

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
11/19/12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JEFFREY P. COLWELL, CLERK

Civil Action No. 12-cv-01326-RBJ-KLM

JAMES SARDAKOWSKI,

Plaintiff,

v.

TOM CLEMENTS, in his official capacity as Director of Colorado Department of Corrections;

JOANIE SHOEMAKER, in her official capacity as Deputy Director of Prisons, Clinical Services for Colorado Department of Corrections;

PAULA FRANTZ, in her official capacity as Chief Medical Officer for Colorado Department of Corrections;

TRAVIS TRANI, in his official capacity as Warden of Colorado State Penitentiary;

JAMES MICHAUD, in his official capacity as Mental Health Program Administrator for Colorado Department of Corrections;

JILL LAMPELA, in her official capacity as Behavior Health Supervisor for Colorado State Penitentiary; and

STATE OF COLORADO, DEPARTMENT OF CORRECTIONS,

Defendants.

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff James Sardakowski, who is incarcerated in the Colorado State Penitentiary in Cañon City, Colorado, submits this Amended Complaint for violations of his rights under the Eighth Amendment to the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act.

NATURE OF THE CASE

1. Mr. Sardakowski suffers from severe mental illness and has a developmental disability. He is currently incarcerated in administrative segregation (solitary confinement) at Colorado State Penitentiary.
2. Since his incarceration beginning in September 2006, Mr. Sardakowski has been denied adequate mental health treatment including, but not limited to, denial of appropriate and necessary medication. As a result, Mr. Sardakowski has engaged and continues to engage in escalating self-injurious behaviors including multiple attempts at castration and suicide. Mr. Sardakowski's mental health has deteriorated and continues to deteriorate as a result of the Defendants' provision of inadequate mental health treatment.
3. Despite recommendations of Colorado Department of Corrections (CDOC) psychiatrists and CDOC's knowledge that prolonged isolation exacerbates symptoms of severe mental illness, CDOC refuses to transfer Mr. Sardakowski to an appropriate facility.
4. CDOC has discriminated against Mr. Sardakowski on the basis of his mental illness and developmental disability by failing to provide him with reasonable accommodations that would enable him to progress out of administrative segregation.

PARTIES

5. Plaintiff JAMES SARDAKOWSKI is, and was at all times relevant herein, a citizen of the United States. Mr. Sardakowski has been a prisoner confined in CDOC since October 2006. Mr. Sardakowski suffers from severe mental illness and has a developmental disability. Each of these conditions substantially limits several of his major life activities, including, but not limited to, learning, concentrating, thinking, impulse control, pursuing long-term goals, and

interacting with others. Mr. Sardakowski also has a record of such impairments and is regarded by Defendants as having such impairments.

6. Defendant TOM CLEMENTS is the Executive Director of CDOC and as such, is responsible for the custody and care of Mr. Sardakowski and all prisoners in CDOC. He oversees all employees in CDOC, and has authority to establish, alter, and implement all policies and procedures within CDOC.

7. Defendant JOANIE SHOEMAKER is the Deputy Director of Prisons, Clinical Services for CDOC and as such, is responsible for setting and reviewing policies for mental health treatment programs and services.

8. Defendant PAULA FRANTZ is the Chief Medical Officer for CDOC and as such, oversees the health care policy that governs the delivery of health care services to prisoners in CDOC.

9. Defendant TRAVIS TRANI is the Warden of Colorado State Penitentiary (CSP) and as such, is responsible for the custody and care of Mr. Sardakowski, and all prisoners in CSP. He oversees all employees at CSP, and has authority for the establishment and implementation of all policies and procedures at the institution.

10. Defendant JAMES MICHAUD is the Mental Health Program Administrator for CDOC and as such, oversees the clinical mental health programs. He supervises clinical staff and is responsible for mental health policies and treatments.

11. Defendant JILL LAMPELA is the Behavior Health Supervisor for CSP and as such, oversees and manages the Offenders with Mental Illness (OMI) program at CSP.

12. Defendant COLORADO DEPARTMENT OF CORRECTIONS is a department of the State of Colorado. The Department is responsible for all prisoners in the state's prison population.

The Department receives and benefits from federal financial assistance as that term is used in 29 U.S.C. § 794 through the Prison Rape Elimination Act and other sources.

JURISDICTION AND VENUE

13. This Court possesses subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

14. Venue of this action is proper in the District of Colorado under 28 U.S.C. § 1391(b). Mr. Sardakowski is currently incarcerated in the Colorado Department of Corrections, and the events giving rise to his claims occurred in facilities in the state of Colorado.

FACTS

Mr. Sardakowski has a long history of serious mental illness and a developmental disability.

15. Mr. Sardakowski is a 26-year old native of Colorado. He is serving an 18-year sentence in the Colorado Department of Corrections. Mr. Sardakowski is currently incarcerated at the Colorado State Penitentiary (CSP) in Cañon City, Colorado.

16. Mr. Sardakowski had a nightmarish childhood. He was raped by his brother at the age of four and was the victim of ongoing sexual, physical and psychological abuse throughout his childhood. These instances of abuse were a source of great trauma for Mr. Sardakowski.

17. In addition to trauma from victimization, Mr. Sardakowski has struggled with mental illness throughout his life. His CDOC record indicates that he attempted suicide on multiple occasions. He began receiving treatment for mental illness at age five.

18. At age eleven, Mr. Sardakowski was placed in a children's psychiatric hospital to be stabilized with psychiatric medication.

19. Mr. Sardakowski was hospitalized at Fort Logan Mental Health Center in 1998, at age twelve, for evaluation and treatment of a number of psychiatric symptoms. Records from his time at Fort Logan indicate that Mr. Sardakowski “has serious deficits in reality testing.”
20. Records of Mr. Sardakowski’s stay at Fort Logan are contained in CDOC’s medical record for Mr. Sardakowski.
21. CDOC’s mental health record for Mr. Sardakowski indicates that at various points he has been diagnosed with Schizophrenia, Psychotic Disorder NOS, Depression with Psychotic Features, Post Traumatic Stress Disorder, Chronic Depression, Attention Deficit Hyperactivity Disorder, Mood Disorder NOS, Polysubstance Dependence, Antisocial Personality Disorder, and Borderline Personality Disorder. Mental health staff at CSP also have opined that Schizoaffective Disorder may be an appropriate diagnosis for Mr. Sardakowski.
22. Mr. Sardakowski’s CDOC mental health record indicates that he has a developmental disability. His Full Scale IQ has been measured with varied results including Mild Mental Retardation and Borderline Intellectual Functioning. Mr. Sardakowski’s CDOC medical record also refers to a likely diagnosis of Fetal Alcohol Syndrome.

Incarceration at San Carlos Correctional Facility, Colorado Territorial Correctional Facility, and Sterling Correctional Facility

23. In September 2006, Mr. Sardakowski was sentenced to 18 years in prison. The judge in Mr. Sardakowski’s sentencing hearing strongly recommended that he be placed at San Carlos Correctional Facility (“San Carlos”).

24. CDOC's website describes San Carlos as serving "the Colorado Department of Corrections by successfully providing specialized treatment, care, and programming to mental health special need male offenders in a level V Correctional Facility."
25. Mr. Sardakowski's CDOC medical record states that he was referred to San Carlos because he was not stable on medication and was responding poorly to medication. Additionally, mental health staff noted that Mr. Sardakowski was at risk for self-injury and suicide.
26. Mr. Sardakowski was stabilized at San Carlos on a medication regimen that included Seroquel.
27. Seroquel is an anti-psychotic medication used to treat symptoms of schizophrenia, bipolar disorder, and at lower doses, depression.
28. Mr. Sardakowski was assigned to the Developmentally Disabled unit (DD unit) at San Carlos in April 2007.
29. Mr. Sardakowski was transferred to Colorado Territorial Correctional Facility ("Territorial") in October 2007, where he was housed in the general population unit.
30. In November 2007, Mr. Sardakowski began participating in a program for offenders with developmental disabilities at Territorial ("DD program").
31. While in the DD program at Territorial, Mr. Sardakowski's mental health improved dramatically, he was able to earn his GED, he went three months without write-ups for negative behavior, and did not engage in self-injurious behavior.
32. Mr. Sardakowski eventually stopped taking psychiatric medications. His mental health deteriorated and he stopped attending DD programming at Territorial.

33. On October 6, 2008, Mr. Sardakowski was transferred to San Carlos for stabilization as a result of his recent deterioration.
34. While at San Carlos, mental health staff specifically tested whether Mr. Sardakowski was malingering, or exaggerating or fabricating symptoms of mental disorders. He took the Structured Inventory of Malingered Symptomatology, a test designed to identify malingering. The report concluded that his symptoms were genuine, specifically finding that “his endorsement of psychiatric and cognitive symptoms is consistent with symptoms described by individuals who have a genuine disorder.”
35. On October 31, 2008, mental health staff at San Carlos gave Mr. Sardakowski a new prescription for Seroquel, noting that Seroquel had improved his mental health in the past.
36. In March 2009, Mr. Sardakowski was transferred to Fort Lyon Correctional Facility, a facility that housed mentally ill prisoners in need of constant care.
37. On April 28, 2009, despite CDOC staff approving him to return to the DD program at Territorial, Mr. Sardakowski was transferred to Sterling Correctional Facility (“Sterling”). Sterling does not have a DD program.
38. Sterling mental health staff continued to treat Mr. Sardakowski’s mental illness with a medication regimen including Seroquel.
39. In May 2009, mental health staff noted that Mr. Sardakowski had an MR/DD (mental retardation/developmental disability) code of 4 and an IQ of 84, indicating that he had a developmental disability. Based on this scoring, Mr. Sardakowski should be housed in a facility where his developmental disabilities can be accommodated, such as Territorial.

40. Because his needs could not be accommodated at Sterling, Mr. Sardakowski's case manager immediately contacted mental health to see if they would approve him for Territorial. Mental health staff reported, "We have no concerns over him going back to Territorial and would support case management in that move." Despite the request of his case manager and mental health's position, Mr. Sardakowski was never transferred.
41. On July 7, 2009, Mr. Sardakowski's Seroquel was discontinued after he was accused of "cheeking" his medication.
42. Mr. Sardakowski repeatedly told mental health staff at Sterling that prisoners threatened to beat him with a lock in a sock if he did not provide them with doses of Seroquel.
43. Mental health staff at Sterling had full knowledge of Mr. Sardakowski's serious mental illness as evidenced by his medical records, entries by staff, and his treatment plan that included the non-formulary anti-psychotic drug Seroquel. Mental health staff were fully aware of Mr. Sardakowski's previous suicide attempts as evidenced by entries in his mental health record. Mental health staff knew that persons with serious mental illness experience increased symptoms when they are not properly medicated. Despite this knowledge, CDOC punished Mr. Sardakowski by discontinuing his antipsychotic medication Seroquel.
44. No longer on Seroquel, Mr. Sardakowski's mental health deteriorated. Over the next sixteen months, Mr. Sardakowski was written up for negative behavior approximately forty-five times. Mr. Sardakowski was written up fewer than five times in the three years prior to discontinuation of his medication.

45. Mr. Sardakowski describes feeling as though he were in a dream state during the period he was off medication. He had trouble distinguishing between what was real and what was not real.

46. In August 2009, Mr. Sardakowski was forcibly extracted from his cell after he refused to stop beating his head against a wall.

47. In response to Mr. Sardakowski's deterioration, CDOC staff scheduled a hearing to determine whether he should be placed in solitary confinement at Colorado State Penitentiary (CSP). In the past when Mr. Sardakowski deteriorated after discontinuing medication, he was sent to San Carlos, a more structured facility where he could be stabilized. Despite a history of successful stabilization at San Carlos, CDOC staff responded to his deterioration at Sterling by sending him to solitary confinement in CSP.

48. On or about November 10, 2009, Mr. Sardakowski was transferred to Denver Reception and Diagnostic Center (DRDC) due to an administrative oversight.

49. Mr. Sardakowski attempted to hang himself on November 13, 2009 while at DRDC.

50. Mr. Sardakowski was subsequently transferred back to Sterling and given an administrative segregation classification on December 14, 2009. He arrived at CSP on December 23, 2009.

Conditions of Solitary Confinement at CSP

51. Mr. Sardakowski has endured the conditions of administrative segregation at CSP since December 2009.

52. All prisoners housed at CSP are held in solitary confinement.

53. Mr. Sardakowski's cell is approximately 10' x 8' (80 square feet) – the size of a small bathroom. The cell has a concrete bed, a metal desk, a metal stool, and three shelves. There is also a metal toilet and sink. All furniture in his cell is made of metal or concrete.
54. Mr. Sardakowski has a small window that is approximately five inches wide and two feet tall. It is permanently sealed and does not allow air in.
55. Mr. Sardakowski has limited ability to communicate with other prisoners. He has a hearing disability and uses hearing aids. This disability prevents him from using the very limited communication available by yelling through the slot in the door.
56. Mr. Sardakowski must eat every meal in his cell alone within arm's reach of his toilet.
57. Mr. Sardakowski's hands and feet are shackled every time he leaves his cell. His hands are shackled behind his back.
58. Mr. Sardakowski is allowed to own only two personal books at any time, which includes his Bible. These books can be exchanged only once a year.
59. Mr. Sardakowski is allowed, at most, one hour a day, five days a week out of his cell to shower and exercise in the indoor recreation room.
60. Prisoners at CSP are never allowed outdoor exercise at any time.
61. During prison lockdowns, Mr. Sardakowski cannot leave his cell at all, sometimes for several days in a row.
62. The conditions of solitary confinement at CSP subject Mr. Sardakowski to prolonged and indefinite isolation.
63. CSP has two programs designed to allow prisoners to "level out" of administrative segregation based on good behavior. The Offenders with Mental Illness (OMI) program has

twelve levels to progress to general population, eight of which must be completed at CSP.

The minimum time to complete each level ranges from one to four weeks. Other prisoners must progress through the Privilege Level Program, which takes a minimum of nine months to complete. Thus, even prisoners who progress as quickly as possible through the “leveling out” programs are subjected to prolonged isolation at CSP.

64. Many prisoners remain in solitary confinement for much longer than the minimum time possible through the “leveling out” programs.
65. For Mr. Sardakowski, solitary confinement in CSP is indefinite. He has no hope of leveling out through the OMI program. Mr. Sardakowski has spent the majority of his time at CSP in the lowest levels of the program. Even while on psychiatric medication, the highest level he has ever reached is level five. Mr. Sardakowski is unable to progress beyond this level because his mental illness prevents him from meeting the behavior-based requirements for long periods of time.
66. The harmful effects of prolonged isolation on individuals with severe mental illness are well documented in the correctional community. Numerous cases have highlighted the profound psychological risks and dangers long-term isolation represents. In *Madrid v. Gomez*, the court emphasized that “[s]ocial science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally....” 889 F. Supp. 1146, 1230 (N.D. Cal. 1995). In *Ruiz v. Johnson*, the court characterized administrative segregation units as “virtual incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.” 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999).

In *Jones 'El v. Berge*, the court acknowledged that severe psychological symptoms and disorders could result from long-term isolated confinement. 164 F. Supp. 2d 1096 (W.D. Wis. 2001).

67. CDOC officials have known and continue to know that the conditions of solitary confinement at CSP exacerbate symptoms of mental illness.
68. Despite knowledge of Mr. Sardakowski's history and record of serious mental illness, and his deterioration and attempted suicide on November 13, 2009, CDOC officials transferred Mr. Sardakowski to solitary confinement at CSP on December 23, 2009.
69. In placing and retaining Mr. Sardakowski in solitary confinement, Defendants ignored and continue to ignore a substantial risk that the conditions of confinement in CSP would seriously exacerbate his mental illness and result in self-injurious behaviors.

Offenders with Mental Illness Program at CSP

70. Mr. Sardakowski has been placed in the OMI program at various times during his confinement at CSP. However, he has been repeatedly removed due to disruptive behaviors, excluding him from the program.
71. Many of the disruptive behaviors CDOC administrators punish Mr. Sardakowski for are manifestations of symptoms of his mental illness.
72. The highest level Mr. Sardakowski has achieved while in the OMI program is level five. This is due to the short-term nature of the goals contained in the lower levels.
73. Mr. Sardakowski's mental health record states that at various points in time, mental health staff have told Mr. Sardakowski that he could be transferred to the DD program at Territorial if he exhibited several months of appropriate conduct.

74. Mr. Sardakowski has communicated his inability to progress to the upper levels of the OMI program because progressing to those levels requires lengthy periods with no behavior problems. Mr. Sardakowski has similar problems with the behavior-based goals of the Privilege Level Program.

75. Mr. Sardakowski's mental illness interferes with his cognitive functioning, impulse control, and behavior management. These symptoms are exacerbated by prolonged isolation and lack of appropriate medication. Mr. Sardakowski's difficulty thinking in the abstract and controlling impulsive behaviors make it virtually impossible to achieve the long-term goals involved in levels five and above.

76. Mr. Sardakowski is quoted in the mental health record as saying, "I have a hard time with long goals, I need short term goals, If you tell me two months it's like telling me a billion years, It just doesn't seem possible." His record indicates that he made this statement in the context of "express[ing] a willingness to work with the treatment team to expedite recovery and promote success in DOC treatment programs."

Signs of Deterioration in Solitary Confinement

77. CDOC has failed to provide adequate mental health treatment since Mr. Sardakowski's arrival at CSP.

78. On February 15, 2010, CSP correctional staff noted in Mr. Sardakowski's file that he was experiencing confusion, disorientation, depression, and overwhelming fears. Corrections staff reported that they worried that Mr. Sardakowski's mental health condition was deteriorating.

79. On March 12, 2010, Mr. Sardakowski submitted a written medical request form, or “kite,” stating that mental health staff were scheduled to follow-up with him after his clinic visit on February 25, 2010, but that no follow-up had been performed.

80. Mental health did not respond to the substance of his kite. Rather, mental health staff dismissed the kite as “malingering.” He was not given any test to verify whether he was malingering.

81. Mental health staff characterized Mr. Sardakowski’s kites as malingering despite the 2008 examination performed by CDOC that indicated that Mr. Sardakowski is not a malingerer.

82. On April 27, 2010, Mr. Sardakowski was seen by a CDOC psychiatrist who noted that Mr. Sardakowski had been stabilized on Seroquel at San Carlos. She decided to restart Mr. Sardakowski on Seroquel after he had been off of this medication for over nine months.

83. Even though Mr. Sardakowski was taking Seroquel, he continued to experience symptoms of his severe mental illness.

84. On June 15, 2010, Mr. Sardakowski attempted to castrate himself “for religious reasons.” His mental health record noted that there were “deep open wounds circumferentially” around his scrotum. Mr. Sardakowski stated that he did not want antibiotics “because it is God’s will.”

85. Mental health staff met with Mr. Sardakowski on June 15, 2010 as a result of his self-injurious behavior. Mental health staff’s entry in Mr. Sardakowski’s record indicates that “Offender’s psychological state does appear to be stable.” Mental health staff ignored the fact that Mr. Sardakowski had just attempted to castrate himself in response to apparent religious delusions.

86. On January 23, 2011, Mr. Sardakowski again engaged in self-injury by tying a string around his testicles (tying off). He was hospitalized at St. Thomas Moore where the doctor noted that “there is no way to predict whether [Mr. Sardakowski’s] testes will survive this event.”
87. Mr. Sardakowski was seen cell-side by mental health staff on May 24, 2011. According to CDOC records from that meeting, Mr. Sardakowski told mental health staff that God had called on him to be a “Eunuch.” He said that he had coveted another man’s wife and that the urges would not go away unless he castrated himself. Staff asked Mr. Sardakowski if he had a plan to which he replied that he did not, but would be ready when God called on him to castrate himself.
88. Mental health staff asked Mr. Sardakowski if he would tell staff before he attempted to castrate himself. He replied that he was not sure if he would remember. He stated that he was unable to remember what he had eaten for lunch. A member of CDOC’s mental health staff documented this interaction in Mr. Sardakowski’s mental health record and indicated that she notified her supervisor. There is no indication that there was any follow-up regarding this interview.
89. Based on this report, mental health staff recognized that Mr. Sardakowski’s delusional thought process represented a substantial risk of serious self-injury. Given Mr. Sardakowski’s prior attempt to castrate himself in June 2010, the risk of harm was and is substantial and apparent.
90. Mr. Sardakowski’s mental health continued to deteriorate over the next three months. On August 24, 2011, he was forced to declare a medical emergency.

91. Mr. Sardakowski was seen by a psychiatrist on August 25, 2011 who prescribed several medications that yielded positive results.

Discontinuation of Psychiatric Medication

92. Mr. Sardakowski's brief period of improvement came to an end in December 2011 when he was accused of attempting to hoard medications.

93. As punishment for alleged medication abuse, one of Mr. Sardakowski's primary psychiatric medications was discontinued.

94. In a December 23, 2011 meeting with mental health staff, Mr. Sardakowski stated that he was upset about accusations of medication abuse and that he felt like "offing himself." Mr. Sardakowski later relayed the same feelings to a psychiatrist in a telepsychiatry appointment.

95. Telepsychiatry appointments are not conducted in person; rather, Mr. Sardakowski meets with a psychiatrist via closed-circuit television. These impersonal television appointments comprise the vast majority of Mr. Sardakowski's opportunities to meet with a psychiatric professional.

96. CDOC and its mental health staff refused to modify Mr. Sardakowski's treatment despite his suicidal ideation and evidence of deterioration.

97. On January 11, 2012, mental health staff visited with Mr. Sardakowski after he expressed a desire to commit suicide. Mental health staff responded by putting Mr. Sardakowski in restraints for "being disruptive."

98. A mere two weeks after he communicated suicidal thoughts, all of Mr. Sardakowski's remaining psychiatric medications were discontinued due to "safety concerns."

99. CDOC's own psychiatrist acknowledged the risk that Mr. Sardakowski would decompensate after discontinuing his psychiatric medication. A CDOC psychiatrist recommended Mr. Sardakowski be transferred to a more structured facility should he deteriorate from discontinuation of psychiatric medication.

100. In proceeding with the discontinuation of medication, mental health staff ignored evidence of the substantial risk of future harm that discontinuation of medication posed. Specifically, Mr. Sardakowski's record was replete with instances where he deteriorated after the discontinuation of medications.

101. Further, CDOC staff discontinued Mr. Sardakowski's medication despite their awareness of the exacerbating effects of prolonged isolation on severe mental illness. CDOC's decision to discontinue a severely mentally ill person's medication while in prolonged isolation is evidence of deliberate indifference.

Escalation of Self-Injurious Behaviors

102. Mr. Sardakowski's mental health deteriorated soon after the discontinuation of his medication at CSP in January 2012.

103. On February 6, 2012, Mr. Sardakowski declared a mental health emergency. Mr. Sardakowski reported to mental health staff that he was hearing voices.

104. Instead of offering treatment, mental health staff responded by reporting Mr. Sardakowski to security staff for covering his cell window, which was treated as a rule violation.

105. On February 8, 2012, Mr. Sardakowski told correctional staff that he was hearing voices and needed to see mental health staff. A mental health staff member went to Mr. Sardakowski's cell to inform him that he could not be pulled from his cell because the unit

was on lockdown. The staff member recorded that Mr. Sardakowski asked, “Then what is the point?”

106. On February 18, 2012, Mr. Sardakowski attempted to castrate himself. One week later, he attempted to castrate himself again. Mental health staff recorded that Mr. Sardakowski said he tied off his penis “to relieve stress, it’s the only way I have to relieve stress because they took all my meds away.”

107. On March 5, 2012, Mr. Sardakowski repeated his self-injurious behavior. He reported to mental health staff that he ties off his genitals twice a day for stress relief. He stated that, “If I don’t tie myself, then I will cut myself.”

108. On March 6, 2012, a psychiatrist saw Mr. Sardakowski in a telepsychiatric appointment. The psychiatrist noted that Mr. Sardakowski had slurred speech, low energy, loss of appetite, and appeared to be seeking medication. Mr. Sardakowski told the psychiatrist, “I have no future, we’re all dead.”

109. The psychiatrist noted that he had previously recommended Mr. Sardakowski for transfer to a more structured psychiatric setting if he deteriorated, but that Mr. Sardakowski remained at CSP for the time being.

110. Following the appointment, Mr. Sardakowski met with a mental health clinician. Mr. Sardakowski stated that he had not showered for twenty days. Mental health staff documented that Mr. Sardakowski said he did not want to leave his cell out of fear that he would hurt someone.

111. Mr. Sardakowski submitted a written complaint, or grievance, about his lack of transfer to an appropriate facility where his mental illness could be adequately treated. CDOC

administrators responded that the doctor's recommendation for transfer was not an order and denied his grievance.

112. The CDOC psychiatrist's recommendation that Mr. Sardakowski be transferred to San Carlos for stabilization put CDOC administrators on notice that Mr. Sardakowski was a risk to himself. CDOC's refusal to transfer Mr. Sardakowski despite the psychiatrist's recommendation demonstrates disregard for the risk that Mr. Sardakowski posed to himself.

113. In March 2012, Mr. Sardakowski submitted a grievance stating that administrative segregation was worsening his lifelong issues with mental illness and thoughts of harming himself. Mr. Sardakowski's grievances were denied at steps one, two, and three on procedural grounds.

114. CDOC staff ignored the substance of Mr. Sardakowski's grievance despite knowledge of his suicide attempt in January and self-castration attempts in February and March. In ignoring the substance of his grievance, CDOC staff disregarded a substantial risk of serious harm to Mr. Sardakowski.

115. On March 12, 2012, just days after he submitted the grievance discussed above, Mr. Sardakowski again engaged in self-injury by tying off his testes. However, tying off was no longer relieving symptoms of his mental illness and his behavior began to escalate.

116. In escalating his behavior, Mr. Sardakowski repeatedly banged his head on the wall and bit his hands. The encounter left Mr. Sardakowski with an abrasion and large contusion on his forehead and bite marks on his hands.

117. Rather than treat Mr. Sardakowski, CDOC staff placed him in extremely restrictive restraints called "four-pointing."

118. “Four-pointing” involves restraining a prisoner on a bed with all four limbs tied down, sometimes for days at a time. The prisoner’s hands are strapped down at his sides and his legs are spread and restrained with leg irons (a chain connecting shackles around each ankle). Prisoners are not permitted to use a toilet to relieve themselves and are instead forced to wear diapers. The restraints permit so little movement that the staff must periodically remove the restraints and “pump” the prisoner’s limbs to prevent loss of circulation.

119. Mr. Sardakowski was sent to Territorial Infirmary and placed in restraints for ten days.

During three of those days he was in four-point restraints.

120. Mr. Sardakowski was seen on March 13, 2012 by mental health staff. The interview was conducted while Mr. Sardakowski was in four-point restraints. He again emphasized that he could not continue in solitary confinement without treatment. He stated that he would break his own bones if sent back to solitary confinement. Mental health staff documented that Mr. Sardakowski said he perceived three possible solutions: “I kill myself, I end up crippled, or I go to GP [general population].”

121. A March 14, 2012 clinical note by mental health staff documented that Mr. Sardakowski again expressed the intent to kill himself if sent back to administrative segregation at CSP.

122. An entry that same day recorded that staff were “perturbed” that Mr. Sardakowski was frequently urinating. However, Mr. Sardakowski had to endure the humiliating experience of urinating into an adult diaper and having it changed by prison staff.

123. Mental health staff acknowledged in a clinical note that Mr. Sardakowski’s mental health symptoms remained disabling and an immediate risk to his safety. However, at this point his

treatment focused on “contracting for safety” (obtaining an agreement from Mr. Sardakowski that he would not harm himself) so that he could be sent back to isolation in CSP.

124. On March 15, 2012, mental health staff interviewed Mr. Sardakowski again while he was in four-point restraints. According to the CDOC record, Mr. Sardakowski stated, “you’re gonna think I’m crazy, but if I go back to CSP, I will have to kill myself for the good of the world.” He explained that, “he was born a ‘portal’ and there are other ‘worlds’ that are trying to ‘infiltrate this world because it is neutral.’” He reported that he was the “cause of 9/11” and that if he returned to CSP there would be a “world war three.” Mr. Sardakowski communicated that he was looking forward to talking to a psychiatrist about getting something “so that my mind can’t get hacked, but I can’t go to a stale place.”

125. Mr. Sardakowski “contracted for safety” that same day and was removed from four-point restraints. This “contract for safety” ignored clear symptoms of severe psychosis and the fact that Mr. Sardakowski indicated that he would engage in significant self-harm if sent back to solitary confinement under any circumstances.

126. On March 19, 2012, Mr. Sardakowski again communicated the dire circumstances that prolonged isolation posed, stating that he would either go back to CSP and “leave in a body bag, or I’ll stay here and do the DD program,” referring to Territorial’s program for developmentally disabled prisoners. Mental health staff reported that Mr. Sardakowski said he would break a light and cut an artery if sent back to CSP.

127. On March 20, 2012, Mr. Sardakowski wrote a letter to mental health staff communicating his concerns about returning to prolonged isolation at CSP. The first item on the list stated, “I am tired of self harm for my mental health issues, depression, anxiety, rage, and anger.” He

again stated, “The only two ways I will get out of CSP is going out in a body bag or mental health can re-classify me so I can get treatment.” He added, “If I was brought to Territorial DD program, I would feel better being around my own kind, because I could get treatment and not feel like people are using me like they do at CSP.”

128. The same day, in an entry in Mr. Sardakowski’s medical record, a CDOC psychiatrist determined that Mr. Sardakowski could benefit from returning to Territorial.

129. Despite Mr. Sardakowski’s suicidal ideation and delusional conversations with mental health staff, and despite the CDOC psychiatrist’s recommendation that Mr. Sardakowski be transferred to Territorial, Mr. Sardakowski was sent back to solitary confinement in CSP on March 21, 2012.

Return to Solitary Confinement at CSP

130. An April 25, 2012 entry in Mr. Sardakowski’s medical record indicates that he continued to struggle with mental illness while off psychiatric medication.

131. On May 26, 2012, Mr. Sardakowski again engaged in self-injury by trying to castrate himself. This behavior resulted in Mr. Sardakowski being put on mental health watch, where he used the string from his “safety smock” to tie off his testes again.

132. After again attempting to castrate himself while on mental health watch, Mr. Sardakowski was transferred to Territorial Infirmary and put in four-point restraints for three days.

133. On May 29, 2012, Mr. Sardakowski was seen by a CDOC psychiatrist. In that interview, Mr. Sardakowski stated that he could not stop thinking about self-harm while at CSP. He also stated that he “really needs to get back on medications....” After four months of repeated

incidents of self-injury, the CDOC psychiatrist submitted a non-formulary drug request to have Mr. Sardakowski prescribed Seroquel.

134. In an individual contact with mental health staff that same day, Mr. Sardakowski was told that “his safe behaviors were primary in changing his custody level and making other treatment programs besides the OMI program available to him.”

135. In an additional interview, Mr. Sardakowski again told mental health staff that he could not be safe in prolonged isolation at CSP. A May 29, 2012 entry in his record states, “he indicated no belief that he could successfully return to CSP and remain safe. He indicated indifference to his welfare and powerlessness to control his behaviors of self-injury.”

136. Mental health staff discharged Mr. Sardakowski on May 31, 2012 and returned him to solitary confinement at CSP.

137. CDOC mental health staff returned Mr. Sardakowski to CSP and prolonged isolation despite his statement that he was “powerless to control his behaviors of self-injury.”

138. On August 7, 2012, Mr. Sardakowski broke an audio tape and used the shard of plastic to cut himself. He again began to beat his head against the wall. Mr. Sardakowski reported that this was the only way he could relieve his stress. He stated that he would rather hang himself than remain in administrative segregation.

139. Despite knowledge of Mr. Sardakowski’s severe mental illness, his inability to control self-harming behaviors, and the recommendations of CDOC’s own psychiatrists, Mr. Sardakowski remains at CSP in solitary confinement.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Mr. Sardakowski exhausted all administrative remedies that were available to him related to his denial of adequate mental health treatment claim.

140. On February 13, 2012, Mr. Sardakowski submitted a Step One grievance (C-CS11/12-15066, attached as Exhibit 2, at 1) stating that he was being denied psychiatric medication. Mr. Sardakowski noted that his psychiatrist stated that he required psychiatric medication but needed a more structured treatment setting where his medication could be safely administered. Mr. Sardakowski noted that he had not been transferred to a more structured facility and since that recommendation, had been put in special controls (restraints) twice. Mr. Sardakowski stated that without his medication, he would likely get into trouble and be unable to progress out of administrative segregation.

141. The prison's response to the grievance (Ex. 2 at 1) noted that Mr. Sardakowski received mental health visits and that his medication had been discontinued as a result of two disciplinary convictions for medication abuse, including abuse of crush and float medications.

142. On March 3, 2012, Mr. Sardakowski submitted a Step Two grievance (Ex. 2 at 2) answering the prison's Step One response. He stated that since being taken off medication, he had hurt himself on numerous occasions, sometimes up to five times per day. He stated that he was doing so to "get stress, depression, and anger out of my mind." He noted the connection between disciplinary violations and his being off medication and that without medication, he was a danger to himself and others.

143. The prison's response (Ex. 2 at 2) mischaracterized his grievance as a complaint about crush and float medications and stated that because he had previously grieved that issue in

two other sets of grievances,¹ further grievances on crush and float medications would not be addressed. Those previous grievances, however, were either unrelated to his new grievance or procedurally denied.

144. Despite the prison's mischaracterization of the issue in the response to his Step Two grievance, Mr. Sardakowski submitted a Step Three grievance (Ex. 2 at 3). He re-emphasized that since being off psychiatric medication, he had engaged in self-injurious behaviors and had "severe thoughts of self-homicide." He stated he felt he was a risk to himself and others.

145. The final Step Three response (Ex. 2 at 4) again denied Mr. Sardakowski's grievance on procedural grounds as "previously addressed." The response stated that "issues which have previously been grieved will not be addressed again," and yet also informed Mr. Sardakowski that his grievance was not exhausted.

146. At no time did Defendants address the substance of Mr. Sardakowski's grievance about the denial of psychiatric medication.

147. Defendants' responses rendered the administrative remedy system unavailable to him.

Mr. Sardakowski has exhausted his administrative remedies in relation to his claim that, as a person with severe mental illness, placement in administrative segregation is a violation of his right to be free from cruel and unusual punishment.

148. Mr. Sardakowski submitted a Step One grievance (R-CS11/12-17973, attached as Ex. 5, at 1), stating that his two and a half year stay in administrative segregation caused his anxiety, auditory hallucinations, and self-harming behaviors to increase.

¹ Grievance C-CS11/12-12967 (Ex. 3) was a three-step grievance submitted by Mr. Sardakowski complaining that he was no longer being given medication for his Irritable Bowel Syndrome (IBS). The grievance was denied procedurally for having been filed out of time. Grievance C-CS11/12-12969 (Ex. 4) was a three-step grievance about the discontinuation of Mr. Sardakowski's psychiatric medication and the resulting effects on his mental health. The prison responded that it would not address previously grieved matters, citing the unrelated IBS grievance that was denied on procedural grounds.

149. The prison's response (Ex. 5 at 1) denied his grievance, stating that the issue was previously grieved.²

150. In his Step Two grievance (Ex. 5 at 2), Mr. Sardakowski stated that the previous grievance "wasn't exhausted & if not exhausted I must exhaust it thus this is being refiled to exhaust this grievance." He reiterated his concerns about the effect of solitary confinement on his mental health.

151. The prison's Step Two response (Ex. 5 at 2) again denied his grievance on procedural grounds, again stating that the issue was already grieved.

152. Mr. Sardakowski submitted a Step Three grievance (Ex. 5 at 3) reiterating that the previous grievance was not exhausted and that he was attempting to exhaust his administrative remedies on this issue.

153. The prison's final Step Three response (Ex. 5 at 4) stated that he was not allowed to grieve duplicate issues and stated that the previous grievance was exhausted. This response directly contradicts the prison's Step Three response to the previous grievance (Ex. 6 at 4), which stated that Mr. Sardakowski did not exhaust his administrative remedies.

154. Mr. Sardakowski followed CDOC's procedures for exhausting his administrative remedies. The prison's conflicting responses demonstrate that there are no further administrative remedies available to him for grieving this issue.

² Grievance C-CS11/12-6411 (Ex. 6) grieved multiple mental health concerns. The prison denied it on procedural grounds, stating that a prisoner can grieve only one issue at a time. The Step Three response (Ex. 6 at 4) stated that Mr. Sardakowski had not exhausted his administrative remedies.

Mr. Sardakowski exhausted all administrative remedies related to his claims under the Americans with Disabilities Act and the Rehabilitation Act.

155. Mr. Sardakowski filed a Step One grievance (R-CS11/12-11708, attached as Ex. 7, at 1)

claiming that he was unable to progress out of CSP solitary confinement through the available program (OMI). He stated that he was unable to do so because of his disabilities.

As a remedy, Mr. Sardakowski requested that he be given an alternative means to progress out of solitary confinement. He noted that this was an ADA issue.

156. The prison responded (Ex. 7 at 1) that Mr. Sardakowski had equal opportunity to progress

out of solitary confinement through the OMI program, but that Mr. Sardakowski failed to take advantage of that opportunity.

157. In his Step Two grievance (Ex. 7 at 2), Mr. Sardakowski responded that he was unable to

complete programs that require long-term goals and thus, he was being denied equal

opportunity to progress to general population. Mr. Sardakowski again requested that he be given an alternative means to progress out of solitary confinement.

158. The prison's Step Two response (Ex. 7 at 2) denied his grievance, noting that he had "6

COPD convictions," "numerous chrons," and that he had failed to take advantage of his opportunity to participate in the OMI program.

159. Mr. Sardakowski submitted a Step Three grievance (Ex. 7 at 3) reiterating his inability to

progress toward long-term goals and his frustration with "long term classes." As a remedy,

he again requested that he be given an alternative means to progress out of solitary confinement.

160. The prison denied Mr. Sardakowski's Step Three grievance on procedural grounds (Ex. 7 at 4), stating that the issue was previously grieved. The previous grievance referred to was denied on procedural grounds as a non-grievable issue.³

161. Mr. Sardakowski followed the prison's exhaustion procedures. The prison's characterization of this grievance as a non-grievable issue rendered administrative remedies unavailable.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Against Defendants Tom Clements, Joanie Shoemaker, Paula Frantz, Travis Trani, James Michaud, and Jill Lampela

Failure to Provide Adequate Mental Health Treatment Violated Mr. Sardakowski's Right to be Free from Cruel and Unusual Punishment Under the Eighth Amendment.

(42 U.S.C. § 1983 – Eighth Amendment Violation of Plaintiff's Right to be Free from Cruel and Unusual Punishment)

162. Mr. Sardakowski incorporates herein by reference all other paragraphs of this complaint as if those allegations were set out explicitly herein.

163. The Eighth Amendment to the United States Constitution forbids cruel and unusual punishment. The Eighth Amendment prohibits deliberate indifference to serious mental health needs of prisoners.

164. Defendants have violated Mr. Sardakowski's right to be free from cruel and unusual punishment by failing to provide him with adequate mental health care, including but not limited to appropriate and necessary medication and ignoring transfer recommendations made by CDOC mental health staff.

³ Grievance R-CS11/12-14383 (Ex. 8) was a three-step grievance about Mr. Sardakowski's classification for administrative segregation, and the process by which he was classified. The prison denied the grievance on procedural grounds, stating that classification was not a grievable issue per AR 850-04, IV.

165. Mr. Sardakowski has obvious serious mental health needs. His medical history includes diagnoses of several serious mental illnesses and a developmental disability that require treatment, including but not limited to appropriate medication.

166. Defendants are aware of Mr. Sardakowski's serious mental health needs as indicated by diagnoses in his medical file, treatment history contained in his medical file, recommendations of CDOC mental health staff, his history of suicide attempts, and instances of self-injurious behavior. Mr. Sardakowski's self-injurious behavior makes the severity of his mental illness obvious even to non-medical correctional staff.

167. Despite this knowledge, Defendants have acted with deliberate indifference to Mr. Sardakowski's serious mental health needs.

168. Defendants' inadequate treatment of Mr. Sardakowski's mental health conditions and their refusal to follow recommendations to transfer Mr. Sardakowski to an appropriate facility constitute cruel and unusual punishment.

169. Defendants' intentional and/or deliberate indifference to Mr. Sardakowski's serious mental health needs has severely exacerbated his mental illness.

SECOND CLAIM FOR RELIEF

Against Defendants Tom Clements, Joanie Shoemaker, Paula Frantz, Travis Trani, James Michaud, and Jill Lampela

Placing and Retaining Mr. Sardakowski, an Individual with Mental Illness, in Administrative Segregation Violates His Right to Be Free from Cruel and Unusual Punishment.

(42 U.S.C. § 1983 – Eighth Amendment Violation of Plaintiff's Right to be Free from Cruel and Unusual Punishment)

170. Mr. Sardakowski incorporates herein by reference all other paragraphs of this complaint as if those allegations were set out explicitly herein.

171. The Eighth Amendment to the United States Constitution forbids cruel and unusual punishment. The Eighth Amendment prohibits deliberate indifference to serious mental health needs of prisoners.
172. Defendants have violated Mr. Sardakowski's right to be free from cruel and unusual punishment by being deliberately indifferent to the substantial deterioration of his mental health due to prolonged isolation.
173. Subjecting Mr. Sardakowski to indefinite isolation in solitary confinement has exacerbated his preexisting mental illnesses and has led to the significant deterioration of his mental health. Subjecting Mr. Sardakowski to such conditions does not comply with evolving standards of decency.
174. Mr. Sardakowski has an obvious serious mental health need. He has been diagnosed throughout his lifetime with severe mental illnesses and is now manifesting signs of significant mental deterioration.
175. The ongoing risk of significant deterioration that Mr. Sardakowski is exposed to as a result of his placement in solitary confinement is objectively, sufficiently serious to trigger intervention on the part of the Defendants.
176. Defendants were and are aware of Mr. Sardakowski's severe mental illness as his prison file documents his various diagnoses and repeated incidents of self-injury. Defendants were aware of the substantial risk that prolonged isolation would cause deterioration in Mr. Sardakowski's mental health.

177. Furthermore, Mr. Sardakowski's self-harming behavior has noticeably escalated over the period of time he has been in isolation at CSP, as the nature of his acts has become more aggressive and their frequency has increased.

178. Defendants were and are aware of the substantial risk that prolonged isolation would exacerbate Mr. Sardakowski's mental illness and lead to severe deterioration of his mental health, and they ignored that risk.

179. Defendants ignored that risk by placing and retaining Mr. Sardakowski in solitary confinement.

180. Placing Mr. Sardakowski in solitary confinement and continuing to subject him to conditions of prolonged isolation violates his right under the Eighth Amendment to be free from cruel and unusual punishment.

THIRD CLAIM FOR RELIEF

Against Defendants Tom Clements, Joanie Shoemaker, Paula Frantz, Travis Trani, James Michaud, and Jill Lampela

Discrimination Against Mr. Sardakowski on the Basis of Disability in Violation of the Americans with Disabilities Act.

(42 U.S.C. § 12101 – Violation of ADA)

181. Mr. Sardakowski incorporates herein by reference all other paragraphs of this complaint as if those allegations were set out explicitly herein.

182. Mr. Sardakowski is an individual with a mental impairment, a record of such an impairment, and is regarded as having such impairment within the meaning of 42 U.S.C. § 12102. His serious mental illness and developmental disability constitute mental impairments that substantially limit him in several major life activities, including but not limited to learning, concentrating, thinking, impulse control, pursuing long-term goals, and interacting

with others. These limitations on his life activities have had a profound effect on Mr. Sardakowski's life as more fully described above.

183. As a prisoner in the custody of CDOC, Mr. Sardakowski is qualified for the programs, activities, aids, benefits, and services offered by CDOC.

184. Mr. Sardakowski is qualified for "leveling out" programs at CSP designed to allow prisoners to progress out of solitary confinement. At various times, CDOC staff have placed Mr. Sardakowski in both of the "leveling out" programs at CSP. Mr. Sardakowski, with or without reasonable modifications to rules, policies or practices, met and continues to meet the essential eligibility requirements for participation in "leveling out" programs provided by Defendants.

185. Mr. Sardakowski is also qualified for CDOC programs and services for developmentally disabled prisoners. His eligibility for these programs and services is evidenced by his previous placement in the DD unit at San Carlos and the DD program at Territorial.

186. Thus, Mr. Sardakowski is a "qualified individual with disabilities" within the meaning of the ADA, 42 U.S.C. § 12131(2).

187. Defendants are public entities as that term is used in 42 U.S.C. § 12131.

188. Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

189. Defendants have discriminated against Mr. Sardakowski on the basis of disability in violation of 42 U.S.C. § 12132 and its implementing regulations as more fully described above.

190. Such discrimination includes but is not limited to failure to make reasonable accommodations and modifications to the policies, practices, or procedures in the CSP “leveling out” programs. *See* 28 C.F.R. § 35.130(b)(7). Mr. Sardakowski is incapable of progressing out of solitary confinement through the OMI program or Privilege Level Program because of his mental illness and developmental disability. Reasonable modifications to these programs are necessary to avoid discrimination on the basis of Mr. Sardakowski’s disability and allow Mr. Sardakowski a meaningful opportunity to progress out of solitary confinement.

191. “Provid[ing] a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others” constitutes discrimination under the ADA. 28 C.F.R. § 35.130(b)(1)(iii).

192. Although Defendants have allowed Mr. Sardakowski to participate in the OMI and Quality of Life/Privilege Level programs, he does not have the same opportunity as prisoners without his disabilities to gain the benefit of these “leveling out” programs. Defendants have discriminated against Mr. Sardakowski on the basis of disability by failing to provide him an equal opportunity to progress out of solitary confinement.

193. Defendants have also discriminated against Mr. Sardakowski by excluding him from programs and services for developmentally disabled prisoners. DD programs and services

that are available at Territorial and San Carlos are unavailable to prisoners at CSP.

Defendants have denied Mr. Sardakowski access to these because he is unable to progress out of administrative segregation at CSP without reasonable accommodations for his disability.

194. Mr. Sardakowski has been injured and aggrieved by and will continue to be injured and aggrieved by Defendants' discrimination.

FOURTH CLAIM FOR RELIEF

Against Defendant CDOC

Discrimination Against Mr. Sardakowski on the Basis of Disability in Violation of the Rehabilitation Act of 1973

(29 U.S.C. § 794 – Violation of Rehabilitation Act)

195. Mr. Sardakowski incorporates herein by reference all other paragraphs of this complaint as if those allegations were set out explicitly herein.

196. Section 504 of the Rehabilitation Act of 1973 states that “No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794.

197. Defendants receive and benefit from federal financial assistance as that term is used in 29 U.S.C. § 794 through the Prison Rape Elimination Act and other sources.

198. Mr. Sardakowski is an individual with a mental impairment, a record of such an impairment, and is regarded as having such an impairment within the meaning of 42 U.S.C. § 12102 (as incorporated into 29 U.S.C. § 705(b)(9)(B)). His serious mental illnesses and developmental disability constitute mental impairments that substantially limit him in several

major life activities, including but not limited to learning, concentrating, thinking, pursuing long-term goals, and interacting with others. These limitations on his life activities have had a profound effect on Mr. Sardakowski's life as more fully described above.

199. As a prisoner in the custody of CDOC, Mr. Sardakowski is qualified for the programs, activities, aids, benefits, and services offered by CDOC.

200. Mr. Sardakowski, with or without reasonable modifications to rules, policies or practices, met and continues to meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants. Thus, Mr. Sardakowski is a "qualified handicapped person" within the meaning of the Rehabilitation Act. *See, e.g.*, 28 C.F.R. § 41.32(b).

201. Defendants have discriminated against Mr. Sardakowski on the basis of disability in violation of 29 U.S.C. § 794 and its implementing regulations as more fully described above.

202. Such discrimination includes but is not limited to exclusion of Mr. Sardakowski from prison services and programs on the basis of his disability. Defendants also have failed to make reasonable accommodations and modifications to policies, practices, and procedures that are necessary for Mr. Sardakowski to be able to participate in Defendants' services, programs and activities, including but not limited to "leveling out" programs at CSP and DD programs.

203. Mr. Sardakowski has been injured and aggrieved by and will continue to be injured and aggrieved by Defendants' discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

- A. A declaration that Mr. Sardakowski has been and is being deprived by Defendants of his right to be free from cruel and unusual punishment in violation and contravention of the Eighth Amendment to the United States Constitution;
- B. A declaration that Mr. Sardakowski has been and is being deprived by Defendants of his right to be free from discrimination on the basis of disability in violation of the Americans with Disabilities Act and the Rehabilitation Act by Defendants' exclusion and segregation of him on the basis of his disability and refusal to make reasonable modifications to policies, practices and procedures necessary to avoid such discrimination;
- C. An injunction requiring Defendants to comply with the Eighth Amendment to the United States Constitution, including but not limited to:
 - 1. requiring evaluation of Mr. Sardakowski's mental health and level of intellectual functioning by an independent mental health professional;
 - 2. requiring proper treatment of Mr. Sardakowski's mental illness and developmental disability;
 - 3. providing Mr. Sardakowski the proper medications to accommodate his mental health disabilities and prevent self-harm;
 - 4. requiring transfer out of administrative segregation to an appropriate facility;
- D. An injunction requiring Defendants to comply with the Americans with Disabilities Act and Rehabilitation Act, including but not limited to:

1. providing Mr. Sardakowski with reasonable accommodations to ensure that he has a meaningful opportunity to progress out of administrative segregation;
 2. requiring reasonable modifications to rules, policies, and practices in CSP leveling out programs to provide Mr. Sardakowski with equal opportunity to progress out of administrative segregation.
- E. An award of attorneys' fees and costs of this action, including expert witness fees, on all claims allowed by law;
- F. Any additional or alternative relief as may be just, proper and equitable.

DATED: October 25, 2012

Respectfully submitted,

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