitted to the Punitive Segregation Unit.*”

167. Plaintiffs suffered from severe and persistent mental illness for which each Plaintiff was receiving psychotropic medication before their transfer to NHH.

168. Defendants failed to examine Plaintiffs before moving them to NHH.

169. Section IV-T of the MHPPM cautions Rikers’ officials that the terms “malingering” and “manipulating” should be used “only with the most cautious application” because they are loaded terms that “can be taken to be professional shorthand for stating that the inmate in question is a phony, a faker, putting on a show to get what he wants.” Manipulating “cannot be used as summary statement about an individual as if it were a diagnosis”.

170. Despite the clear warnings against the dangers of misusing the terms “malingering” and “manipulating”, Defendants wrongfully and intentionally manipulated those terms to manufacture the pretext by which they confined plaintiffs in NHH.

171. The MHPPM further requires "Mental Health Services [to] provide ... [s]tabilization of mental illness and the alleviation of psychological deterioration in the corrections setting".

172. While confined in NHH, Plaintiffs suffered from command hallucinations and/or voices telling them to kill themselves. Plaintiffs also experienced feelings of hopelessness, appetite disturbance and sleep disturbance.

173. The extreme and harsh conditions of NHH subjected Plaintiffs to conditions that exacerbated their well-documented mental problems and caused Plaintiffs to decompensate, injuring Plaintiffs' psychological stability.

174. Nevertheless, Defendants denied Plaintiffs confined in NHH access to mental health care.

175. Section IV-Fii of the MHPPM recognizes that inmates dressed in Suicide Prevention Smocks will suffer insults when seen by fully clothed inmates. For this reason, Section IV-Fii limits the use of smocks to only those areas where "all other inmates are wearing smocks." The MHPPM emphasizes "[t]his is to prevent any adverse impact caused by comments or behaviors from those not similarly dressed."

176. Defendants violated Section IV-Fii by confining Plaintiffs to a NHH unit in full view of fully clothed inmates before whom Defendants paraded Plaintiffs in various degrees of undress. Some Plaintiffs were completely naked in full view of other inmates and female corrections officers. Others were made to appear in the view of other inmates and female corrections officers wearing nothing more than diapers. As anticipated by the MHPPM, the fully-clad inmates taunted Plaintiffs as "diaper-babies".

**First Cause of Action**  
(Cruel and Unusual Punishment)

177. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

178. Defendants' actions violated plaintiffs' right to be free from cruel and unusual punishment under Article 5 § 5 of the New York State Constitution.

179. These violations injured Plaintiffs.

**Second Cause of Action**  
(Violation of N.Y.C.R.R. 137(5))

180. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

181. N.Y.C.R.R. 137(5), made applicable to localities by Corr. Law § 500-k, provides that "no inmate in the care or custody of the department shall be subjected to degrading treatment ...."

182. Defendants' actions and inactions subjected plaintiffs to degrading treatment.

183. These violations injured plaintiffs.

**Third Cause of Action**  
(Right to Medical Care)

184. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

185. Pursuant to title 40 of the New York City Charter, 40 RCNY §§ 2-01 et seq., Plaintiffs have a legal right to medical care including care for mental illness.

186. Defendants, by their actions and inactions, failed to provide medical care to plaintiffs.

187. These violations injured Plaintiffs.

**Fourth Cause of Action**  
(Due Process)

188. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

189. Defendants confined plaintiffs in No Harm Housing without prior mental health evaluation, notice or hearing and failed to provide any opportunity to be heard.

190. Defendants thereby violated Article I § 6 of the New York State Constitution.

191. These violations violated plaintiffs' right to procedural due process pursuant to Article I § 6 of the New York State Constitution.

**Fifth Cause of Action**  
(Negligence)

192. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

193. Defendants owed a duty to provide plaintiffs with adequate medical care while they were confined in No Harm Housing.

194. Defendants failed to provide plaintiffs with adequate medical care while they were confined in No Harm Housing.

195. Defendants' failure to provide plaintiffs with adequate medical care while they were confined in No Harm Housing breached the duty owed by defendants to plaintiffs and thereby caused plaintiffs to suffer physical and emotional harm.

196. Plaintiffs suffered injury as a direct result of defendants' actions and inactions.

**Sixth Cause of Action**  
(Ministerial Neglect)

197. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

198. Rikers' authorities established protocols for the provision of medical care to inmates, including the provision of mental health care.

199. Rikers authorities failed to provide plaintiffs with mental health care and thereby violated clearly established protocols requiring the provision of such care to Plaintiffs.

200. Plaintiffs suffered physical and emotional injuries by virtue of defendants' failure to follow Rikers' protocols regarding the provision of medical care to Rikers inmates.

**Prayer For Relief**

WHEREFORE, Plaintiffs pray for an order:

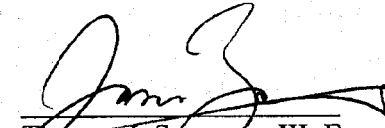
201. As to all causes of action, awarding plaintiffs monetary damages against the defendants jointly and severally, in compensation for injuries sustained by plaintiffs as a result of the various constitutional and statutory violations, including damages for injuries such as extreme emotional pain caused by terminating plaintiffs' psychotropic medication and prohibiting visits with mental health professionals;

202. As to all causes of action, awarding plaintiffs punitive damages against the defendants jointly and severally;

203. Granting all costs, disbursements and attorney fees arising out of this action;

204. Granting such other relief as this Court deems just and proper.

Dated: New York, New York  
June 18, 2007



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