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FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

GUJUAN FUSILIER, MAH-KONCE HUDSON, AND O'SHAY TONEY ON THEIR OWN BEHALF AND ON BEHALF OF ALL SIMILARLY SITUATED INDIVIDUALS,

Plaintiffs,

v.

NEW MEXICO CORRECTIONS DEPARTMENT; PENITENTIARY OF NEW MEXICO; AND DOES 1-50, inclusive,

Defendants.

Case No.: CaseNumber

D-101-CV-2025-01194

Case assigned to Wilson, Matthew Justin

COMPLAINT FOR CLASS RELIEF

1. Plaintiffs GuJuan Fusilier, Mah-konce Hudson, and O'Shay Toney, on their own behalf and on behalf of all individuals similarly situated, bring these causes of action against the New Mexico Corrections Department (NMCD), Penitentiary of New Mexico (PNM) and Does 1-50 (Does), (collectively, "Defendants") to enforce the New Mexico Constitution and the New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 to -13 (2021) (NMCRA).

I. INTRODUCTION

2. This case seeks to put an end to Defendants' unlawful policy and practice of subjecting hundreds of New Mexicans annually to prolonged periods of solitary confinement as a form of punishment for violating prison rules. There is widespread consensus that solitary confinement, even for relatively short periods, inflicts profound and sometimes irreversible psychological and physical harm on incarcerated individuals. Yet Defendants have established a "Predatory Behavior Management Program" (PBMP), institutionalizing the practice of solitary confinement at the Penitentiary of New Mexico. Under PBMP, Plaintiffs have spent months, and in many cases, *years* of their lives locked in tiny, barren cells for 23 hours per day or more as

supposed punishment for violating prison rules. Defendants' cavalier use of extreme isolation as punishment inflicts tremendous harm on individuals for no legitimate reason, and it is the essence of "cruel and unusual punishment" forbidden by the New Mexico State Constitution and New Mexico Civil Rights Act (NMCRA). Accordingly, Plaintiffs and a class of similarly situated individuals they seek to represent bring this action for declaratory and injunctive relief arising from Defendants' unlawful conduct.

II. JURISDICTION & VENUE

3. Jurisdiction over the subject matter of this action is conferred by Article II, Section 13 of the New Mexico Constitution, the New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 through -13 (2021), and the Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975).

4. Jurisdiction over the subject matter of this action is also proper in this Court because one or more named Plaintiffs have exhausted the NMCD's internal grievance procedure pursuant to NMSA 1978, § 33-2-11(B) (1990), and Defendants have impeded one or more named Plaintiffs attempts to exhaust, making these attempts useless endeavors.

5. This Court has personal jurisdiction over the Plaintiffs and Defendants.

6. Venue is proper as the acts complained of occurred within Santa Fe, New Mexico and NMCD is headquartered in Santa Fe.

III. PARTIES

7. Plaintiff GuJuan Fusilier is incarcerated at the PNM. Defendants placed him in PBMP in February 2024 and he expects to remain there until January 2026. This is his second time in unlawful solitary confinement in PBMP. Mr. Fusilier appealed his current PBMP placement but did not receive a response. Mr. Fusilier suffers from severe mental illness, but in PBMP he is unable to speak privately or consistently with a mental health professional. PBMP conditions have negatively impacted his physical and mental health.

8. Plaintiff Mah-konce Hudson is incarcerated at the PNM. Defendants placed him in PBMP in July 2024, and he expects to remain in the program until at least July 2025. Defendants held Mr. Hudson in pre-PBMP segregation for four months, before entering the program. This is his third time being subjected to unlawful solitary confinement in PBMP. Mr. Hudson did not appeal his current PBMP placement because any appeal would be futile. He filed a grievance about the lack of programming in PBMP but never received a response. Mr. Hudson has been diagnosed with post-traumatic stress disorder ("PTSD") related to his long-term solitary confinement. He fears being overmedicated in PBMP and is unable to access the mental health care he needs because of the lack of privacy to communicate with providers in PBMP.

9. Plaintiff O'Shay Toney is incarcerated at the PNM. Defendants placed him in PBMP in April 2024, and he expects to remain in the program until at least January 2026. This is his fourth time being subjected to unlawful solitary confinement in PBMP. He previously was placed in the program from 2020–2022 and again in 2023. Mr. Toney did not appeal his current PBMP placement because any appeal would be futile. Mr. Toney did file a formal grievance on July 30, 2024, challenging PBMP's solitary confinement practices, lack of programming and deprivation of meaningful human interaction for prolonged periods of time. NMCD made it difficult for Mr. Toney to file his grievance and responded that matters involving PBMP are "not grievable." This determination was not appealable. Mr. Toney suffers from severe mental illness. He also needs critical medical attention in PBMP because his retina detached after an NMCD officer sprayed him with pepper spray. NMCD delayed providing meaningful medical care for two months, and he now requires ongoing necessary care, following two surgical operations. Mr. Toney has faced even harsher restrictions under PBMP because Defendants placed him on "sanctions." These "sanctions" deprived him of necessities like using technology, making phone calls or accessing the commissary, his property or recreation time.

10. Defendant NMCD is a department of the State of New Mexico, and a "public body" as defined by NMCRA. NMSA 1978, § 41-4A-2 (2021). It operates prison facilities in

the State, including PBMP at the PNM. NMCD is responsible for establishing, monitoring, and enforcing overall operations, policies, and practices of the New Mexico state prison system, including the provision of medical and mental health care for all individuals in the custody of NMCD.

11. Defendant PNM is the state's maximum-security prison, located in Santa Fe, New Mexico. PBMP is housed and operated at PNM.

12. Defendants Does 1 through 50 are unknown to Plaintiffs, and Plaintiffs therefore sue those defendants under such fictious names. Plaintiffs are informed and believe, and on that basis allege, that each defendant was, and is a public body in the state of New Mexico or an entity of the other Defendants, and in doing the things alleged herein, was acting within the course and scope of such agency and employment and with the knowledge, consent and approval of the other defendants. Plaintiffs are informed and believe, and on that basis allege, that each defendant is responsible in some manner for the acts alleged herein and for the harms that Plaintiffs have sustained. Plaintiffs will further amend this Complaint to show the true names and capacities of Does 1-50 when such names and identities are ascertained.

IV. STATEMENT OF FACTS

A. Solitary confinement causes extreme harm.

13. Human rights, medical, and mental health experts around the world have all confirmed that the prolonged isolation imposed by solitary confinement has devastating effects on prisoners' physical and psychological well-being. Decades of research has shown that being left in isolation, confined to a small space, and without meaningful human interaction leads to mental decompensation and serious health effects.[1]

14. The mental and emotional harms associated with solitary confinement include increased anxiety, depression, emotional breakdowns, insomnia, panic, and suicidal ideation.

[1] Nat'l Comm'n on Correctional Health Care, Position Statement Solitary Confinement (Isolation) (2016), https://www.ncchc.org/wp-content/uploads/Solitary-Confinement-Isolation.pdf.

The psychological stress of isolation can be as clinically distressing as physical torture. In fact, human rights experts consider prolonged solitary confinement to be torture.[2] Individuals held in solitary confinement report increased anxiety, rage, paranoia, cognitive impairments, hallucinations, self-mutilation, and other forms of psychological distress.

15. These risks of severe psychological distress are even more extreme for individuals already suffering from serious mental illness. The sensory deprivation, lack of meaningful human contact, irregular recreation time, and inadequate mental health care often exacerbates pre-existing symptoms or illnesses.[3] The consequences of holding individuals in solitary confinement can be dire. A recent study found that individuals in solitary confinement are five times more likely to die by suicide than prisoners in the general population.[4]

16. Individuals in solitary confinement also suffer physically from their conditions. Solitary confinement traps individuals in a tiny cell for most or all of each day. If individuals do receive recreation time out of their cell, it is often confined to another small cell that restricts their movement. These conditions impair individuals' physical health and lifespan. Individuals in solitary confinement report suffering from heart palpitations, sensory hypersensitivity, severe weight fluctuation, eyesight deterioration, and aggravation of preexisting medical conditions.

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[2] United States: Prolonged solitary confinement amounts to psychological torture, says UN expert, United Nations (Feb. 28, 2020), https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture.

[3] Kayla James, Elena Vanko, *The Impacts of Solitary Confinement*, Vera Inst. (Apr. 2021), 9, https://www.vera.org/publications/the-impacts-of-solitary-confinement; National Alliance on Mental Illness, Solitary Confinement, https://www.nami.org/advocacy/policy-priorities/stoppingharmfulpractices/solitaryconfinement/#:~:text=For%20inmates%20with%20a%20pre,of%20solitary%20confinement%20is%20devastating (last visited Apr. 18, 2025).

[4] #HALTsolitary Campaign, *The Walls are Closing in on Me: Suicide and Self-Harm in New York State's Solitary Confinement Units*, 2015–2019, N.Y. Campaign for Alternatives to Isolated Confinement (May 2020), https://nycaic.org/wp-content/uploads/2020/05/The-Walls-Are-Closing-In-On-Me_For-Distribution.pdf.

Moreover, studies show that individuals subjected to solitary confinement have increased rates of hypertension, cardiovascular issues, and premature death.[5]

17. Even after individuals are released from isolation, they often continue to suffer severe psychological effects. Studies have found that individuals who have spent time in solitary confinement are more likely to die by suicide in their first year of release.[6]

18. Studies have shown that solitary confinement does not decrease the behavior that its proponents claim it deters.[7] Solitary confinement does not decrease rates of violence or misconduct or make prisons safer.[8] Spending greater amounts of time in solitary confinement also does not correlate with improved behavior once individuals re-enter the general population in prison.[9]

19. Studies also have shown that solitary confinement does not decrease rates of recidivism once individuals re-enter community settings.[10] Other research has found that spending time in solitary confinement can increase an individual's chance of re-offending after being released from jail or prison.[11] Individuals in solitary confinement may be more likely to reoffend because solitary confinement often denies them the opportunity to participate in crucial

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[5] James and Vanko, *supra* note 4, at 3; Brie A. Williams, Amanda Li, et. al*., The Cardiovascular Health Burdens of Solitary Confinement*, J. of Gen. Internal Medicine (June 21, 2019), https://link.springer.com/article/10.1007/s11606-019-05103-6#Sec4.

[6] Lauren Brinkley-Rubinstein, Josie Sivaraman, et. al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Network Open (Oct. 4, 2019), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350.

[7] James and Vanko, *supra* note 4, at 5.

[8] *Id.*; Benjamin Steiner, Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence, in Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, U.S. Dept. of Justice, Natl. Inst. of Justice (2016), https://www.ojp.gov/pdffiles1/nij/250320.pdf.

[9] Ryan M. Labrecque, Paula Smith, *Assessing the Impact of Time Spent in Restrictive Housing Confinement on Subsequent Measures of Institutional Adjustment Among Men in Prison*, Criminal Just. and Behavior 46.10 (2019), 1445-1455.

[10] James and Vanko*, supra* note 4*,* at 5*;* Steiner and Cain*, supra* note 8, at 178.

[11] *Id.*; Anjali Tsui, Does Solitary Confinement Make Inmates More Likely to Reoffend?, Frontline (Apr. 18, 2017), https://www.pbs.org/wgbh/frontline/article/does-solitary-confinement-make-inmates-more-likely-to-reoffend/.

supports to help them transition back into a community setting, like rehabilitative programming, educational or vocational opportunities, or mental health or substance treatment.[12]

B. Defendants establish a PBMP that inflicts solitary confinement on individuals as punishment.

20. Established in 2015, Defendants describe PBMP as a behavioral-based program for individuals who need increased supervision. PBMP is supposed to provide treatment to individuals to help them eventually reintegrate with the general population. According to official policy, PBMP is a program intended to reduce predatory behavior and to prepare individuals to return to general population upon completion of the program. In reality, PBMP is a long-term solitary confinement unit that offers little in the way of programming or preparation.

21. PBMP is comprised of four steps, which range from "evaluation" (Step 1), which is the most restrictive step, to "re-integration" (Step 4), in which Defendants supposedly prepare individuals to return to the general population.

22. Defendants hold individuals in the program in unconstitutional solitary confinement, with individuals in Steps 1-3 isolated in their cells for at least 23 hours a day for months on end under the express terms of PBMP policy.

23. Indeed, even prior to official admittance to PBMP, Defendants often place individuals into pre-PBMP segregation, or effectively a "Step 0." Defendants typically hold individuals in disciplinary segregation in the same solitary confinement cell in which they will spend the entirety of their PBMP time. As such, pre-PBMP segregation operates in practice as early admittance into Defendants' unlawful solitary confinement apparatus.

24. Defendants house individuals in PBMP (and pre-PBMP segregation) in tiny 8 ft. x 10 ft. cells where they experience social isolation, reduced visual and sensory stimulation, filthy living conditions, and restricted opportunities for mental health treatment, exercise, and

[12] *Id.*

programming. Defendants hold individuals in such conditions for prolonged periods—on average, for 12–15 months or more.

25. In fact, per NMCD policy, the *minimum* number of days someone can spend in PBMP is 360 days, not including pre-PBMP segregation or "enhancements" increasing the minimum time for one or more of the steps.

26. Per NMCD policy, Step 1 of PBMP is at least 30 days. Step 2 is at least 90 days, with possible enhancements up to another 390 days. Step 3 is at least 120 days, with possible enhancements up to another 600 days. And Step 4 is at least 120 days, with enhancements up to another 480 days.

27. Ostensibly, PBMP is structured such that individuals can progress through the Steps, gradually earning back "privileges" (in reality, necessities). In fact, individuals referred to PBMP find it difficult to escape the program's grip once referred for placement and Defendants give them "enhancements" or additional time for arbitrary and unsubstantiated reasons. Individuals in PBMP can also face step "regressions" in which Defendants force them to repeat a step, without explanation and with no way to appeal.

28. Individuals in PBMP ultimately find themselves less equipped to deal with general population or release into the outside world than when they began the program. The predictable outcomes of these cruel conditions of isolation are physical and psychiatric deterioration, self-injury, and even death.

C. Defendants employ arbitrary and inconsistent criteria for PBMP placement and fail to screen out individuals with mental illnesses.

29. Under PBMP policy, Defendants should place individuals in the program only if they commit acts of violence, coercion, extortion, or conspiracy to commit these acts. However, Defendants routinely place individuals in PBMP without written notice, without a hearing, and for behavior that does not satisfy these criteria. Defendants also place individuals in PBMP for minor transgressions, such as possession of alleged contraband, participating in a strike, or as a means of protective custody.

30. Defendants have also placed in PBMP individuals with serious mental illnesses, such as bipolar disorder, post-traumatic stress disorder, schizophrenia, depression, attention deficit hyperactivity disorder, and generalized anxiety disorder.

31. Defendants have no legitimate excuse for imposing prolonged solitary confinement on mentally ill individuals. Defendants routinely place individuals in PBMP knowing that they suffer from mental illness.

32. Defendants also systemically fail to inform individuals of their right to appeal placements in PBMP. Defendants do so even though PBMP policy requires them to inform prisoners of their right to appeal to the Predatory Behavior Management Referral Committee. Defendants make it virtually impossible to appeal by failing to provide prisoners the necessary paperwork and failing to deliver information about the appellate process.

33. Once individuals are in PBMP, Defendants hinder their ability to grieve or remedy the egregious conditions of PBMP by deeming them not "grievable." If individuals do submit a grievance, Defendants frequently do not respond or tell them that their issue cannot be grieved.

D. Defendants hold PBMP prisoners in unconstitutional conditions.

34. Defendants subject Plaintiffs and all individuals in PBMP to horrific and illegal conditions. PBMP cells are tiny and barren—just 8 ft. x 10 ft., smaller than a standard horse stall and comparable to the size of a parking space. Although the cells have small windows, they are covered by metal cages that prevent them from being cleaned, block the sunlight, and prevent the windows from opening. The cell windows are filthy, exacerbating the feeling of darkness in the cells and leading to the growth of dangerous black mold.

35. The following graphic contains photos from two different vantage points of the interior of a PBMP cell:

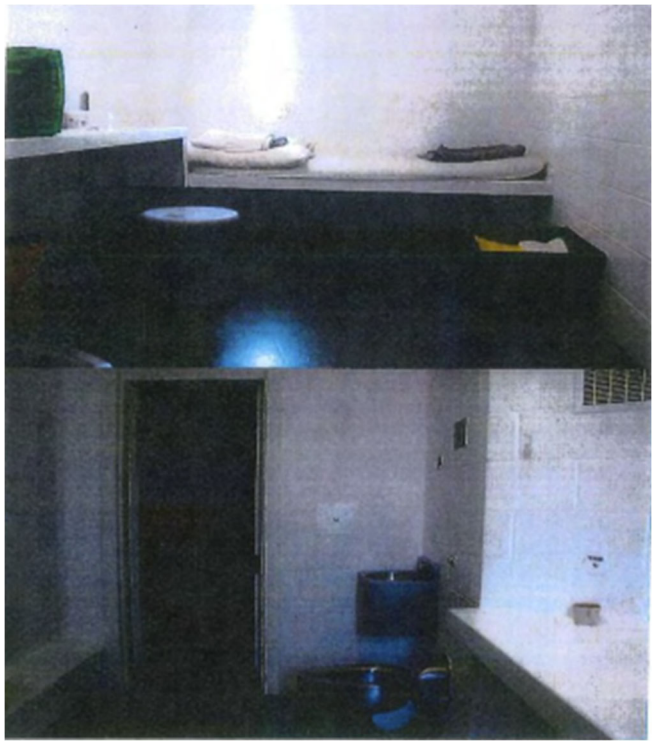

Photo: PBMP Cell

36. Defendants restrict individuals in PBMP to their cells for 23 to 24 hours a day, with no access to meaningful human contact or programming. Defendants routinely deny individuals in PBMP visitation or telephone calls with their families for months on end, causing prisoners to feel a deep sense of isolation and their familial relationships to deteriorate. Defendants also severely restrict PBMP prisoners' access to educational programming, reading materials, radio, or television. These restrictions leave individuals in PBMP stuck in a state of idleness, cut off from the outside world, with nothing to do but sleep, sit, or pace in their cells for months, and often years, on end.

37. Making matters worse, Defendants deny individuals in PBMP adequate recreation time. Even when Defendants purport to offer minimal recreation, they often condition it on compliance with arbitrary rules. For instance, Defendants require prisoners to have their cell

lights on at 5 a.m. to request recreation time. But most individuals in PBMP lack access to a clock or a watch, making it difficult or impossible to comply with the arbitrary 5 a.m. rule. Others cannot control the lighting in their cells at all. For example, one incarcerated individual did not have a light switch in his cell for his first 8 months in PBMP, leaving his light illuminated for all 24 hours each day. Defendants' arbitrary rules severely impair the sleep of those incarcerated in PBMP and further contribute to their mental deterioration. It is no surprise that individuals in PBMP report chronic sleep deprivation. Even when those incarcerated in PBMP manage to overcome Defendants' arbitrary rules, Defendants still may deny them recreation time anyway, leaving them to spend 24 hours a day in solitary confinement in their cells.

38. When Defendants do permit outdoor recreation time, they place those incarcerated in PBMP in outdoor cages no larger than their indoor PBMP cells. Defendants leave them in these tiny outdoor cages in the snow and in freezing temperatures, as a means of deterring them from requesting recreation time in the future.

39. Defendants also often force individuals in PBMP to trade away "privileges" such as recreation time in exchange for basic necessities. For example, if an individual in PBMP is eligible for recreation time, he may trade this for food, hygiene products, or other necessities. Thus, Defendants force individuals in PBMP to weigh their need for time outside their cell against their need for other basic human needs, such as adequate nutrition and basic hygiene.

40. Defendants further deprive individuals in PBMP of adequate food, sanitation, and personal property. Defendants serve rancid food and soapy water, frequently causing those in PBMP to become ill. Many individuals in PBMP lose substantial weight due to food-borne illnesses and small portions.

41. Defendants also fail to provide appropriate sanitation, leaving PBMP facilities filthy. They subject those being held in PBMP to black mold in their cell windows and in the showers. PBMP cells are poorly ventilated, and Defendants refuse to repair the ventilation system. Although Defendants require that those being held in PBMP to maintain clean cells,

Defendants deny them the necessary cleaning supplies to do so. In the face of these denials, Defendants force individuals to resort to other methods to keep their cells clean, including tearing up towels meant for showering to make cleaning rags.

42. Defendants also fail to control the temperature in PBMP, often leaving incarcerated individuals freezing in the winter and languishing in dangerously high temperatures in the summer.

43. Defendants routinely denigrate and humiliate individuals in PBMP, adding to their mental anguish and dehumanization. Defendants' officers strip search individuals being held in PBMP in full view of others. As part of a strip search, officers conduct both an oral and anal inspection, requiring an individual to touch his own mouth and anus to facilitate the search. To add to the humiliation, officers sometimes purposely conduct the anal inspection before the oral inspection, forcing incarcerated individuals to touch their anal cavity and then immediately touch their mouths without allowing them to wash their hands. PBMP officers have used speakers in cells to curse at incarcerated individuals and call them names. PBMP officers use an outside switch to turn lights on inside the cells to disturb incarcerated individuals, leaving them with no way to turn the light off themselves. These additional indignities, on top of the inhumane and isolating conditions, reinforce the sense of powerlessness for those who are incarcerated in PBMP.

E. Defendants deny individuals in PBMP access to adequate medical and mental healthcare.

44. In such dire conditions, access to appropriate mental health services is crucial, particularly for individuals in PBMP who suffer from serious mental illnesses. Yet, Defendants routinely deny individuals adequate, medically necessary mental health treatment.

45. Defendants fail to provide mental health care in private settings to those incarcerated in PBMP. Instead, Defendants' mental health care professionals speak with individuals across the bars of their cell in full view of other incarcerated individuals in the cell

block, often for only a few minutes at a time. This lack of privacy prevents the open conversations necessary for Defendants to provide effective care.

46. Often, Defendants fail to provide mental health care in a private setting until an individual reaches a critical point of mental distress and exhibits distressing and life-threatening symptoms, such as cutting themselves. Even in these extreme circumstances of critical need, some individuals being held in PBMP report that they are unable to access urgent mental health care, with Defendants claiming that it would be a security risk to remove them from their cell to see a provider. Defendants further impede the appropriate provision of mental health services by disciplining those held in PBMP for things they reveal during mental health treatments.

47. Defendants' provision of medical care is no better. Those held in PBMP regularly wait weeks or months to see a doctor, even for medical emergencies. Defendants often cancel regularly scheduled medical appointments or fail to transport those being held in PBMP to confirmed appointments causing incarcerated individuals to forego adequate medical care.

48. At least one individual in PBMP has lost vision because they were sprayed by Defendants with pepper spray and did not receive medical care after the incident. Others report that dentists have pulled teeth that are not supposed to be pulled when they receive dental care. Individuals in PBMP struggle to receive medical care even for severe issues, including asthma attacks, stomach ulcers, vomiting blood, infections, and severe pain.

F. PBMP serves no rehabilitative purpose.

49. PBMP not only fails to accomplish its supposedly rehabilitative purpose, it is counterproductive and regularly exacerbates the problems it purportedly seeks to address.

50. Although PBMP is intended to be completed within a defined timeframe, those who are referred and placed there frequently cycle in and out of the program for years and return to the unit over and over again with only short stints in general population. Once an individual has been placed in PBMP, they have a kind of "stain" on their record and are more likely to be returned to PBMP for minor infractions not otherwise warranting PBMP placement under

NMCD policy. Further, Defendants do not follow their own policies and arbitrarily add time onto Steps or regress individuals to previous Steps, even when incarcerated individuals have complied with all requirements.

51. With little to no actual programming or support for individuals exiting the program, the transition from solitary confinement to the general population is extremely difficult. Worse still, individuals report that Defendants release them directly from PBMP onto the street when they complete their sentences, leaving them ill-equipped to function in society after months or years in isolation. Going from isolation to a congregate setting, whether in general population or the outside world, triggers antisocial tendencies, problems interacting and living with others, issues with trust, feelings of paranoia and irritation, trouble connecting with others, and increased sensitivity to light and sound.

52. When, often as a result of prolonged isolation, these individuals struggle to meet conditions of their parole and are returned to NMCD custody, they are placed directly back into PBMP on Step 1, even if they had completed or nearly completed all of the steps prior to release.

53. Individuals who make it out of PBMP report that their time in the program exacerbated violent tendencies, because what were previously small annoyances, sounds, stressors, or social interactions now feel overwhelming, frightening, or unbearable. Additionally, some individuals learn to use fighting as a coping mechanism, because while in PBMP, fights are the only time they have physical contact with another person. Others become recluses, suffering from low self-esteem, depression and suicidal ideation after their participation in the program. And even when Defendants release individuals from PBMP, individuals struggle to engage with their own families and loved ones, because their ability to express emotion and communicate with other people has atrophied in solitary confinement.

54. To find relief from the discomfort of being around other people in general population, some individuals resort to openly violating policies in order to return to PBMP. These individuals find PBMP to be miserable and torturous but have lost the ability to function outside of the terrible conditions to which they become accustomed after years of isolation.

55. Put simply, PBMP achieves the opposite of Defendants' stated rehabilitative goals: individuals are far worse off mentally, emotionally, and physically after experiencing PBMP's devastating conditions of solitary confinement.

G. Defendants have violated Plaintiffs' constitutional rights.

56. Defendants have violated the constitutional rights of Plaintiffs GuJuan Fusilier, Mah-konce Hudson, O'Shay Toney, and those similarly situated through Defendants' imposition of unlawful conditions in PBMP.

1. GuJuan Fusilier

57. Defendants placed Plaintiff Fusilier in PBMP in February 2024, and he expects to remain there until at least January 2026. This is his second time in PBMP. In total, he spent over one third of his prison sentence in PBMP.

58. After he was placed in PBMP, Mr. Fusilier suffered additionally from inadequate nutrition and lost over 40 pounds in approximately 90 days. He made multiple medical requests related to this severe weight loss because Defendants ignored his rapid weight loss. Defendants only took his requests seriously when he became so weak he had trouble getting out of bed, and was so emaciated that his face and eyes were sunken in.

59. Mr. Fusilier was most recently on Step 3 of PBMP. Defendants have extended the amount of time he has spent on each step of PBMP by giving him unwarranted "enhancements." Defendants have also made Mr. Fusilier repeat completed enhancement time as part of a regression from Step 2 to Step 1.

60. Defendants have denied Mr. Fusilier the mental health care necessary to treat his borderline schizophrenia, severe anxiety, and PTSD. His long-term solitary confinement in PBMP has exacerbated Mr. Fusilier's mental illness. While in PBMP, he requested mental health care on a regular basis, but providers only stopped by his cell on a weekly basis, at most, spending seconds speaking to him through the bars of his cell. Although Mr. Fusilier experienced instances of mental distress while in PBMP, he was deterred from reporting it after

observing Defendants brutalize other incarcerated individuals who had raised severe mental health issues and deprive them of their property.

61. Defendants have failed to provide Mr. Fusilier with any meaningful programming or rehabilitative services while in PBMP, and they have provided him with recreation time two days a week or less. Defendants have deprived Mr. Fusilier of a watch or clock for extended periods of time, causing him to lose his sense of time while in PBMP, further contributing to his sense of disorientation and isolation.

62. Defendants have deprived Mr. Fusilier use of a phone and meaningful contact with family while in PBMP, and he has gone at least nine consecutive months without contact from his family.

63. Mr. Fusilier has suffered, and continues to suffer, lasting negative effects from his time in PBMP, including severe stress, mental anguish, and declining physical health.

2. Mah-konce Hudson

64. Defendants placed Plaintiff Hudson in PBMP in July 2024, and he expects to remain there until July 2025. This is his third time in PBMP. In total, he has spent about 4 years, or almost half of his prison sentence in PBMP and pre-PBMP segregation.

65. Defendants confined Mr. Hudson to solitary confinement conditions in pre-PBMP segregation for four months.

66. Mr. Hudson was diagnosed with PTSD in 2022 because of the trauma of Defendants holding him in conditions of long-term solitary confinement. Even though PBMP is a cause of his mental illness, Defendants refuse to provide adequate treatment. Like the other Plaintiffs, Mr. Hudson has only received brief mental health consultations from Defendants' providers when they stop by his cell.

67. Defendants have denied Mr. Hudson use of a phone and meaningful contact with his family while in PBMP and deprived him of recreation time. Defendants have forced Mr.

Hudson to go up to one year without phone privileges in PBMP, severely damaging his relationships with his friends and family.

68. In periods where he has been transferred back to general population, Mr. Hudson has struggled to adapt and feels alienated from others.

69. Mr. Hudson has suffered, and continues to suffer, lasting negative effects from his time in PBMP, including PTSD and mental anguish.

3. O'Shay Toney

70. Plaintiff Toney entered PBMP in April 2024 and expects to complete the program in January 2026 for a total of twenty-one months. In total, he has spent about five years, or half of his prison sentence, in PBMP.

71. Mr. Toney was most recently in Step 3 of PBMP. While in Step 1, he faced far greater restrictions than what is typical because he was placed on "sanctions." These sanctions included being deprived of personal property, technology, phone calls, visitation, or use of the "canteen" or commissary, leaving him without the ability to supplement the meager meals offered in PBMP. Defendants placed Mr. Toney on "sanctions" for at least four months as retaliation for his speaking out against the horrifying, unlawful conditions in PBMP. Defendants also regressed Mr. Toney to Step 1 as part of these unwarranted sanctions.

72. While in PBMP, Defendants have deprived Mr. Toney of the mental health treatment he needs to adequately treat his PTSD, anxiety, and insomnia.

73. Defendants have also deprived Mr. Toney of the medical care necessary to treat his detached retina, which was the result of being shot in the eye with a pepper spray ball. Defendants forced Mr. Toney to wait two months to receive any medical treatment after the initial incident, and he struggles to receive adequate care even after three surgeries.

74. Defendants have not offered him consistent recreation time, programming, or rehabilitative services.

75. Defendants have denied Mr. Toney use of a phone and meaningful contact with his family while in PBMP, and he has gone at least seven consecutive months without phone calls.

76. Mr. Toney remains in PBMP. He has suffered, and continues to suffer, lasting negative effects of his time in PBMP, including anxiety, social and familial detachment, and mental anguish.

V. CLASS ACTION ALLEGATIONS

A. Class

77. All Plaintiffs bring this action on their own behalf and, pursuant to Rule 1-023 NMRA, on behalf of a "Class" of all individuals who are, or will be, placed in PBMP of the NMCD. This Class satisfies the requirements of numerosity, commonality, typicality and adequacy under Rule 1-023(A). The Class action is maintainable under Rule 1-023(B)(2).

78. The Class satisfies the numerosity requirements of Rule 1-023(A)(1) because there are an estimated 200 individuals currently confined in PBMP, and 400 individuals estimated to have been confined over the last three years. The members of the Class are so numerous that joinder of all members is impracticable.

79. The Class satisfies the commonality requirement of Rule 1-023(A)(2) because there are questions of law and fact common to members of the class. These include but are not limited to:

a. Whether Defendants' operation of PBMP violates the Cruel and Unusual Punishment Clause of Article II, Section 13 of the New Mexico Constitution; and

b. Whether Defendants' operation of PBMP violates the New Mexico Civil Rights Act by depriving those incarcerated of constitutional protections guaranteed by the New Mexico Constitution.

80. Defendants are expected to raise common defenses to these claims, including denying that their actions violated the law.

81. The Class satisfies the typicality requirement under Rule 1-023(A)(3) because the Plaintiffs are typical of the class. Plaintiffs and class members are individuals confined to unconstitutional solitary confinement conditions in PBMP. Plaintiffs' claims arise from the same PBMP policies and practices and are based on the same theory of law as the Class's claims.

82. Plaintiffs satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the Class, and their interests do not conflict with the interests of members of the Class. The Class will be fairly and adequately protected by the Plaintiffs and their counsel, who are experienced in civil rights litigation, prisoners' rights litigation and complex class action litigation.

83. The Class claims are properly maintained under Rule 1-023(B)(2) because Defendants' policies, practices, actions, and omissions related to PBMP that form the basis of this complaint are common to and apply generally to all members of the class. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

B. Individuals with Serious Mental Illness Subclass

84. All Plaintiffs diagnosed with a serious mental illness bring this action on their own behalf and, pursuant to Rule 1-023 NMRA, on behalf of the "Subclass" of all individuals diagnosed with a serious mental illness who are, or will be, placed in PBMP of the NMCD. This Subclass satisfies the requirements of numerosity, commonality, typicality and adequacy under Rule 1-023(A). The Subclass actions are maintainable under Rule 1-023(B)(2).

85. The Subclass satisfies the numerosity requirements of Rule 1-023(A)(1) because there are hundreds of individuals with a serious mental illness who are currently confined in PBMP or have been confined in PBMP over the last three years. The members of the Subclass are so numerous that joinder of all members is impracticable.

86. The Subclass satisfies the commonality requirement of Rule 1-023(A)(2) because there are questions of law and fact common to members of the class. These include but are not limited to:

a. Whether Defendants' operation of PBMP violates the Cruel and Unusual Punishments Clause of Article II, Section 13 of the New Mexico Constitution;

b. Whether Defendants' operation of PBMP violates the New Mexico Civil Rights Act by depriving those incarcerated with serious mental illness of constitutional protections guaranteed by the New Mexico State Constitution.

87. Defendants are expected to raise common defenses to these claims, including denying that their actions violated the law.

88. The Subclass satisfies the typicality requirement under Rule 1-023(A)(3) because the Plaintiffs are typical of the Subclass. Plaintiffs and Subclass members are individuals with serious mental illness diagnoses confined to unconstitutional solitary confinement conditions in PBMP. Plaintiffs' claims arise from the same PBMP policies and practices and are based on the same theory of law as the Subclass's claims.

89. Plaintiffs satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the Subclass and their interests do not conflict with the interests of members of the Subclass. The Subclass will be fairly and adequately protected by the Plaintiffs and their counsel, who are experienced in civil rights litigation, prisoners' rights litigation and complex class action litigation.

90. The Subclass claims are properly maintained under Rule 1-023(B)(2) because Defendants' policies, practices, actions, and omissions related to PBMP and adequate mental health treatment that form the basis of this complaint are common to and apply generally to all members of the Subclass. Defendants have acted or refused to act on grounds generally applicable to the Subclass, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the subclass as a whole.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Injunctive and Declaratory Relief for the Named Plaintiffs and the Class Against All Defendants for Violation of Article II, Section 13 of the New Mexico Constitution

91. Plaintiffs incorporate by reference the above allegations.

92. The New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 through -13 (2021) provides that individuals may bring suits against public bodies for violations of rights established pursuant to the bill of rights of the constitution of New Mexico. NMSA 1978, § 41-4A-3 (2021).

93. Defendants are public bodies as defined in the NMSA 1978, Section 41-4A-2 (2021).

94. Article II, Section 13 of the New Mexico Constitution prohibits government entities from inflicting cruel and unusual punishment.

95. By their policies and practices described herein, Defendants violate Article II, Section 13 because they subject all Plaintiffs and the Class to cruel and unusual punishment through unconstitutional solitary confinement conditions under PBMP.

96. These unconstitutional PBMP policies and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacities, and are the proximate cause of the Plaintiffs' and the Class's ongoing deprivation of rights secured by Article II, Section 13 of the New Mexico State Constitution.

97. Defendants have been and are aware of all the deprivations complained of herein.

98. Plaintiffs and the putative class seek injunctive and declaratory relief remedying these ongoing and systematic violations.

99. Plaintiffs, upon prevailing, have a right to recover reasonable costs and attorneys' fees in pursuing this action to be paid by Defendants under NMSA 1978, Section 41-4A-5 (2021).

SECOND CAUSE OF ACTION

Injunctive and Declaratory Relief for Named Plaintiffs with Serious Mental Illness and the Subclass Against All Defendants for Violation of Article II, Section 13 of the New Mexico Constitution

100. Plaintiffs incorporate by reference the above allegations.

101. The New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 through -13 provides that individuals may bring suits against public bodies for violations of rights established pursuant to the bill of rights of the constitution of New Mexico. NMSA 1978, § 41-4A-3.

102. Article II, Section 13 of the New Mexico Constitution prohibits government entities from inflicting cruel and unusual punishment.

103. Defendants are public bodies as defined in the NMSA 1978, Section 41-4A-2.

104. By their policies and practices described herein, Defendants violate Article II, Section 13 of the New Mexico Constitution because they subject Plaintiffs diagnosed with a serious mental illness and the Subclass to cruel and unusual punishment through unconstitutional solitary confinement conditions under PBMP.

105. These unconstitutional PBMP policies and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacities, and the proximate cause of the Plaintiffs' and Subclass's ongoing deprivation of rights secured by Article II, Section 13 of the New Mexico State Constitution.

106. Defendants have been and are aware of all the deprivations complained of herein.

107. Plaintiffs and the putative subclass seek injunctive and declaratory relief remedying these ongoing and systematic violations.

108. Plaintiffs, upon prevailing, have a right to recover reasonable costs and attorneys' fees in pursuing this action to be paid by Defendants under NMSA 1978, Section 41-4A-5.

THIRD CAUSE OF ACTION

Injunctive and Declaratory Relief for the Named Plaintiffs and the Class Against All Defendants for Violation of Article II, Section 13 of the New Mexico Constitution

109. Plaintiffs incorporate by reference the above allegations.

110. The Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975) provides that "the state of New Mexico, or any official thereof, may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof." NMSA 1978, § 44-6-13 (1975).

111. Article II, Section 13 of the New Mexico Constitution prohibits government entities from inflicting cruel and unusual punishment.

112. Defendants are public bodies of the State of New Mexico subject to suit under the Declaratory Judgment Act.

113. By their policies and practices described herein, Defendants violate Article II, Section 13 because they subject all Plaintiffs and the Class to cruel and unusual punishment through unconstitutional solitary confinement conditions under PBMP.

114. These unconstitutional PBMP policies and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacities, and are the proximate cause of the Plaintiffs' and the Class's ongoing deprivation of rights secured by Article II, Section 13 of the New Mexico State Constitution.

115. Defendants have been and are aware of all the deprivations complained of herein.

116. Plaintiffs and the putative class seek injunctive relief and a declaratory judgment holding that PBMP violates the Plaintiffs' and Class's right under Article II, Section 13 to be free from cruel and unusual punishment.

FOURTH CAUSE OF ACTION

Injunctive and Declaratory Relief for Named Plaintiffs with Serious Mental Illness and the Subclass Against All Defendants for Violation of Article II, Section 13 of the New Mexico Constitution

117. Plaintiffs incorporate by reference the above allegations.

118. The Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975) provides that "the state of New Mexico, or any official thereof, may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof." NMSA 1978, § 44-6-13 (1975).

119. Article II, Section 13 of the New Mexico Constitution prohibits government entities from inflicting cruel and unusual punishment.

120. Defendants are public bodies of the State of New Mexico subject to suit under the Declaratory Judgment Act.

121. By their policies and practices described herein, Defendants violate Article II, Section 13 of the New Mexico Constitution and the New Mexico Civil Rights Act because they subject Plaintiffs diagnosed with a serious mental illness and the Subclass to cruel and unusual punishment through unconstitutional solitary confinement conditions under PBMP.

122. These unconstitutional PBMP policies and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacities, and the proximate cause of the Plaintiffs' and Subclass's ongoing deprivation of rights secured by the New Mexico State Constitution under Article II, Section 13.

123. Defendants have been and are aware of all the deprivations complained of herein.

124. Plaintiffs and the putative subclass seek injunctive relief and a declaratory judgment holding that PBMP violates the Plaintiffs' and Subclass's right under Article II, Section 13 to be free from cruel and unusual punishment.

VII. PRAYER FOR RELIEF

WHEREFORE, the named Plaintiffs and the classes they represent request that this Court grant them the following relief:

1. Declare that the suit is maintainable as a class action pursuant to Rule 1-023 NMRA and certify the proposed Class and Subclass.

2. Adjudge and declare that the acts, omissions, policies, and practices, related to PBMP, of Defendants, and their agents, employees, officials, and all persons acting in concert with them under color of state law or otherwise, described herein are in violation of the rights of Plaintiffs and the classes they represent under the Cruel and Unusual Punishment Clause of the New Mexico State Constitution, which grants state constitutional protection to the Plaintiffs and the classes they represent.

3. Permanently enjoin Defendants, their agents, employees, officials, and all persons acting in concert with them under color of state law, from subjecting Plaintiffs and the classes to the illegal and unconstitutional conditions, acts, omissions, policies, and practices set forth above.

4. Order Defendants and their agents, employees, officials, and all persons acting in concert with them under color of state law, to develop and implement, as soon as practical, a plan to eliminate the use of unconstitutional solitary confinement perpetrated under PBMP.

5. Order Defendants and their agents, employees, officials, and all persons acting in concert with them under color of state law, to develop and implement, as soon as practical, a plan to eliminate the current and substantial risk of serious harm that Plaintiffs and members of the classes suffer due to Defendants' inadequate medical and mental health care and prolonged isolation policies under PBMP.

6. Award Plaintiffs the costs of this suit, and reasonable attorneys' fees and litigation expenses pursuant to NMSA 1978, Section 41-4A-5 (2021) and other applicable law.

7. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future absent continuing jurisdiction.

8. Appoint a special master to oversee compliance with the Court's orders.

9. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: May 8, 2025

By: */s/ Lalita Moskowitz*

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Dated: May 8, 2025

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