

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Jane Doe, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Civil Action No. _____
	)	
v.	)	
	)	
Deval L. Patrick, Governor of the Commonwealth of Massachusetts; Massachusetts Department of Correction; Luis S. Spencer, Commissioner of the Massachusetts Department of Correction; and Lynn Bissonnette, Superintendent of the Massachusetts Correctional Institution at Framingham,	)	
	)	
Defendants.	)	
	)	

**CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. Jane Doe<sup>1</sup> (“Plaintiff”) brings this lawsuit on behalf of herself and all others who are or will be imprisoned at the Massachusetts Correctional Institution at Framingham (“MCI-Framingham”) solely because they have been civilly committed under Chapter 123, Section 35 of the Massachusetts General Laws (“Section 35”). These women are not being held because they have been charged with or convicted of any crime. They are committed solely for the explicit statutory purpose of Section 35: “inpatient care” of individuals at risk of “serious harm” resulting from their addiction.

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<sup>1</sup> Jane Doe is a pseudonym. Plaintiff’s motion seeking leave to proceed pseudonymously is forthcoming.

However, women sent to MCI-Framingham are not provided with “inpatient care.” They are put through a brief detoxification, and then they are simply incarcerated.

2. The staff at MCI-Framingham, from the Superintendent to the guards, treat women civilly committed under Section 35 as ordinary prisoners. Upon admission, the civilly committed women are required to sit on a body orifice security scanner chair to detect metal objects concealed in body cavities. They must submit to a strip search, which includes a visual inspection of their oral, anal, and vaginal cavities. Their personal property is taken from them. They are issued prison uniforms. Once confined, they are housed with women awaiting trial on criminal charges. They are subject to pat searches conducted by guards and cell “shakedowns.” They must stand by their bunk for regular “counts” four times a day, starting at 6 A.M.

3. Indeed, women civilly committed under Section 35 have less freedom than other prisoners confined at MCI-Framingham. Unlike convicted criminals and pretrial detainees, civilly committed women at MCI-Framingham are allowed outside for no more than 15 hours per week and, even then, only have access to a small, gravel-lined caged space, which often is not shaded. They cannot visit the library, pray at the chapel, or participate in most recreational programs or organized activities.

4. Civilly committed women are barred from participating in the prison’s substance abuse treatment programs. Following detoxification, treatment is available *only* to women being held at MCI-Framingham because they have been charged with or convicted of crimes.

5. The imprisonment of women civilly committed to MCI-Framingham

amounts to the criminalization of addiction, unnecessarily stigmatizing those who have an urgent medical need. Placing civilly committed women in prison, rather than an appropriate treatment facility, is traumatic and incompatible with professional judgment regarding the treatment of people with the disease of addiction. It occurs only because Massachusetts has chosen not to establish an adequate number of treatment beds in community facilities to meet the needs of civilly committed women.

6. Massachusetts is the only state in the country that imprisons people for drug or alcohol addiction. As Governor Patrick has recognized, “treating those with substance abuse as prisoners is wrong.”<sup>2</sup> It is also illegal. Treating Plaintiff and the other members of the proposed class (the “Class”) as criminals instead of as people with a disability requiring professional inpatient care violates their right to substantive due process, guaranteed by the Constitutions of the United States and the Commonwealth, and their rights under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”) and Massachusetts law to be free from discrimination.

7. For over two decades, multiple governmental advisory panels have recommended terminating the policy of incarcerating individuals committed under Section 35, yet Defendants have failed to act on any of those recommendations.

8. This class action seeks declaratory and injunctive relief prohibiting Defendants from continuing the unlawful practice of confining women civilly committed solely under Section 35 at MCI-Framingham and requiring Defendants to provide these

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<sup>2</sup> Governor Deval L. Patrick, Remarks at Reform, Re-entry and Results: Change and Progress in the Massachusetts Criminal Justice System (Feb. 20, 2014), *available at* <http://www.mass.gov/governor/pressoffice/speeches/0220-re-entry-forum-remarks.html>.

individuals with “care and treatment of alcoholism or substance abuse” in a Department of Public Health (“DPH”) licensed facility in the community, as required by Section 35.

### **JURISDICTION & VENUE**

9. This Court has jurisdiction over Plaintiff’s federal and state law claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

10. Plaintiff is entitled to declaratory and other relief deemed necessary and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District.

### **THE PARTIES**

12. Plaintiff Jane Doe has suffered from substance abuse addiction for multiple years. She was civilly committed to MCI-Framingham under Section 35 in June 2014. Ms. Doe was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Complaint. Ms. Doe is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

13. Defendant Deval L. Patrick is the Governor of the Commonwealth of Massachusetts. Defendant Patrick maintains an office at the Massachusetts State House, Office of the Governor, Room 105, Boston, Massachusetts 02133. Defendant Patrick is sued in his official capacity.

14. Defendant Massachusetts Department of Correction (“DOC”) is an executive department of the Commonwealth of Massachusetts. It is a “public entity”

within the meaning of the ADA. *See* 42 U.S.C. § 12131(1).

15. Defendant Luis S. Spencer is the DOC Commissioner. By statute, Defendant Spencer is designated responsible for the administration of all correctional facilities in Massachusetts. *See* Mass. Gen. Laws ch. 124, § 1. Defendant Spencer maintains an office at DOC Central Headquarters, 50 Maple Street, Suite 3, Milford, Massachusetts 01757. Defendant Spencer is sued in his official capacity.

16. Defendant Lynn Bissonnette is the Superintendent of MCI-Framingham. By statute, Defendant Bissonnette is designated “responsible for the custody and control of all prisoners” in MCI-Framingham. Mass. Gen. Laws ch. 125, § 14. Under DOC policy, she is “ultimately responsible for the overall functioning of the institution.” 103 DOC 101.01 (October 2013). Defendant Bissonnette maintains an office at MCI-Framingham, 99 Loring Drive, P.O. Box 9007, Framingham, Massachusetts 01701. Defendant Bissonnette is sued in her official capacity.

### **CIVIL COMMITMENT UNDER SECTION 35**

#### ***A. Statutory Framework of Section 35***

17. Section 35 allows certain individuals to petition a district or juvenile court for the civil commitment of anyone whom the petitioner alleges is addicted to alcohol or a controlled substance and who allegedly presents a risk of danger to himself or herself or others due to his or her addiction. Mass. Gen. Laws ch. 123, § 35.

18. Section 35 defines a substance abuser or alcoholic as a person who “chronically or habitually” uses controlled substances or alcohol to the extent that “such use substantially injures his health or substantially interferes with his social or economic functioning . . . or . . . he has lost the power of self-control over the use of” controlled

substances or alcohol. *Id.*

19. If a court finds, after a hearing and medical examination, that the individual is an alcoholic or substance abuser and that “there is a likelihood of serious harm as a result of the person’s alcoholism or substance abuse,” then the court may order the individual to be civilly committed. *Id.* The statutory period of commitment can be up to 90 days. *Id.*

20. Section 35 directs that these individuals shall receive “inpatient care in public or private facilities approved by [DPH] under [C]hapter 111B for the care and treatment of alcoholism or substance abuse.” *Id.* If “suitable facilities” under Chapter 111B are unavailable, the statute authorizes the civil commitment of women to MCI-Framingham. *Id.*

21. DPH has failed to establish a sufficient number of “suitable facilities” to provide care and treatment to women committed under Section 35. As a result, since 2011, more than 540 civilly committed women have been incarcerated at MCI-Framingham.

***B. DPH Mandates for the Care of Section 35 Commitments***

22. Chapter 111B of the Massachusetts General Laws requires DPH to establish a statewide program for the treatment of persons who are alcoholics. Mass. Gen. Laws ch. 111E, § 7 requires similar services for individuals with substance abuse disorders.

23. All facilities established under these statutes must be licensed or approved by DPH and comply with DPH minimum standards as set forth in 105 Code of

Massachusetts Regulations (“CMR”) 164.001 *et seq.* These standards require that each resident receive an individualized treatment plan and at least four hours of treatment per day. 105 CMR 164.073-.074.

24. Although each facility must have policies for managing disruptive behavior, “physical restraint[] in any form” is prohibited. 105 CMR 164.078(C). Each facility must also guarantee its client certain minimum rights, including the “freedom from strip searches and body cavity searches.” 105 CMR 164.079(B)(2).

25. Under its statutory authority, DPH funds High Point, a private vendor, to provide services for women civilly committed under Section 35 at the Women’s Addiction Treatment Center (“WATC”) in New Bedford, Massachusetts. WATC has approximately 90 beds.

26. The program operates acute treatment service beds for detoxification, “step-down” beds for those with less acute treatment needs, and transitional beds for those who have finished their commitment and choose to voluntarily stay until being placed in a half-way house. WATC is staff-secured, but not locked.

27. Every day, women committed at WATC are offered a variety of treatment and recovery options.

28. They are provided with substance abuse treatment programs throughout each day and into the evenings. These include individual and group counseling, family support and education, 12-step programs, trauma awareness, coping skills, and aftercare planning.

29. WATC also provides related programming on issues including relapse

prevention, relationships, HIV awareness, domestic violence, nutrition, self-help, and recovery.

30. Women committed at WATC meet with a case manager every day; most case managers have a master's degree in social work or are licensed alcohol and drug counselors. Case management includes planning, goal development, and family unification services. Case managers facilitate referrals for physical and mental health care, legal issues, and vocational and educational needs.

31. WATC staff members assist women in transitioning to residential rehabilitation sites and discharge services.

32. During detoxification, women committed at WATC are provided with the full range of treatment protocols and medication, including methadone, Suboxone (buprenorphine and naloxone), or Vivitrol (naltrexone), based on individualized assessments.

33. Following detoxification, women committed at WATC live in four-person rooms and are allowed to personalize their spaces and have personal items.

34. During the initial stages of their stay, women are expected to remain within the facility and its outdoor patio area. Subsequently, they may be entitled to leave the facility during the day for volunteer work and other activities in the community.

***C. MCI-Framingham***

35. MCI-Framingham is the most secure prison for women in Massachusetts. It is not designed, equipped, or staffed to serve as a treatment facility for individuals with

addiction.<sup>3</sup>

36. The oldest female correctional institution operating in the United States, MCI-Framingham holds women awaiting trial or sentencing, as well as women serving sentences for serious crimes, including murder.

37. It is surrounded by high walls, two chain-link fences topped with razor wire, and armed guards who monitor the perimeter.

38. Although Mass. Gen. Laws ch. 125, § 16 requires that the DOC maintain at MCI-Framingham “a facility for the treatment and rehabilitation of alcoholics, subject to the approval of [DPH] under the provisions of [C]hapter [111B],” no such facility has been established.

39. Instead, women sent to MCI-Framingham solely due to civil commitment under Section 35 (sometimes called “straight civils”) are housed in the same facility with and treated like prisoners.

40. When women civilly committed under Section 35 first enter MCI-Framingham, they are subject to the same intake procedures as convicted prisoners and pretrial detainees.

41. These procedures include sitting on a body orifice security scanner chair to detect metal objects concealed in body cavities, a strip search, and a visual search of oral, anal, and vaginal cavities.

42. Their personal property is taken from them, and they are issued prison uniforms.

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<sup>3</sup> Commonwealth of Mass., Dep’t of Corr. Advisory Council, *Final Report 5* (2005).

43. Detoxification services for all prisoners at MCI-Framingham are provided in the infirmary unit. During detoxification, women civilly committed under Section 35 are placed in cells with pretrial detainees.

44. The infirmary has one cell with five beds and an open toilet—which is visible not only to cellmates, but also from the nurses' station and the hall—and a number of two- and three-person cells with an open toilet in the cell and windows to the hallway, affording little privacy.

45. The infirmary unit follows the DOC treatment protocols for opioid, benzodiazepine, and alcohol detoxification.

46. Consequently, the medications available to individuals going through detoxification at MCI-Framingham are very limited, unlike at DPH facilities.

47. For example, for women suffering from heroin withdrawal, MCI-Framingham provides only over-the-counter medication such as acetaminophen, ibuprofen, Tums, and Imodium,<sup>4</sup> rather than drugs federally-approved for use in the treatment of opioid addiction, such as methadone, Suboxone, or Vivitrol. 42 C.F.R. § 8.12(h)(2)(i), (iii).

48. After detoxification, which usually takes from one to five days, women civilly committed under Section 35 are housed with pretrial detainees and treated like prisoners. Women civilly committed under Section 35 are generally housed in a

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<sup>4</sup> The one exception to this policy is that pregnant women have access to methadone.

temporary modular building known as the “Mod.”<sup>5</sup>

49. In the Mod, civilly committed women live in a 40-person dormitory along with pretrial detainees.

50. All of the women are supervised by uniformed correctional officers, some of whom mock the civilly committed women, refuse to give them access to medical help for symptoms associated with drug withdrawal, and seek to intimidate them when they complain.

51. Along with the standard prison conditions faced by all women at MCI-Framingham, including strip searches, pat searches, cell shakedowns, regular “counts” four times a day, starting at 6 A.M., and the full range of DOC discipline (potentially including solitary confinement), the “straight civils” endure even harsher conditions of confinement than the detainees with whom they are housed.

52. Unlike other prisoners, civilly committed women do not have access to the prison recreation yard, but instead are escorted to an outdoor recreation area consisting of a small cage covered in black netting with a gravel floor. There is often little or no shade, and the women are not allowed to have water in the cage. Access to the cage is limited to, at most, two and a half hours per day, six days per week.

53. These women also have no access to programs available to the rest of the

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<sup>5</sup> Some women are committed under Section 35 *and* have a criminal charge pending against them. These individuals are considered to have “dual status,” and are placed in prison. They are housed in a separate unit from the straight civils and participate in a treatment program offered at MCI-Framingham called “First Steps.” These dual status individuals are not members of the proposed class. Approximately one-third of all Section 35 commitments have a criminal charge pending. *See* Mass. Dep’t of Pub. Health, Bureau of Substance Abuse Servs., *Sec 35 – Civil Commitments FY12 – Year End Report 4* (2012).

prison population, including peer-directed groups such as Alcoholics Anonymous, Narcotics Anonymous, and peer counseling. The civilly committed women are permitted no religious services and no library access.

***D. The Impact of Incarceration under Section 35***

54. Imprisoning civilly committed women is counter-therapeutic.

55. Addiction is a complex brain disease characterized by the disruption of a person's ability to control her behavior even in the face of devastating consequences. In numerous ways, imprisoning civilly committed people suffering from this disease can impede rather than advance effective treatment.

56. For example, civil commitment to MCI-Framingham is traumatic and stigmatizing. Women experience shame, humiliation, and loss of dignity.

57. The women are often intimidated by the harsh conditions of confinement and can be nervous about being housed in a dormitory filled with individuals charged with serious crimes who sometimes threaten and assault them.

58. They do not understand why they are in prison when they were supposedly committed to receive treatment.

59. Incarcerating these women also reflects and perpetuates unwarranted prejudices about individuals with alcoholism and substance abuse disorders and reinforces the perception that they are second-class citizens. Indeed, even their family and friends often believe the women must have engaged in crime to end up in prison.

60. Their imprisonment undermines their self-image and causes them to experience fear and confusion regarding the purpose of their confinement.

61. Far from providing an opportunity to begin meaningful recovery, the imprisonment of women civilly committed to MCI-Framingham is punitive. They are simply warehoused in the Mod and denied participation in programs available to sentenced prisoners and pretrial detainees.

62. Family members who file Section 35 petitions are often horrified, telling the DOC that they would not have initiated the process if they had known their loved one would be sent to prison.

63. Women civilly committed to MCI-Framingham under Section 35 are isolated from their communities both psychologically and physically. Because the prison is often far from their homes and families, and communication and visitation are restricted, it is difficult to establish relationships with aftercare services in their own communities.

64. By authorizing the civil commitment of women to prison, Section 35 reinforces longstanding societal prejudice against individuals with alcoholism and substance abuse disorders.

65. Defendants have long been aware that imprisoning civilly committed individuals is inconsistent not only with the proper treatment of addiction, but also with the proper mission of the DOC.

66. For example, in 1989, the Governor's Special Advisory Panel on Forensic Mental Health recommended that "only individuals who are subjects of the criminal

justice system” should be committed to prison under Section 35.<sup>6</sup>

67. In 2005, the Governor’s Corrections Advisory Council also recommended against committing women to MCI-Framingham under Section 35.<sup>7</sup>

68. In 2008 and again in 2011, an independent consultant retained by the DOC recommended that Massachusetts discontinue civil commitments to MCI-Framingham “as soon as possible.”<sup>8</sup>

69. Nevertheless, the Commonwealth has continued to fail to make sufficient beds available for these women in appropriate treatment facilities.

#### **ALLEGATIONS RELATING TO PLAINTIFF JANE DOE**

70. Plaintiff Jane Doe has experienced all of the prison conditions above described.

71. After being civilly committed, Ms. Doe was transported in a police wagon to MCI-Framingham.

72. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus. She was also forced to sit on a body orifice security scanner chair.

73. Ms. Doe was forced to turn over all her personal items, including her

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<sup>6</sup> Commonwealth of Mass., Governor’s Special Advisory Panel on Forensic Mental Health, *Final Report* 33 (1989).

<sup>7</sup> Commonwealth of Mass., Dep’t of Corr. Advisory Council, *Final Report* 5 (2005).

<sup>8</sup> MGT of America, Inc., *Analysis of Health Care Costs in the Massachusetts Department of Correction* 17, 78 (2011).

clothing, and was forced to wear a prison uniform.

74. Ms. Doe was sent to the infirmary unit for detoxification. She was given only over-the-counter medications for her withdrawal symptoms.

75. After detoxification, she was moved to the Mod.

76. Ms. Doe has been locked in the Mod for the majority of her days at MCI-Framingham.

77. Ms. Doe has declined to visit the gravel-lined caged recreation area, which the correctional officers have referred to as the “kennel,” because the unshaded space is hot and the correctional officers do not provide civilly committed women with water while they are in the “kennel.”

78. Ms. Doe has not met with a caseworker or a mental health counselor during her incarceration at MCI-Framingham.

79. She also has received no substance abuse treatment during her incarceration at MCI-Framingham.

80. Ms. Doe has experienced increased anxiety since her arrival, particularly due to the uncertainty regarding when she will leave MCI-Framingham and receive treatment.

#### **CLASS ACTION ALLEGATIONS**

81. This action is properly maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.<sup>9</sup>

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<sup>9</sup> The reasons supporting class certification will be more set forth in Plaintiff’s forthcoming Memorandum of Law in Support of Plaintiff’s Motion for Class Certification.

82. The putative class is defined as: “All women who are now or will be placed in MCI-Framingham based solely on a civil commitment under Massachusetts General Laws Chapter 123, Section 35.”

83. The members of the class are so numerous that joinder of all members is impracticable. According to data from the DOC, between 2011 and 2013, approximately 540 women were imprisoned at MCI-Framingham based solely on a civil commitment under Section 35. Moreover, the inherent transitory state of the putative class members makes joinder impracticable.

84. The common issues central to the validity of the claims in this class action are: (a) whether the imprisonment of women committed solely under Section 35 violates their substantive due process rights under the United States and Massachusetts Constitutions because their imprisonment is incompatible with the statutory purpose of in-patient treatment for substance abuse, and a substantial departure from any professional judgment about helping people recover from the disease of addiction; and (b) whether it impermissibly discriminates against them based on their disability in violation of the ADA and Massachusetts law.

85. The legal violations alleged by the named Plaintiff and the resultant harms are typical of those raised by each member of the putative Class.

86. The named Plaintiff will fairly and adequately protect the interests of the Class. There is no conflict between the interests of the named Plaintiff and the proposed Class.

87. Plaintiff’s counsel are competent and experienced in class action,

disability, and complex civil rights litigation. Plaintiff's counsel have committed sufficient resources to fully litigate this case through trial and any appeals.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violation of Substantive Due Process Guaranteed by the Fourteenth Amendment to the United States Constitution**

88. Plaintiff incorporates the preceding paragraphs of this complaint as if fully set forth herein.

89. The Fourteenth Amendment to the United States Constitution provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

90. Plaintiff has a liberty interest in not being unjustly incarcerated in prison.

91. Plaintiff's incarceration in prison represents a substantial departure from accepted professional judgment, practice, or standards. Plaintiff's incarceration does not bear any reasonable relation to the purpose of Section 35, which, according to the statute, is to provide for "the care and treatment of alcoholism or substance abuse."

92. By their policies, practices, and actions, Defendants violate the rights of Plaintiff, as well as all members of the proposed Class, to substantive due process guaranteed by the Fourteenth Amendment to the United States Constitution, as enforceable under 42 U.S.C. § 1983.

93. Plaintiff has suffered immediate and irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

94. Plaintiff has no adequate remedy at law to protect herself and those similarly situated from this harm. The injunctive relief sought by Plaintiff is necessary to prevent continued and further injury.

## **COUNT II**

### **Violation of Title II of the Americans with Disabilities Act**

95. Plaintiff incorporates the preceding paragraphs of this complaint as if fully set forth herein.

96. Title II of the ADA prohibits a “public entity” from discriminating against a “qualified individual with a disability . . . by reason of such disability.” 42 U.S.C. § 12132.

97. Plaintiff, as an individual committed under Section 35 for substance addiction, is a “qualified individual with a disability” under Title II of the ADA, as defined in 42 U.S.C. § 12131(2) and § 12102(1).

98. Defendant DOC is a “public entity” under Title II of the ADA, as defined in 42 U.S.C. § 12131(1).

99. Under Section 35, Plaintiff was placed in prison solely because of her disabilities. She was not committed because of a criminal charge or conviction. No other citizens in Massachusetts are forced to endure such unjustified incarceration as a condition of receiving needed medical treatment.

100. The imprisonment of Plaintiff under Section 35, including the imprisonment of all members of the proposed Class, violates Title II of the ADA by subjecting Plaintiff to discrimination solely on the basis of her disabilities.

101. Plaintiff has suffered immediate and irreparable injury as a result of the

unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

102. Plaintiff has no adequate remedy at law to protect herself and those similarly situated from this harm. The injunctive relief sought by Plaintiff is necessary to prevent continued and further injury.

### **COUNT III**

#### **Violation of Substantive Due Process Guaranteed by the Constitution of the Commonwealth of Massachusetts**

103. Plaintiff incorporates the preceding paragraphs of this complaint as if fully set forth herein.

104. Article 1 of the Massachusetts Declaration of Rights, as amended by Article 106 of the Amendments to the Constitution of the Commonwealth of Massachusetts, provides: “All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; . . . in fine, that of seeking and obtaining their safety and happiness.”

105. Article 10 of the Massachusetts Declaration of Rights provides: “Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.”

106. Article 12 of the Massachusetts Declaration of Rights provides that “no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.”

107. Article 4 of Section 1 of Chapter 1 of Part the Second of the Constitution of the Commonwealth of Massachusetts provides that the General Court has power “to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances . . . so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same . . . .”

108. Plaintiff has a liberty interest in not being unjustly incarcerated in prison.

109. Plaintiff’s incarceration in prison represents a substantial departure from accepted professional judgment, practice, or standards. Plaintiff’s incarceration does not bear any reasonable relation to the purpose of Section 35, which, according to the statute, is to provide for “the care and treatment of alcoholism or substance abuse.”

110. By their policies, practices, and actions, Defendants violate the rights of Plaintiff, as well as all members of the proposed Class, to substantive due process guaranteed by the Constitution of the Commonwealth of Massachusetts.

111. Plaintiff has suffered immediate and irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

112. Plaintiff has no adequate remedy at law to protect herself and those similarly situated from this harm. The injunctive relief sought by Plaintiff is necessary to prevent continued and further injury.

**COUNT IV**

**Violation of Article 114 of the Constitution of  
the Commonwealth of Massachusetts**

113. Plaintiff incorporates the preceding paragraphs of this complaint as if fully set forth herein.

114. Article 114 of the Constitution of the Commonwealth provides that no “otherwise qualified handicapped individual” may “solely by reason of his handicap” be discriminated against in the context of “any program or activity within the commonwealth.”

115. Plaintiff, as an individual committed under Section 35 for addiction to alcohol or controlled substances, is an “otherwise qualified handicapped individual.”

116. Under Section 35, Plaintiff was placed in prison solely because of her disabilities. She was not committed because of a criminal charge or conviction. No other citizens in Massachusetts are forced to endure such unjustified incarceration as a condition of receiving needed medical treatment.

117. The imprisonment of Plaintiff under Section 35, as well as the imprisonment of all members of the proposed Class, violates Art. 114, as enforceable by M.G.L. ch. 93, § 103, by subjecting Plaintiff to discrimination solely on the basis of her disabilities.

118. Plaintiff has suffered immediate and irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

119. Plaintiff has no adequate remedy at law to protect herself and those

similarly situated from this harm. The injunctive relief sought by Plaintiff is necessary to prevent continued and further injury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court grant the following relief:

- a. Certify this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2) and declare that Plaintiff is a representative of the Class and that Plaintiff's counsel are counsel for the Class;
- b. Issue preliminary and permanent injunctions against Defendants, their agents, officials, employees, and all persons acting in concert with them, requiring them to cease and desist from placing any women committed solely under Section 35 in a DOC facility;
- c. Issue a judgment against Defendants declaring that the acts, omissions, policies, and practices of placing women committed solely under Section 35 to DOC facilities are unlawful and violate the Fourteenth Amendment to the United States Constitution, the Americans with Disabilities Act, the Constitution of the Commonwealth of Massachusetts, and Massachusetts law;
- d. Award Plaintiff her reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12133, Mass. Gen. Laws ch. 93, § 103(d), Fed. R. Civ. P. 54(d), and other applicable law; and

- e. Grant Plaintiff such other and further relief as the Court considers just and proper.

Dated: June 30, 2014

Respectfully submitted,

/s/ William F. Lee

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