



PC-NJ-001-001

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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----- X  
D.M., L.K., A.O. and J.W., individually, and on  
behalf of all others similarly situated,

PLAINTIFFS,

v.

WILLIAM F. FAUVER, GARY J. HILTON,  
HOWARD L. BEYER, EUGENE F. O'NEILL,  
JOHN FORKER, DR. THOMAS FARRELL,  
DR. RICHARD CEVASCO, CORRECTIONAL MEDICAL  
SERVICES, INC., AND CORRECTIONAL BEHAVIORAL  
SOLUTIONS OF NEW JERSEY, INC.

DEFENDANTS.  
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: Index No.  
: Civil 96-1840 (AET)  
: FIRST  
: AMENDED  
: CLASS ACTION  
: COMPLAINT

Plaintiffs, by their attorneys, allege as follows, upon personal belief as  
to themselves and on information and belief as to all other matters:

**PRELIMINARY STATEMENT**

1. This is a class action brought by plaintiffs on behalf of a class  
consisting of themselves and all persons who suffer DSM IV, Axis I and/or Axis II  
disorders such that they are unable to meet the functional requirements of prison life

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Exhibit A

without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections (the "Class"). The Court certified the Class in an order dated November 20, 1996.

2. The plaintiffs bring this action under 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. § 504 (the Rehabilitation Act), and 42 U.S.C. § 12132 (the Americans with Disabilities Act of 1990). Defendants William F. Fauver, Gary J. Hilton, Howard L. Beyer, Eugene F. O'Neill, John Forker, Dr. Thomas Farrell and Dr. Richard Cevasco (hereinafter, collectively referred to as "the DOC defendants") are New Jersey State government officials who are responsible for the housing, treatment services, discipline and health care for Class members within the facilities of the New Jersey Department of Corrections ("DOC"). Defendant Correctional Medical Services, Inc. ("CMS") is responsible, pursuant to a contract with DOC, for carrying out DOC's obligation to provide medical, psychological and psychiatric services to Class members. Defendant Correctional Behavioral Solutions of New Jersey, Inc., ("CBS") is responsible under a subcontract with CMS for carrying out DOC's and CMS's obligations to provide psychological and psychiatric services to Class members. Plaintiffs seek declaratory and injunctive relief to remedy the illegal and unconstitutional conditions for which the DOC defendants, CMS and CBS (collectively the "Defendants") are responsible and to which Class members are or will be subjected. Due to the highly private and personal

nature of the facts surrounding the claims of the representative plaintiffs, only their initials are used herein to protect their dignity and privacy.

3. This action arises from DOC's policies and practice of imposing punishment, rather than providing treatment, when Class members violate prison rules and regulations. Through the DOC defendants' deliberate indifference, Class members are placed in facilities referred to as disciplinary detention and administrative segregation, where they are locked in their cells for over 23 hours a day for alleged disciplinary infractions resulting from their serious mental disorders. Class members assigned to administrative segregation remain there, isolated and virtually untreated, often for years at a time.

4. Even the most hardened offenders generally are able to adjust to prison life and avoid receiving administrative segregation time. Because Class members do not receive adequate mental health care, they find it extremely difficult or impossible to comply with institutional rules, the violation of which may subject them to discipline. Class members are often sentenced to disciplinary detention and/or administrative segregation after breaking those rules. Once confined in administrative segregation, these prisoners are even less able to conform to prison rules because their mental conditions worsen. As a result, they receive additional disciplinary charges and often additional administrative segregation time, leading to a further deterioration in their mental conditions. In addition, the accrual of disciplinary sanctions ultimately

causes Class members to spend more time in prison by delaying their parole eligibility date, thus reducing the likelihood that Class members will receive parole and delaying their ultimate release date.

5. In administrative segregation, Class members have minimal contact with other prisoners or with custody staff and may leave their cell only for a daily shower and a few hours of outdoor recreation each week. The most severely mentally ill prisoners are housed on the first floor of each of the units, known as "flats." Severely depressed or delusional prisoners are stripped of clothing (except for a paper gown) and bedding, sometimes for weeks at a time. Due to their mental disorders, some Class members become increasingly unable to care for themselves, fail to shower, and smear themselves and their cells with feces and urine.

6. Defendants have equipped each of the prisons with restraining chairs to punish psychotic behavior. Defendants permit untrained officers to administer these and other mechanical means of behavioral control without adequate supervision by trained mental health personnel.

7. Defendants fail to provide Class members with constitutionally adequate and appropriate mental health care. DOC's few designated housing units for mentally ill prisoners are insufficient in number, unavailable to female prisoners altogether, and generally not available to prisoners with records of disciplinary infractions.

8. The effects of this system of punishment have been devastating to the representative plaintiffs.

- Plaintiffs A.O., D.M. and J.W. have numerous scars from suicide attempts in administrative segregation.
- Plaintiff A.O. once resorted to swallowing a belt buckle and another time set herself on fire in a desperate plea for help.
- Plaintiff J.W., a twenty-one-year-old nonviolent offender, has spent the last five years in administrative segregation. When he is charged with a disciplinary infraction, he is often placed in a dry cell without lights, without a toilet that flushes and without water.
- Plaintiff D.M., now committed to FPH, is terrified at the prospect of being returned to administrative segregation. She is fearful of the corrections officers and the other prisoners in administrative segregation.
- Plaintiff L.K. has difficulty distinguishing persons trying to help him from those trying to hurt him. His mental disorder is such that traditional sanctions do not deter his behavior.

9. The DOC defendants have known for years that a substantial number of prisoners in administrative segregation have serious mental disorders. Indeed, as long as a decade ago, the New Jersey State legislature, recognizing both the prevalence of mental illness in State prisons and the lack of adequate mental health care therein, directed DOC to make adequate and appropriate treatment available. The DOC defendants have refused to modify DOC's disciplinary policies to take mental disorders into account, to provide the Class with treatment and housing that

accommodate their needs, or to provide adequate mental health staffing to deliver meaningful treatment to the Class.

10. The DOC defendants are aware that their disciplinary policies and practices exacerbate the mental disorders of Class members. Yet they continue to abdicate their statutory obligations and to violate the constitutional rights of Class members by failing to provide them with adequate and appropriate care and treatment.

### **JURISDICTION**

11. This Court has jurisdiction over the subject matter of this lawsuit pursuant to 28 U.S.C. §§ 1331, 1343(a) and 1367(a).

12. Venue in the District of New Jersey is proper. Plaintiffs reside in the District of New Jersey, and all events relevant to this action occurred in the District of New Jersey.

### **PARTIES**

#### **Representative Plaintiffs**

13. The representative plaintiffs are citizens of the United States with serious mental disorders who are confined in New Jersey state prisons. These facilities are operated by and under the control of the DOC, CBS and CMS.

14. The representative plaintiffs are "handicapped" individuals as that term is defined in 29 U.S.C. § 706(8)(B) and 42 U.S.C. § 12102.

15. DOC receives federal financial assistance.

16. A.O. is a prisoner currently confined to Northern State Prison's administrative segregation unit for women in Newark, New Jersey. A.O. has been diagnosed by DOC psychiatrists as suffering from schizophrenia, adjustment disorder and multiple personality disorder, and she also suffers from seizures as a result of a stroke which she experienced at age fifteen. Her mental illness makes it difficult for her to control her behavior. She has received numerous disciplinary charges, including several for self-mutilation, drug overdoses and assaults on correctional staff. While housed in administrative segregation at Northern State Prison -- for over four of the last five years -- A.O. has attempted suicide or engaged in self-mutilation approximately 15 times. Although she attempted to explain the role her mental disorder played in her suicidal behavior at her disciplinary hearings, she received additional time in both disciplinary detention and administrative segregation as a result of her suicidal behavior. On several occasions, A.O.'s behavior reached an acute crisis and she was transferred to the Forensic Psychiatric Hospital ("FPH") in Trenton, New Jersey, only to be returned to administrative segregation upon release from FPH.

17. J.W. is a prisoner currently assigned to the administrative segregation unit of New Jersey State Prison in Trenton, New Jersey. Except for brief commitments to the FPH, J.W. has been in virtual isolation in administrative segregation for nearly six years, since he was 16 years old. He suffers from schizoaffective disorder, a borderline personality disorder and an antisocial personality

disorder. While incarcerated at New Jersey State Prison, J.W. has received no psychiatric or psychological treatment except for psychotropic medications. He has attempted suicide on numerous occasions, and has been committed to FPH approximately eight times. As a result of actions stemming from J.W.'s inability to control his frustration and anger at being isolated, he has on several occasions been placed by prison officials in a "dry cell" -- a cell without lights or running water from which urine and feces are removed on approximately a weekly basis -- for generally two to three weeks at a time. On other occasions, prison officials have responded to his suicide attempts by transferring him to a "strip cell", an empty cell where no clothes are permitted, or to a "restraining chair" where his hands are cuffed either to his sides or behind his back and his feet are shackled to the chair.

18. L.K. is a prisoner currently assigned to the administrative segregation unit of New Jersey State Prison in Trenton, New Jersey. He has been diagnosed with schizoaffective disorder, antisocial personality disorder, organic mood disorder, explosive personality disorder and paranoid personality disorder. As a result of his mental condition, L.K. has on several occasions struck corrections officers believing that the officers intended to harm him. Prison officials have committed L.K. to FPH on five occasions, yet have failed to provide L.K. with appropriate follow-up treatment upon his release from FPH.



19. D.M. is a prisoner currently assigned to the administrative segregation unit of Northern State Prison in Newark, New Jersey. She has been diagnosed by psychiatrists at FPH as suffering from recurrent major depression, adjustment disorder, histrionic personality disorder, borderline personality disorder and acute paranoid disorder. Since her transfer to administrative segregation, she has mutilated her arms and wrists with sharp objects on at least eight occasions and has been placed in a restraining chair and in a strip cell as punishment. She also has been committed repeatedly to FPH where she currently remains.

**Defendants**

20. Defendant William F. Fauver is the Commissioner and Chief Executive Officer of DOC and is sued herein in his official capacity. DOC is obligated under State law to provide for the custody, care, discipline, training and treatment of persons committed to State correctional institutions, N.J.A.C. 10A:1-1.1(a)(i), including the provision of constitutionally adequate psychiatric care to prisoners with serious mental illnesses. N.J.A.C. 10A:16-2.1(4)(5), 16-13.1(a). In addition, DOC is responsible for providing an environment for incarcerated persons that encourages rehabilitation and reintegration into the community. N.J.S.A. 30:1B-3(b); N.J.A.C. 10A:1-1.1(a)(2)(7). Defendant Fauver, as Commissioner and Chief Executive Officer of DOC, is responsible for determining all matters of policy and for formulating, adopting, issuing and promulgating rules and regulations for DOC institutions.

N.J.S.A. 30:1B-6(e), (g); N.J.A.C. 10A:1-2.4(a)(b). Defendant Fauver has refused to adopt or to ensure the implementation of rules, regulations and policies to provide: (1) adequate screening procedures to identify prisoners with mental disorders; (2) training for correctional officers in recognizing and dealing professionally with prisoners with mental disorders; (3) disciplinary procedures which in practice take account of the role that Class members' mental disorders play in prison infractions; (4) adequate mental health care for Class members in disciplinary detention and administrative segregation; and (5) adequate and appropriate inpatient facilities for Class members.

21. Defendant Gary J. Hilton is the DOC's Chief of Staff and is sued herein in his official capacity. He reports directly to Commissioner Fauver on all significant policy matters within DOC. Defendant Hilton has direct oversight and responsibility for creating and implementing policy with regard to the operation of DOC's prisons and the disciplinary process in those prisons. He is responsible for the living conditions in, and for the assignment of Class members to, disciplinary detention and administrative segregation. Prior to 1994, defendant Hilton served as the Assistant Commissioner for Adult Institutions, which included DOC's administrative segregation facilities.

22. Defendant Howard L. Beyer is the Assistant Commissioner, Division of Operations, of DOC pursuant to N.J.A.C. 10A:1-2.2 and is sued herein in his official capacity. See N.J.S.A. 30:1B-5(a), (b). Defendant Beyer has primary

responsibility for directing and supervising the major operational and programmatic activities for the State's prisons as well as the training of custody staff. He, along with defendants Fauver and Hilton, is responsible for both the living conditions in disciplinary detention and administrative segregation, and for the assignment of Class members to those facilities.

23. Defendant Eugene F. O'Neill is the Chief Hearing Officer for DOC and is sued herein in his official capacity. Defendant O'Neill is responsible for overseeing the individual hearing officers at New Jersey's State prisons and ensuring that DOC's disciplinary procedures are followed. Defendant O'Neill is responsible for DOC's failure to adequately supervise hearing officers and its refusal to promulgate disciplinary policies and procedures which take account of the problems of those prisoners with serious mental disorders.

24. Defendant John Forker is the Director of the Office of Institutional Support Services (O.I.S.S.) for DOC and is sued herein in his official capacity. Among defendant Forker's responsibilities is the development of health care policies for mentally ill prisoners. Defendant Forker is responsible for DOC's policy of assigning Class members to disciplinary detention and administrative segregation facilities, and for DOC's refusal to provide adequate and appropriate special housing units for Class members. In addition, defendant Forker is responsible for failing to ensure defendant CMS's compliance with the terms of its contract with DOC.

25. Defendant Thomas Farrell is the Director of Medical Services in the O.I.S.S. and is sued herein in his official capacity. Defendant Farrell has special training in clinical psychology and is responsible for formulating directives and policies for the operation of the medical programs within DOC pursuant to N.J.A.C. 10A:16-22. Defendant Farrell is also responsible for failing to ensure defendant CMS's compliance with the terms of its contract with DOC.

26. Defendant Dr. Richard Cevasco is the Director of Psychological Services for DOC, serving in the O.I.S.S., and is sued herein in his official capacity. Defendant Cevasco is a psychology consultant to DOC. As such, he provides professional review, evaluation and guidance for all DOC psychological programs and activities pursuant to N.J.A.C. 10A:16-4.1 and monitors the performance of the mental health services portion of the contract between DOC and CMS. Defendant Cevasco is responsible for failing to ensure defendant CMS's compliance with the its contract with DOC.

27. Defendant CMS is a private corporation, incorporated in Missouri, which provides health care to prisoners in prisons and jails. Defendant CMS is doing business in New Jersey and has corporate offices at 3000 Atrium Way, Mount Laurel, N.J. 08054. CMS offers "managed health care services." Managed health care is a system of health care delivery with the principal goal of reducing health care cost by imposing limits on access to non-contracted care providers. Defendant CMS

has entered into a contract with DOC, pursuant to which CMS is responsible for carrying out DOC's responsibilities to provide medical, psychological and psychiatric services for prisoners in DOC's facilities. Defendant CMS has breached its contract with DOC and, acting under color of state law, has continued DOC's practices of providing inadequate mental health care to Class members since it assumed responsibility for providing all psychiatric and psychological services to prisoners confined in DOC facilities.

28. Defendant CBS is a private corporation, incorporated in New Jersey, which provides behavioral health services to prisoners in jails and prisons. Defendant CBS has its corporate offices at 3000 Atrium Way, Mt. Laurel, NJ 08054. CBS has entered into a subcontract with defendant CMS pursuant to which CBS is responsible for carrying out defendant CMS's and DOC's responsibilities to provide mental health services to prisoners in DOC's facilities. Defendant CBS has breached its subcontract with CMS and, acting under color of state law, has continued DOC's practices of providing inadequate mental health care to Class members since its assumption on August 19, 1996 of responsibility for providing all mental health services to prisoners confined in DOC facilities.

### **CLASS ALLEGATIONS**

29. Pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure, the representative plaintiffs bring this action on their own behalf, and on

behalf of the Class, consisting of all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections.

(a) There are approximately 22,000 state prisoners incarcerated in state prison facilities managed by DOC. Numerous studies have been conducted to determine the prevalence of mental disorders among prison inmates in the United States. The most recent prevalence studies have found that between eight and nineteen percent of the total prison population have significant psychiatric or functional disabilities. See Jeffrey L. Metzner, Guidelines for Psychiatric Services In Prisons, Criminal Behavior and Mental Health, 3, 252-267 (Whurr 1993). Thus, it is estimated that there are approximately 1700 to 4100 persons in DOC facilities who have serious mental disorders. Many of these mentally ill prisoners have been, currently are, or will in the foreseeable future be, confined in DOC's disciplinary detention and/or administrative segregation facilities, often as a result of the DOC defendants' failure to modify DOC's disciplinary system to adequately address the special circumstances of mentally ill prisoners, and to provide adequate and appropriate mental health care and special needs housing. The Class is thus so numerous that joinder of all members is impracticable.

(b) The conditions, practices and omissions that form the basis of this Complaint are common to all Class members, and the relief sought will apply to all of them.

(c) The claims of the representative plaintiffs are typical of the claims of the entire Class. The representative plaintiffs and Class members all have serious mental disorders, have been, currently are, or will in the foreseeable future be confined within DOC's disciplinary detention and administrative segregation units, and are not receiving adequate mental health care and treatment or rehabilitative activities in violation of the Americans With Disabilities Act, the Rehabilitation Act, and the Eighth and Fourteenth Amendments to the United States Constitution.

(d) The representative plaintiffs are capable, through counsel, of fairly and adequately representing the Class and protecting its interests.

(e) The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications which would establish inconsistent and incompatible standards of conduct for Defendants.

(f) Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate injunctive and declaratory relief with respect to the Class as a whole.

(g) There are questions of law and fact common to Class members, including Defendants' violation of the Americans With Disabilities Act, the

Rehabilitation Act, and the Eighth and Fourteenth Amendments to the United States Constitution by (1) failing to identify prisoners with serious mental disorders; (2) punishing Class members for actions which are manifestations of their mental disorders without taking into account the role that their disorders play in the charged conduct; (3) subjecting Class to disciplinary hearings notwithstanding their incompetency to participate in such hearings; (4) placing Class members in disciplinary detention and administrative segregation units despite DOC's knowledge that the conditions of disciplinary detention and administrative segregation are counter-therapeutic and lead to the deterioration of the mental conditions of Class members; (5) failing to provide Class members with adequate and appropriate mental health treatment; (6) failing to train corrections officers to recognize the signs of mental illness and respond professionally to the special needs of Class members; (7) failing to provide adequate and appropriate special needs housing for Class members; (8) failing to enforce DOC's contract with defendants CBS and CMS; and (9) failing to perform the duties set forth in the CMS contract and the CBS subcontract.

### **FACTUAL ALLEGATIONS**

30. As set forth in paragraphs 31 through 82 below, the DOC defendants' disciplinary and behavioral control practices and procedures, administered without regard to their effect on the mental health condition of Class members, combined with Defendants' failure to provide adequate mental health care to Class



members while they are confined to administrative segregation and disciplinary detention facilities, result in intolerable suffering, deterioration in the mental health status of Class members, and the unnecessary and wanton infliction of pain.

#### **Disciplinary Process**

31. All prisoners within DOC facilities are required to abide by a series of prison rules. If a prisoner violates a rule, corrections officers must complete a Disciplinary Report and submit the report to the appropriate supervisor. N.J.A.C. 10A:4-9.1(a). In the case of "serious" offenses, the supervisor then forwards the report to the facility's Disciplinary Hearing Officer or Adjustment Committee ("hearing officers"). N.J.A.C. 10A:4-9.1(b). A prisoner so charged is entitled to a prompt hearing before a hearing officer to explain his or her version of the facts leading to the disciplinary charge. N.J.A.C. 10A:4-9.8(b); N.J.A.C. 10A-9.8(c); N.J.A.C. 10A-9.14.

32. Hearing officers, who are employees of DOC and are acting under the direction of, and pursuant to policies set by, defendants Fauver and O'Neill, may "sentence" prisoners to one or more regulatory punishments, depending on the severity of the offense, including: verbal reprimand; loss of privileges; disciplinary detention; administrative segregation; and loss of commutation time which is awarded for good behavior. N.J.A.C. 10A:4-5.1. DOC's disciplinary detention and

administrative segregation facilities house prisoners charged with or found guilty of "serious" disciplinary infractions.

33. When considering a disciplinary charge against a prisoner, hearing officers are required to make individualized determinations that take into account the circumstances surrounding the prisoner's adverse behavior, the prisoner's accountability for such behavior and the underlying reasons for the prisoner's noncompliance with prison rules. N.J.A.C. 10A:4-9.17. Despite this mandate, hearing officers routinely fail to assess the role that mental illness has played in the conduct at issue or to take the mental health status of the prisoner into account in determining either guilt or the appropriate sanction.

34. In some cases, hearing officers have acknowledged the role that a prisoner's mental disorder played in the conduct charged, but nevertheless imposed substantial sanctions anyway, including disciplinary detention and administrative segregation.

35. As a result of DOC's disciplinary procedures and practices, Class members have been punished for displaying symptoms of their disorders and for conduct over which they have no control. For example:

(a) Plaintiff A.O. has been repeatedly sentenced to disciplinary detention and administrative segregation for self-mutilation and suicide attempts.

(b) In another case which is the subject of a pending federal court lawsuit, a member of the Class alleges that he sought professional assistance because he heard voices telling him to leave the perimeter of the prison. Instead of receiving mental health treatment, the prisoner was punished with administrative segregation for planning an escape.

(c) Another prisoner incurred a series of disciplinary charges resulting in administrative segregation time after being denied his prescribed psychotropic medications for three weeks.

### **Disciplinary Detention and Administrative Segregation Facilities**

#### **Disciplinary Detention**

36. As described in paragraph 32, prisoners who are found guilty of prison infractions deemed "serious" are subject to a number of potential punishments, including disciplinary detention and administrative segregation. All DOC prisons contain disciplinary detention units. See N.J.A.C. 10A:5-1.3. In most prisons, the disciplinary detention units are separate from the general prison population. Those prisons without a separate disciplinary detention area utilize the prisoner's own cell as a disciplinary detention unit. N.J.A.C. 10A:4-10.1-10.3.

37. Disciplinary detention facilities are used to house prisoners temporarily after they have been charged with or found guilty of an infraction. N.J.A.C. 10A:4-10.1, 10.2. Prisoners may be sentenced to 15 days in disciplinary

detention for each offense, N.J.A.C. 10A:4-5.4; N.J.A.C. 10A:4-10.2, provided that the total time served does not exceed 30 days. N.J.A.C. 10A:4-5.4(a)(1); N.J.A.C. 10A:4-10.2.

38. While in disciplinary detention, prisoners are kept in isolation and are permitted to shower only once every three to four days. N.J.A.C. 10A:4-10.6. They are not permitted visitors, contact with other prisoners, telephone calls, personal possessions or to leave their cells for meals. N.J.A.C. 10A:4-10.6; N.J.A.C. 10A:4-10.13.

#### **Administrative Segregation**

39. Administrative segregation units are used for the confinement of prisoners who have been found guilty of disciplinary infractions. See 10A:5-1.3. Unlike disciplinary detention, however, prisoners can be sentenced to administrative segregation for up to a year for each disciplinary offense. N.J.A.C. 10A:4-5.1(a). Once confined to administrative segregation, it is not unusual for Class members to incur additional disciplinary charges. As a result, some Class members are confined in administrative segregation for years at a time.

40. DOC administrative segregation units are located at Northern State Prison in Newark, New Jersey, East Jersey State Prison in Rahway, New Jersey, New Jersey State Prison in Trenton, New Jersey and the Albert Wagner Youth Correctional Facility in Bordentown, New Jersey. The sole women's administrative

segregation unit is located within the men's prison at Northern State Prison. DOC has a total of approximately 1100 administrative segregation cells at these four facilities.

41. Although prisoners within administrative segregation are allowed certain privileges not permitted prisoners in disciplinary detention such as daily showers and some recreational time, the conditions in the two facilities are similar in many other ways. Like prisoners in disciplinary detention, prisoners confined in administrative segregation are left idle with minimal sensory stimulation. They are confined in small cells for all but three or four hours per week. A typical cell holds a metal bed, a mattress, a toilet, a sink and a footlocker. Some of the beds are equipped to permit custody staff to place prisoners in four-point restraints by shackling the prisoner's arms and legs to the bed. There is a narrow window in the cells for natural light at all of the facilities except for New Jersey State Prison, where the cells have no natural light at all.

42. Prisoners in administrative segregation have very little contact with other human beings. They are not permitted to work at their normal prison jobs or to attend programs or other rehabilitative and vocational activities, and they must eat all their meals alone in their cell. In addition, prisoners in administrative segregation are permitted visitors on a more limited basis than the general prison population, may not participate in organized religious services and have very limited library access. The only time they are permitted outside their cells is for a daily shower and for an

hour or two of recreation two or three times per week. Recreation generally consists of access to a small concrete yard with a basketball net.

43. Prisoners in administrative segregation have very little contact even with corrections officers. Corrections officers open and shut the cell doors using remote automatic controls and pass prisoners' meals through slots in the cell door called food ports. Likewise, medications, including psychotropic drugs are delivered through the food port.

44. In most administrative segregation units, cell doors are solid so that prisoners may speak to other prisoners only through vents or by shouting -- behavior which may lead to further disciplinary charges.

45. Prisoners in administrative segregation are completely dependent upon custody staff for every need. Some Class members must depend on corrections officers even to flush their toilets.

46. Due to their mental disorders, some Class members never leave their cells, never shower, and smear their cells with urine and feces.

#### **Effect of Administrative Segregation and Disciplinary Detention on Class Members**

47. The effects of administrative segregation and disciplinary detention on Class members are profound. Placement of prisoners with serious mental

disorders in disciplinary detention and/or administrative segregation exacerbates their underlying mental disorders, induces psychosis, and increases the risk of suicide.

48. Even when Class members are transferred to FPH -- the State institution used for the confinement of the criminally insane and certain acutely mentally ill prisoners -- they do not receive long-term psychiatric care. Instead, because of insufficient space at FPH and the lack of any other appropriate prison facilities for the treatment and housing of Class members, DOC employees, under the supervision and control of defendants Fauver, Hilton and Beyer, generally reassign Class members to administrative segregation once they are returned to the prison. Once returned to administrative segregation, Class members are not permitted to participate in rehabilitative programs, despite FPH discharge instructions that often recommend such participation. Typically, the mental condition of such prisoners further deteriorates with each return to administrative segregation.

49. Although DOC does operate designated housing units for mentally ill male prisoners at Northern State Prison and New Jersey State Prison, Class members are generally not eligible for such housing because of their disciplinary infractions. Although these designated housing units are not punitive, prisoners in these units similarly do not receive constitutionally adequate mental health care. Nor do the corrections officers who work in these units receive any special training in dealing with the mentally ill.

50. Sentencing seriously mentally ill prisoners to disciplinary detention and/or administrative detention has other adverse effects. Time spent in administrative segregation delays a prisoner's parole eligibility date because it results in the loss of commutation or "good behavior" time, N.J.A.C. 10A:9-5.3. See N.J.S.A. 30:4-123.51. In addition, disciplinary charges reduce a prisoner's chances of being paroled at all. N.J.A.C. 10A:71-3.11(b)(2), (7), (10). For example, following the failure of Riverfront State Prison to provide one prisoner with his psychotropic medications for a three-week period, the prisoner broke a number of prison rules and received administrative segregation time. Because of these disciplinary infractions, the New Jersey Parole Board then rescinded the prisoner's previously approved parole date.

51. The inability of prisoners in administrative segregation to participate in jobs and rehabilitative programs also adversely affects an individual prisoner's parole decision, N.J.A.C. 10A:71-3.11(8), (11), no matter that the failure was involuntary. The failure to participate in rehabilitative programs is often cited by the New Jersey Parole Board as a reason for denying parole to Class members who have been assigned to administrative segregation. Thus, Class members are more likely to be required to serve their maximum sentences than are other prisoners as a result of Defendants' policy of punishing rather than treating prisoners with serious mental disorders.



52. Finally, the consequences of placement in administrative segregation do not end when Class members are released from prison. Because such prisoners often serve their entire terms and are not paroled, they are unable to take advantage of the mental health services afforded parolees. Without post-release mental health services, Class members have difficulty adjusting to life outside prison, are unlikely to find employment, and, as a result, are more likely to return to prison.

**Lack of Treatment Opportunities and Inadequate Staffing**

53. The deterioration in the mental health condition of Class members caused by the isolation of administrative segregation and disciplinary detention facilities is exacerbated by Defendants' failure to provide adequate mental health care to such prisoners before, during, and after that confinement.

54. As a result of the Defendants' policies and procedures, Class members have been and will in the future be deprived of necessary mental health services in numerous ways, including, but not limited to, those identified in paragraphs 55-69 below.

55. There are insufficient resources, including professional staffing, to provide appropriate mental health care for prisoners. Despite a doubling of the general prison population since 1986 and a corresponding increase in the number of mentally ill prisoners, the DOC defendants significantly reduced psychiatric staffing at DOC facilities over the last five years. An August 1993 article in the Bergen Record

reported that at New Jersey State Prison, for example, one psychiatrist -- one of only three full-time psychiatrists employed by DOC statewide at that time -- supervised medication for about four hundred patients, a caseload that did not permit adequate time for proper monitoring of medication, let alone provision of any other treatment. Today, mental health staffing is so minimal that the professional staff must spend much of their time responding to medical emergencies, preparing parole and institutional assessments, and providing minimal monitoring of the administration of medication.

56. Inadequate professional staffing and lack of proper procedures prevent Defendants from properly identifying prisoners with serious mental disorders.

57. Inadequate staffing has and continues to cause Class members who seek access to psychiatric care to experience delays in receiving that care, causing severe harm to their mental conditions. The Department of the Public Advocate (the "Public Advocate") reported that in July 1993, for example, a prisoner in administrative segregation at East Jersey State Prison remained in his cell for three days eating his own feces. During this time, DOC did nothing to help him because the sole prison psychiatrist was away on vacation. Only after the intervention of an attorney from the Public Advocate did the prison arrange for the prisoner's commitment to FPH.

58. There is no comprehensive, systematic mental health quality assurance program in DOC's individual prisons, let alone in its administrative

segregation facilities. Consequently, errors in treatment and diagnosis are not systematically identified or corrected. Also, prison mental health staff under the supervision of Defendants do not routinely prepare mental health treatment plans, and those that are prepared are inadequate. Moreover, mental health records often lack essential elements, such as recommended action, laboratory test results and frequency of needed follow-up care. In addition, contacts between professional staff and prisoners are often not documented, and mental health records are rarely reviewed or updated because of a lack of clerical support.

59. Defendants do not maintain a current central database to track the mental health treatment and placement for even the most severely mentally ill prisoners.

60. DOC has not allocated sufficient physical facilities and resources to provide the necessary care and treatment for Class members. Due to the lack of appropriate mental health facilities within DOC prisons and a severe shortage of beds at the FPH, defendants CMS and CBS fail to commit Class members to the FPH until a Class member's condition constitutes an acute crisis. Those prisoners committed to FPH are often discharged before it is medically appropriate to do so. In addition, because of the lack of sufficient space at FPH, even an acute crisis does not always lead to a prisoner's transfer to FPH.

61. Mentally ill prisoners who are prematurely discharged from FPH and returned to administrative segregation often suffer from renewed psychosis or some other form of psychological deterioration. For example, the Public Advocate reported in a letter to defendant Beyer, dated April 5, 1994, that in late November 1993 a member of the Class confined in East Jersey's administrative segregation facility set himself on fire, suffering third-degree burns over thirty percent of his body. He required hospitalization in a burn unit for many months. Upon release from the burn unit, the prisoner, who suffered from severe schizophrenia, was nonetheless returned to administrative segregation where he remained, incoherent, severely mentally ill, in a cell especially designed to prevent him from setting additional fires, for nearly three years until he completed his term. It was only at that time -- when he was to be released to the community -- that the prisoner was committed to FPH, where he currently remains.

62. DOC's facilities for female Class members are even more inadequate than those afforded male Class members. Despite the fact that a substantial number of the women in administrative segregation at Northern State Prison have serious mental disorders, Edna Mahan Correctional Facility ("EMCF") -- DOC's only women's prison -- does not have a designated housing unit for mentally ill female prisoners. Thus, although plaintiff D.M.'s mental health needs are such that she is similarly situated to the male prisoners with mental disorders housed in designated

housing units at Northern State Prison and New Jersey State Prison, she was assigned to general population at EMCF, rather than to a designated housing unit. While assigned to the general population, she incurred disciplinary charges, was transferred to administrative segregation, and experienced a devastating deterioration in her mental health condition. Were EMCF to establish a designated unit, some of the mentally ill women currently confined in administrative segregation cells could be diverted to more appropriate and therapeutic housing. Defendants are aware of the need for designated housing for female Class members but have deliberately failed to take the necessary steps to establish an appropriate long-term alternative to administrative segregation.

63. The dearth of outpatient therapy or other appropriate services for Class members contributes to their psychological deterioration. Defendants' failure to plan and budget for outpatient mental health services is inconsistent with proven, acceptable mental health practices in the community and in other prison systems.

64. The mental health care available to Class members in administrative segregation and disciplinary detention consists almost exclusively of psychotropic medication — medication which, by acting on the mind, is intended to treat the symptoms of mental illness. Even this limited treatment, however, is provided in an inadequate manner. Defendants CMS and CBS and employees subject to their supervision and control fail to explain either the necessity or side effects of psychotropic medications to Class members. Many prisoners receiving such medication

therefore refuse it either because of the medication's side effects, or out of fear that the medication will render them vulnerable to other prisoners and corrections officers. The serious, oftentimes painful and potentially fatal side-effects of psychotropic medications are exacerbated by defendants' CMS's and CBS's failure to adequately monitor the administration of medication to ensure that Class members are correctly taking their prescribed medications and that the medications are having their intended effect.

Although many side effects of psychotropic medications may be successfully prevented or treated with medication, A.O., L.K., J.W. and D.M. have not received the proper medications in appropriate dosages to offset these adverse effects. Because of the lack of an effective quality assurance program with respect to mental health care, as well as insufficient staffing, the problems that Class members experience in taking psychotropic medications frequently go undetected and uncorrected.

65. Defendants also fail to make appropriate psychotropic medications available to Class members. In October 1995, for instance, psychiatrists at FPH determined that plaintiff A.O. should be treated with Clozaril, a medication which the FDA has approved for the treatment of schizophrenia. However, because Northern State Prison does not stock Clozaril, the FPH staff decided not to begin a therapy which could not be continued upon A.O.'s return to the prison. A.O. was thereby deprived of appropriate mental health care treatment. Defendant CBS likewise does not include Clozaril on its list of available medications for Class members. More broadly,

defendant CBS has recently begun changing Class members' medications by substituting less expensive drugs, despite the fact that these cheaper drugs are less effective, are associated with greater side effects, and are therefore less safe than the drugs formally used.

66. Unnecessary deaths and injuries occur because of the absence of sufficient staff and adequate practices to identify and monitor Class members who are at risk of committing suicide. Prisoners kept in isolation attempt to commit suicide at a significantly higher rate than prisoners in the general prison population. Defendants Fauver, Hilton, Beyer, Forker, Farrell and Cevasco have failed to take necessary and appropriate measures to prevent suicide attempts among prisoners in administrative segregation and disciplinary detention, including providing corrections officers with adequate training in the area of suicide prevention and providing a physically safe environment for prisoners at risk of suicide.

67. Inadequate and improper policies and practices, adopted by Defendants, are used by DOC custody staff to restrain Class members in either strip cells or mechanical restraints such as restraining chairs and so-called "four point" restraints. The decision to so restrain Class members is often made by prison administrators and custody staff, sometimes without adequate input by mental health professionals. As a result, the mental health of these prisoners is not adequately considered in this decision. The use of such restraining devices often results in the

further deterioration of the already fragile mental conditions of Class members. An inmate in administrative segregation at East Jersey State Prison, for example, had a history of self-mutilating behavior. He was placed in a restraining chair for four hours on April 5, 1995, after which he was returned to his administrative segregation cell. He proceeded to tear out his eyeball and throw it at a corrections officer.

68. Defendants Fauver, Hilton and Beyer have also failed to adequately train corrections officers to recognize the signs of mental illness among prisoners in the general population as well as in disciplinary detention and administrative segregation. Custody staff assigned to disciplinary detention and administrative segregation facilities do not receive any special training, despite the high concentration of mentally ill prisoners in these facilities. The failure to train corrections officers on how to respond appropriately to prisoners whose mental disorders cause them to engage in extremely bizarre and uncontrolled behaviors places Class members in jeopardy of physical and verbal abuse from the officers. In addition, their lack of training leaves corrections officers unable to determine which prisoners are in urgent need of psychiatric assistance. Consequently, Class members often do not receive any mental health attention until they have suffered further psychological or physical injury.

69. As a result of Defendants' deliberate indifference to these deficiencies in mental health treatment, staffing, training and housing, as well as the



conditions of isolation and sensory deprivation in disciplinary detention and administrative segregation facilities, Class members presently suffer unnecessary physical pain, mental anguish and temporary or permanent exacerbation of their mental disorders while confined in administrative segregation and disciplinary detention.

**DOC's Abdication of Responsibility for Medical Care to CMS**

70. On July 2, 1995, DOC issued an advertised bid proposal to privatize medical, dental, psychiatric and psychological services provided to prisoners incarcerated in DOC-operated facilities. A copy of the portion of the proposal relating to mental health services is attached hereto as Exhibit A. Defendant CMS submitted its bid on September 29, 1995, which DOC accepted. A copy of the portion of the bid relating to mental health services is attached hereto as Exhibit B.

71. The advertised bid proposal and CMS's bid proposal together comprise the contract ("CMS contract") pursuant to which defendant CMS is providing health care services. DOC agreed to pay defendant CMS approximately \$62.4 million per year for a three-year contract.

72. DOC's purpose in privatizing medical services was to reduce DOC expenditures on health care for prisoners. In a press release issued on November 28, 1995, by DOC, defendant Fauver and Governor Christie Whitman announced that the contract with defendant CMS would result in an annual savings of \$20 million. Defendant Fauver and Governor Whitman also announced that under the CMS contract,

DOC would reduce annual health care expenditures per prisoner from about \$3,800 to \$2,800.

73. The formula for determining defendant CMS's compensation is based on the number of prisoners housed in state correctional facilities, regardless of the amount of or cost of the medical, dental, psychological and psychiatric services which defendant CMS provides. Thus, under the managed care CMS contract, CMS's profit is increased by providing the least expensive services to DOC prisoners, including Class members.

74. The CMS contract obligates CMS to provide extensive services to Class members, including the following, which are set forth in full in Exhibits A and B:

- (a) psychiatric evaluations of every prisoner housed in administrative segregation and disciplinary detention within three days of their arrival and afterwards, every ten days;
- (b) psychiatric evaluations of prisoners within 24 hours of the onset of their exhibiting unusual behavior;
- (c) psychiatric and psychological crisis care and prompt referrals of prisoners requiring greater care than the State correctional facilities are able to offer;

- (d) psychiatric monitoring of prisoners receiving psychotropic medication;
- (e) psychological evaluation within 24 hours of prisoners with difficulties adjusting to prison or who request psychological services;
- and
- (f) psychological case management, including therapy and crisis care, for mentally ill prisoners.

75. Defendant CMS subcontracted certain of the responsibilities described in paragraph 74 to CBS for approximately \$376,341 per month ("the subcontract").

76. Defendants CMS and DOC entered into the CMS contract with the intention that Class members would benefit from the services which CMS agreed to provide. Class members are also the intended beneficiaries of the CBS subcontract.

77. On April 27, 1996, defendant CMS began providing medical and psychiatric services to Class members, pursuant to the CMS contract. The takeover of psychological services by defendant CMS and defendant CBS occurred on August 29, 1996.

78. Since defendant CMS assumed responsibility for prisoners' medical and psychiatric care, defendant CMS has failed to perform the functions

required by the CMS contract and specifically, the functions described in paragraph 74, supra.

79. Since defendant CBS assumed responsibility for prisoners' medical and psychiatric care, defendant CBS has failed to perform the functions required by the CMS contract, the subcontract, and specifically, the functions described in paragraph 74, supra.

80. The privatization of mental health services has not remedied the grossly inadequate mental health care which Class members receive in large part because defendants CMS and CBS have continued DOC's practice of failing to provide adequate mental health professional staff. At New Jersey State Prison, for example, a single psychiatrist is responsible for providing all psychiatric care for all mentally ill prisoners housed in the prison's approximately 2000 bed facility, all while working just half the time of a full-time employee. He reported that the prison required four times the current psychiatric coverage to provide adequate care.

81. As a result of defendants CMS and CBS's failure to provide sufficient professional mental health staff, Class members remain incarcerated in administrative segregation without access to essential mental health treatments. Defendants CMS and CBS are unable to even identify prisoners receiving treatment or those in need of treatment, much less provide the necessary care. Consequently, grossly

psychotic and dysfunctional Class members have been all but abandoned by the skeleton staff of mental health professionals now employed by defendants CMS and CBS.

82. Despite the obvious failure of defendants CMS and CBS to perform the mental health services required under their respective agreements, defendants Fauver, Hilton, Beyer, Forker and Farrell have failed to take the necessary measures to enforce these agreements to ensure that Class members receive the services promised by the advertised bid proposal and CMS's proposal as well as those services that are constitutionally required.

**Defendants' Awareness and Deliberate Indifference to the Inadequacies in DOC's Disciplinary Process and Mental Health Care With Regard to Prisoners With Serious Mental Disorders**

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83. The DOC defendants are aware that Class members' mental disorders are exacerbated by placing them in administrative segregation and disciplinary detention. Despite this knowledge, the DOC defendants and State employees under their supervision continue to place such prisoners in those facilities, sometimes for years at a time.

84. DOC defendants are also aware that DOC's disciplinary process fails to take account either of the role a prisoner's mental disorder plays in a given infraction or whether the prisoner is competent to understand the infraction charged. In August 1993, a prisoner at New Jersey State Prison filed a Petition for Rulemaking pursuant to N.J.A.C. 10A:1-1.2. The Petition sought an amendment to the rules

governing prisoner discipline. N.J.A.C. 10A:4-9.15. The proposed amendment provided that where an prisoner is charged with a disciplinary infraction while under the care of a psychologist or psychiatrist or the prisoner has been placed in an observation cell as a result of alleged misconduct, the treating physician must report to the hearing officer as to: (1) the prisoner's competency, i.e., whether the prisoner's current mental status precludes participation in the disciplinary process; (2) whether the prisoner's mental status contributed to the alleged disciplinary offense; and (3) whether the prisoner's mental disorder contraindicates any particular form of punishment.

85. Defendant Fauver, following consultation with defendants Hilton, Beyer, O'Neill, rejected the Petition in its entirety on October 18, 1993.

86. The Public Advocate, on numerous occasions during 1993 and 1994, brought to the attention of defendants Fauver and Beyer DOC's failures with regard to the provision of adequate mental health care for prisoners in New Jersey's state prisons.

87. In 1994, the Public Advocate, through the Office of Inmate Advocacy and the Division of Mental Health Advocacy, informed defendants Fauver, Hilton and Beyer of the special problems of mentally ill prisoners in administrative segregation. In a report dated April 5, 1994, which is annexed hereto as Exhibit C, the Public Advocate asserted that approximately one-third of the prisoners housed in administrative segregation units were mentally ill, in need of psychiatric treatment, and

had been punished and placed in isolation for displaying symptoms of their illness. The report also noted that DOC had failed to train corrections officers to recognize the signs of mental illness and to respond to those needs.

88. Defendants Fauver, Hilton and Beyer received the report described in paragraph 87, supra. Defendants failed to correct any of the reported inadequacies concerning the punishment and treatment of mentally ill prisoners confined in administrative segregation.

89. On April 5, 1994, Susan Remis Silver, the director of the Office of Inmate Advocacy, informed defendant Beyer by letter:

"Unfortunately, neglect of the mentally-ill inmates in the ACSU [Administrative Close Segregation Unit] has continued to be a serious problem without any improvement in the conditions. Our investigation has revealed that, in many cases, inmates are not being screened to determine a need for hospitalization. Nor are inmates provided with even minimal mental health care. Since only a few hospital beds exist in the Forensic Psychiatric Hospital for the entire population of mentally ill inmates in ACSU (as well as other prisons) the prison psychiatrists are not hospitalizing even severely ill patients. The result of this has been inmate injury and death."

A copy of the letter, which is annexed hereto as Exhibit D, was forwarded to defendant Fauver.

90. In a subsequent meeting on May 24, 1994, between Ms. Silver and defendant Beyer, defendant Beyer acknowledged the existence of many of the problems outlined in Ms. Silver's letter of April 5, 1994. Nevertheless defendants

have never implemented any of the proposals relating to the punishment and treatment of mentally ill prisoners set forth in Exhibits C and D to this Complaint.

91. On July 1, 1994, the New Jersey state legislature abolished the Public Advocate's office, including the Office of Inmate Advocacy and the Division of Mental Health Advocacy. There is currently an Inmate Advocacy Unit in the Office of the Public Defender. However, its attorney is not permitted to bring litigation concerning the punishment and treatment of mentally ill prisoners. See N.J.S.A. 2A:158A-7(n); N.J.S.A. 52:27E-50 et seq.

92. Defendants, with the exception of defendant O'Neill, are aware that Class members are not receiving appropriate mental health services. Defendants, with the exception of defendant O'Neill, are aware that Class members suffer unnecessarily from the untreated or poorly treated symptoms of their mental illnesses.

### **CAUSES OF ACTION**

#### **I.**

#### **Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth Amendments to the United States Constitution**

93. Plaintiffs repeat and reallege paragraphs 1 through 92 above as if the same had been set forth herein.

94. By their policies, practices and acts, Defendants have with deliberate indifference violated the rights of Class members to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the



United States Constitution. These policies and practices established and permitted by Defendants violate 42 U.S.C. § 1983 as follows:

- (a) Class members are subjected to disciplinary hearings even if they are incompetent to participate in such hearings;
- (b) Class members have been punished for actions for which they were not responsible due to mental illness;
- (c) DOC hearing officers have punished Class members without obtaining an assessment from their mental health care providers to determine the role that their mental disorders played in the charged behavior;
- (d) Class members are placed in administrative segregation units despite DOC's knowledge that the conditions of administration are counter-therapeutic and lead to the deterioration of Class members' mental conditions;
- (e) the Defendants fail to provide adequate mental health treatment to Class members while they are housed in either disciplinary detention, administrative segregation or within the general prison population.

## II.

### Violation of the Americans with Disabilities Act of 1990

95. Plaintiffs repeat and reallege paragraphs 1 through 94 above as if the same had been set forth herein.

96. Defendants have discriminated against Class members in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 by: (a) failing to reasonably accommodate Class members' handicaps by not providing adequate mental health care; (b) adjudicating disciplinary charges without reference to relevant mental health records; (c) adjudicating disciplinary charges without regard for the competency of Class members; (d) denying Class members access to mental health treatment, prison jobs and rehabilitative programs; and (d) deducting commutation time from Class members.

### **III.**

#### **Violation of Section 504 of the Rehabilitation Act of 1973**

97. Plaintiffs repeat and reallege paragraphs 1 through 96 above as if the same had been set forth herein.

98. Defendants have discriminated against Class members in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987 by (a) failing to reasonably accommodate Class members' handicaps; (b) not providing adequate mental health care; (c) adjudicating disciplinary charges without reference to relevant mental health records; (d) adjudicating disciplinary charges without regard for the competency of Class members; (e) denying Class members access to mental health treatment, prison jobs and rehabilitative programs; and (f) deducting commutation time from Class members.

**IV.**

**Sex Discrimination in Violation of the Fourteenth  
Amendment to the U.S. Constitution**

99. Plaintiffs repeat and reallege paragraphs 1 through 98 above as if the same had been set forth herein.

100. Defendants have discriminated against plaintiff D.M. and other female Class members because of their sex in violation of the rights guaranteed under 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment.

**V.**

**Violation of the Due Process Clause of the Fourteenth Amendment**

101. Plaintiffs repeat and reallege paragraphs 1 through 100 above as if the same had been set forth herein.

102. Defendants have violated Class members' due process rights under the Fourteenth Amendment by: (a) failing to ensure that Class members are mentally competent to participate in disciplinary hearings; (b) sentencing Class members to administrative segregation and disciplinary detention without examining the role that their mental disorders played in the charged conduct; and (c) confining Class members to administrative segregation, often for years at a time.

**VI.**

**Breach of Contract, Pursuant to N.J.S.A. 2A:15-2**

103. Plaintiffs repeat and reallege paragraphs 1 through 102 above as if the same had been set forth herein.

104. Defendant CMS has breached its contract with DOC by failing to provide the mental health services required by the contract, thereby causing injury to plaintiffs and Class members, who are intended third-party beneficiaries of the contract.

**VII.**

**Breach of Contract, Pursuant to N.J.S.A. 2A:15-2**

105. Plaintiffs repeat and reallege paragraphs 1 through 106 above as if the same had been set forth herein.

106. Defendant CBS has breached its subcontract with CMS by failing to provide the mental health services required by the subcontract, thereby causing injury to plaintiffs and Class members, who are intended third-party beneficiaries of the subcontract.

**PRAYER FOR RELIEF**

107. Class members have no adequate remedy at law to redress the wrongs set forth in this Complaint. Class members have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and

practices of the Defendants as alleged herein, unless they are granted the relief they request.

108. Wherefore, plaintiffs request that this Court grant them the following relief:

(a) adjudge and declare that the acts, omissions, policies, and practices of the Defendants with regard to Class members violate 42 U.S.C. § 1983; the Eighth and Fourteenth Amendments to the United States Constitution; the Rehabilitation Act, 29 U.S.C. § 794; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132;

(b) enjoin Defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, from continuing the unconstitutional and illegal acts, conditions, and practices described in this Complaint;

(c) order Defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, to take all necessary actions to: (1) conduct a mental disorder prevalence study to determine the numbers and mental health needs of prisoners with serious mental disorders; (2) conduct comprehensive mental health screening examinations upon an prisoner's entry into DOC's custody to identify effectively those prisoners in need of mental health care; (3) establish and implement, both at the institutional and system-wide level, a

continuous quality improvement program with respect to the provision of mental health care; (4) provide Class members in administrative segregation with adequate mental health care, including, but not limited to, effective and appropriate psychotropic medications free of charge; (5) provide the most seriously mentally ill Class members, who require more intensive mental health care than could realistically be provided within administrative segregation, with adequate mental health treatment in a special housing unit dedicated solely to mental health use; (6) mandate mental health evaluation of Class members charged with disciplinary infractions to determine whether such prisoners are capable of undergoing DOC's disciplinary process, responsible for the charged conduct, and whether the Class member's disciplinary sentence should be mitigated as a result of his or her mental disorder; (7) cease punishing Class members for exhibiting symptoms of their mental disorders; (8) teach DOC corrections officers during pre-service and in-service training programs to recognize the signs and symptoms of mental illness and to prevent suicides, and to provide advanced training to corrections officers assigned to medical, mental health and high risk settings, including disciplinary detention and administrative segregation facilities, in suicide prevention and in the management of mentally ill prisoners; (9) adequately supervise DOC corrections officers to prevent recurrences of active abuse of prisoners by such officers; (10) take necessary and appropriate measures to prevent suicide attempts among Class members in disciplinary detention and administrative segregation, including providing

corrections officers with suicide prevention training, providing a physically safe environment for potentially suicidal Class members and providing adequate and appropriate mental health care to those Class members; (11) conduct a retrospective review of the records of Class members currently housed in administrative segregation to ensure that those prisoners are not being disciplined for offenses attributable to their mental illnesses; and (11) provide the services set forth in the advertised bid proposal, the CMS contract and the CBS subcontract with respect to mental health care.

(d) retain jurisdiction in this case until the unlawful and unconstitutional conditions and practices as alleged herein no longer exist and the Court is satisfied that they will no longer occur;

(e) grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and

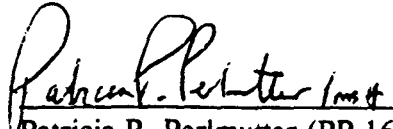
(f) grant any other relief that the Court deems just and proper.

Dated: June 23, 1997

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