

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOSHUA DUNN;

## NATURE OF THE ACTION

1. The prisoner PLAINTIFFS and the Plaintiff Class are incarcerated in Alabama Department of Corrections (“ADOC”) prisons. Plaintiffs bring this case to remedy (a) the defendants’ failure to provide constitutionally adequate medical care to persons in the custody of the ADOC; (b) the defendants’ failure to provide constitutionally adequate mental health care to persons in ADOC custody; (c) the defendants’ failure to provide due process when medicating persons against their will; and (d) the defendants’ failure to provide prisoners with disabilities with the accommodations and services to which they are entitled under the Americans with Disabilities Act (“ADA”) and section 504 of the Rehabilitation Act of 1973 (“§ 504”). Plaintiffs seek declaratory and injunctive relief for the inhumane and discriminatory practices and conditions they face every day in ADOC custody.

2. The prisoner PLAINTIFFS and all those in ADOC custody are entirely dependent on DEFENDANTS JEFFERSON DUNNDUNN, RUTH NAGLICH and ADOC (collectively, “DEFENDANTS”) for medical and mental health care. Yet the system of care provided by DEFENDANTS DUNN and NAGLICH is grossly inadequate and subjects all prisoners to a substantial risk of serious harm, including unnecessary pain, loss of function, injury and death.

3. Because of the DEFENDANTS’ deliberate indifference to the obvious medical needs of the persons in their custody, plaintiff prisoners go for months or years without appropriate diagnoses of medical conditions. Numerous prisoners have died from a failure to treat medical conditions from cancer to diabetes to hepatitis. Others have required emergency surgery or lost the use of legs, arms or eyes, after having been left to suffer with untreated symptoms for lengthy periods. Prisoners with mental illnesses or serious psychological problems are entirely denied mental health care or provided only with medication with little or no medication management, follow-up, or concern for side effects, some of which are debilitating.

Mental health care other than medications is nearly non-

prisoner of any state in the nation. They have long been aware of the unconstitutional and discriminatory practices of which the plaintiffs complain.

7.

PLAINTIFF DUNN suffered from acute mental health crises while in segregation, requested mental health care, and repeatedly engaged in self-harm, but received no mental health care and was not provided with timely emergency medical care. He suffers from headaches and has a cataract due to a previously cracked lens in his right eye. The OFFICIAL CAPACITY DEFENDANTS have refused to treat PLAINTIFF DUNN's right eye because his left eye is functional. The OFFICIAL CAPACITY DEFENDANTS have also failed to provide PLAINTIFF DUNN with appropriate medical care after he was stabbed multiple times by prisoners. PLAINTIFF DUNN is a person with a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF DUNN is being denied adequate medical and mental health care, and reasonable accommodations for his disabilities under the ADA and § 504.

11. PLAINTIFF SHEILA ALLEN has been in the custody of DEFENDANT ADOC since 2006. She is currently housed at Tutwiler Correctional Facility. PLAINTIFF ALLEN has had hypertension and headaches since shortly after she entered ADOC custody. She has been given a variety of blood pressure medications, but continues to have high blood pressure and headaches. PLAINTIFF ALLEN has tested positive for blood and protein in her urine, but has











21.





health medication which would be appropriate for his treatment which had a lesser likelihood of

and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF MANER is being denied adequate medical care and reasonable accommodations for his disabilities under the ADA and § 504.

29. PLAINTIFF RICK MARTIN has been in the custody of DEFENDANT ADOC since 1988. He is currently housed at St. Clair. He has previously been housed at Kilby and Donaldson. PLAINTIFF MARTIN has a long history of heart problems. He has had a stent in his heart since 2009. In 2012, he had to get a new stent in his heart, and was not given necessary blood thinners afterward, resulting in his requiring emergency open-heart surgery because his un-thinned blood quickly clogged the stent. PLAINTIFF MARTIN has been denied adequate medical treatment.

30. PLAINTIFF WILLIE MCCLENDON has been in the custody of DEFENDANT ADOC since 2007. He is currently housed at Limestone and has been there since his initial brief intake period at Kilby. PLAINTIFF MCCLENDON developed an infection in his testicle which went untreated for several days, turned gangrenous, and resulted in his losing the testicle. PLAINTIFF MCCLENDON has been denied adequate medical care.

31. PLAINTIFF ROGER MCCOY entered DEFENDANT ADOC custody in or around 1994. He is currently housed at the Bibb. He has previously been housed at Bullock and Limestone. PLAINTIFF MCCOY has an apparent mental health disorder for which he is treated with medications but little other treatment. PLAINTIFF MCCOY has been physically assaulted by correctional officers. PLAINTIFF MCCOY is a person with a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF MCCOY is being denied adequate medical and mental health care, and reasonable accommodations for his disabilities under the ADA and § 504, and has had his right to refuse medication violated without due process.







a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF MOSELEY is being denied adequate medical care and reasonable accommodations for his disabilities under the ADA and § 504.

37. PLAINTIFF ZERRICK NAYLOR was incarcerated by DEFENDANT ADOC from 2012 until 2015. He was most recently housed at Hamilton A & I, and has previously been housed at Kilby. PLAINTIFF NAYLOR suffers from keratoconus and is legally blind. He sees only vague shadows. Due to his blindness, he was housed for more than two years in a housing unit that was unduly dangerous and restrictive. While in ADOC custody, he was denied access to programs, benefits and services because of his blindness. PLAINTIFF NAYLOR is a person with a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF NAYLOR was being denied reasonable accommodations for his disabilities under the ADA and § 504. PLAINTIFF NAYLOR is no longer in the physical custody of ADOC. However, he was released at the end of the prison-portion of a split sentence. He is on probation and has a high risk of being readmitted to ADOC custody and facing the same discriminatory practices he faced prior to his release.



vision at all and give him headaches. PLAINTIFF ROGERS is being denied adequate medical care.

41. PLAINTIFF TIMOTHY SEARS has been in the custody of DEFENDANT ADOC since 199



care and is likely to lose his two upper front teeth as a result. PLAINTIFF TERRELL likely has

as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(A) and (B). PLAINTIFF TOOLEY is being denied reasonable accommodations for his disabilities under the ADA and § 504.

48. PLAINTIFF JOSEPH TORRES is 20 years old. He entered DEFENDANT ADOC's custody in February 2011 at age 17. PLAINTIFF TORRES was charged when he was 15 years old. He is currently housed at Bibb. He suffers from untreated cataracts and severe headaches. He has been informed that if he does not receive adequate treatment for his cataracts, he will go blind. PLAINTIFF TORRES hurt his knee while playing basketball at Bibb. He was not provided with care, and his knee remained swollen for approximately two years. PLAINTIFF TORRES was given crutches but was not moved to a lower bunk for two weeks.

Bullock. PLAINTIFF WALLACE has numerous physical birth defects and has been diagnosed with ADHD, bi-polar disorder, paranoid schizophrenia and intermittent explosive disorder. He is





constitutional conditions of confinement in all facilities. At all times relevant hereto, DEFENDANT DUNN and his predecessor have acted under color of state law.

54. DEFENDANT RUTH NAGLICH is the Associate Commissioner of Health Services for the ADOC. DEFENDANT NAGLICH is sued in her official capacity. As Associate

Alabama's "underfunded, understaffed, and overcrowded" prison system had, at that time, "the lowest inmate cost per day in the Country."

58. In 2006, then-Commissioner of ADOC Richard Allen admitted that one of the major problems facing ADOC was "[s]oaring healthcare costs for inmates." He explained "[t]he cost of inmate health care has spiraled in recent years," with costs nearly doubling over the three-year period ending in Fiscal Year 2006." Then-Commissioner Allen identified four factors leading costs: "(1) the increased number of inmates incarcerated, (2) an increase in the severity of illness and degenerative diseases of inmates received into the systems aanletemevhe sh

61. ADOC's cost-cutting efforts proved highly successful from a dollars-and-cents



NAGLICH responded that they would. They have not been. Easterling has 120 prisoners on psychiatric medications, including two on involuntary medication orders, and has no coverage by a psychiatrist or psychologist. Fountain has 64 people on psychiatric medications and no coverage by any psychiatrist or psychologist. Bibb, which has 133 people classified as MH-1, 29 people classified as MH-2, and one person on an involuntary medication order, has less than a quarter-time psychiatrist and no psychologist.<sup>6</sup>

**DEFENDANTS Systematically Underfund Compliance with the ADA and § 504**

69. DEFENDANT ADOC has been aware since at least May 2006 that “Almost none of [its] facilities meet the federal Americans with Disabilities Act requirements.” At that time, DEFENDANT ADOC was uncertain as to “the cost of bringing all facilities up to currently accepted codes, including the provisions of the [ADA],” but committed to engaging “an



72. Moreover, despite the inadequacy of the care provided pursuant to the 2007 contract as demonstrated by the high mortality rate and consistently failed audits, DEFENDANTS NAGLICH negotiated a new contract that would result in further reductions in the amount and quality of health care for prisoners in the custody of the ADOC. The agreed medical care spending for an optional 4th year of the contract was reduced by approximately \$2 million through a contract amendment in or around 2009 and a separate price reduction was agreed with regard to the optional 5th year of the contract. The actual annual contract price was then greatly reduced further under the new Corizon contract executed in 2012, with ADOC saving \$12 million dollars in the first year over the 2012 contract price, and nearly \$24 million total during the three-year contract period.

73. Starting in or around July 2012, PLAINTUC(n or)3( a)4(r)3(o)Mm y 226(c)4(7 0 50.56 0 Tdo)13(













94. From about 2002 through 2009, PLAINTIFF SELLERS was on medication for his blood pressure. The medication controlled his blood pressure. In 2009, while at Easterling, he was taken off his blood pressure medicine. No medical staff discussed his being taken off the medications with him; he went to pill call one day and was told he no longer had prescriptions for the blood pressure medications. After being taken off the medications, he felt the effects of his increasing blood pressure. Since he was taken off the medications, he has suffered from migraines and has frequently felt flushed. In November 2013, at the age of 40, PLAINTIFF SELLERS suffered a heart attack.

95. PLAINTIFF MORK is currently housed in segregation. In mid-April 2014, PLAINTIFF MORK had put his right hand out through the slot in his cell door to get the attention of a correctional officer. The correctional officer grabbed his arm and yanked it upward, banging it on the top edge of the slot in the door, and then slammed the door against PLAINTIFF MORK's arm. PLAINTIFF MORK's arm swelled up from this, but he received no medical care. In late April 2014, the same thing happened again with his left arm. The bone in his forearm became misshapen from the incident. A nurse who passed by his cell during rounds said he should have an x-ray. When he asked to be taken to medical to document any injuries from the incident, no x-ray was taken, and none has been taken since. He does not know if the bone is broken.

96. In the fall of 2013, PLAINTIFF HAGOOD fell ill. He was having difficulty starting and stopping urinating and it burned when he urinated. He went to see medical, and provided a urine sample. The nurse looked at the sample and stated that it looked clear so nothing was wrong. No tests were done. For several days, he did not eat because he was too weak to get himself down the hall to the dining area. One day, he threw up after eating some

food another prisoner brought him. He submitted a sick call slip. He saw Dr. Sangeeta Doshi three days later. He told Dr. Doshi about the vomiting, the weakness and the difficulty urinating. Dr. Doshi did not examine him but told him that nothing was wrong with him and sent him back to his dorm. He continued throwing up that evening. That night PLAINTIFF HAGOOD had to be sent to the emergency room at Jackson Hospital. He was diagnosed with a kidney infection, and kept at the hospital for two days. He has had no follow-up care for the kidney infection since he returned to the prison. Since he came out of the hospital, he has been unable to stand. He told Dr. Doshi of this development, but was never examined to determine the cause of the additional weakness.

97. On one occasion in the last four years, PLAINTIFF TERRELL was hearing voices and he grew loud responding to them. A correctional officer beat PLAINTIFF TERRELL, breaking his jaw and his rib, then put him into segregation. PLAINTIFF TERRELL was not given any medical attention at the time. Six months later, because he was in pain, he was seen in medical and given x-rays, at which point the broken bones were diagnosed.

98. In spring 2014, PLAINTIFF TERRELL tried to change the channel of a television in the dormitory. A correctional officer told him not to, grabbed him and spit in his face. PLAINTIFF TERRELL tried to get away, and the officer called for back-up. The officers then beat PLAINTIFF TERRELL, at least one of them using a baton. He was taken to medical, where a wound on his head was taped up. He was then sent to segregation for about six weeks. While in segregation, his head wound was not treated and the dressing was not changed.

99. PLAINTIFF WILLIAMS has a long history of self-harm with DUNN objects. She is nonetheless provided with razors for shaving, and the razors are left with her in her cell. On or about March 2, 2014, PLAINTIFF WILLIAMS was housed in segregation at Fountain.

She cut herself with a razor. After PLAINTIFF WILLIAMS cut herself, she called out to a correctional officer who took her to the medical unit. PLAINTIFF WILLIAMS's wound was dressed but not cleaned. Due to the failure to adequately clean the wound, it became infected.

100. PLAINTIFF SEARS was diagnosed with Hodgkin disease in 1997 and was treated. However, like many people who have had Hodgkin disease, PLAINTIFF SEARS experiences extreme weight loss. While at Hamilton A & I, he received a double tray of food, Ensure (a nutritional supplement) and vitamins to maintain his weight. When he left Hamilton A & I, the double meals, Ensure and vitamins were all discontinued. PLAINTIFF SEARS is six feet tall and, when he arrived at Ventress in May 2013, he weighed 192 pounds. By February 2014, PLAINTIFF SEARS' weight had dropped 54 pounds to just 138 pounds. PLAINTIFF SEARS was then given an order for double portions, but is given only an extra piece of bread at meals. He continues to lose weight, though more slowly. As of the beginning of June 2014, he weighed 135 pounds. He is weak and exhausted. He is extremely gaunt and his head appears too large for his body. He has asked for Ensure and vitamins but been refused.

101. While PLAINTIFF SEARS was at Hamilton A & I, his health code was a 4. He





106. PLAINTIFF BROOKS has a severe keloid disorder, with large keloids covering much of his face, neck, chest, shoulders, back, and buttocks. They have spread dramatically in the time PLAINTIFF BROOKS has been in ADOC custody. They throb in cold temperatures, and throb and itch in hot temperatures. On one occasion, PLAINTIFF BROOKS passed out due to the pain from the keloids caused by the high temperatures in his dormitory. The temperature and pressure of the showers in his dormitory cause him a lot of pain. The many keloids on PLAINTIFF BROOKS's chest, waist, and back prevent from him from stretching. As a result, he often experiences pain in his chest and feels like his chest is caving inwards. PLAINTIFF BROOKS receives pain medication sometimes, but not consistently. Medical staff refuse to provide PLAINTIFF BROOKS with anything for the itching caused by the keloids, and refused his request to bathe in the tub in the facility's infirmary to avoid the pain caused by water hitting the keloids in dormitory showers. PLAINTIFF BROOKS is unable to wash between the keloids on his back. As a result, he relies on prisoners who are willing to clean between the keloids on his back with a cotton swab. When PLAINTIFF BROOKS is unable to clean between the keloids, an odor develops that intensifies in warm temperatures.

107. PLAINTIFF BROOKS has requested surgery to remove the keloids approximately five times between October 2011 and April 2013. His requests were denied. Medical staff informed PLAINTIFF BROOKS in December 2013 that he has been approved for a surgery to remove the keloids. He did not have the treatment. In or around March or April 2014, PLAINTIFF BROOKS was finally sent to a dermatologist who informed him that the keloids had grown so big that they could only be removed through radiation treatment. The dermatologist also prescribed a medicinal soap, but medical staff failed to provide the soap to PLAINTIFF BROOKS.



untreated for more than four years, despite PLAINTIFF FOLSOM's requests for medical evaluation.

112. PLAINTIFF FOLSOM also has a lump in his left breast, which has not been treated or removed. Medical staff discovered the lump four years ago. The lump in PLAINTIFF FOLSOM's left breast causes PLAINTIFF FOLSOM a great deal of pain.

113. In or about 2011, PLAINTIFF FOLSOM learned he had a cyst in his liver. About a year later, PLAINTIFF FOLSOM was told the cyst was not in his liver, but in his kidney. In or about 2014, PLAINTIFF FOLSOM learned he had two cysts, one in each of his kidneys. He has been told neither the cysts nor kidneys need to be removed.

114. PLAINTIFF ALLEN is 34. She was diagnosed with high blood pressure in approximately 2006. Since about the same time, she has suffered from headaches about every other day. PLAINTIFF ALLEN has been given a variety of blood pressure medicines over the years, but they have not controlled her blood pressure. In 2012 or 2013, PLAINTIFF ALLEN was sent out to a cardiologist who put her on a medication that brought down her blood pressure. The medication was discontinued after

115. In early 2015, PLAINTIFF ALLEN tested positive on two separate occasions for blood and protein in her urine. There has been no follow up to determine the cause of the blood and protein in PLAINTIFF ALLEN's urine.

116. In 2011, PLAINTIFF ALLEN had rectal bleeding. She had a colonoscopy and was diagnosed with internal and external hemorrhoids. The doctor who performed the colonoscopy stated that she should a follow-up examination within one or two years. She has not had a follow-up examination. Since approximately 2013, the bleeding from her rectum has increased dramatically. PLAINTIFF ALLEN has complained to medical staff about it, but has not been examined or treated, other than being given hemorrhoid medication.

117. PLAINTIFF SULLIVAN suffers from a hernia. PLAINTIFF SULLIVAN describes the hernia as a "bottom" hernia, on his left side. He has been given a truss so that the hernia will not move or enlarge. Despite the truss, PLAINTIFF SULLIVAN's hernia drops approximately 1.5 inches, and hangs between his legs, where it causes constant pain from chafing. PLAINTIFF SULLIVAN has requested treatment for the hernia since he was first incarcerated in 1990. In 2013, PLAINTIFF SULLIVAN was told he would not receive surgery for the hernia.

**3. DEFENDANTS deny treatment for eye problems.**

118. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of not treating cataracts and other eye problems.

119. PLAINTIFF TORRES was diagnosed with cataracts in both eyes as a child. In or around 2011, PLAINTIFF TORRES visited the Callahan Eye Clinic in Birmingham, Alabama. Doctors informed him that the vision in his left eye had substantially deteriorated. Doctors advised PLAINTIFF TORRES that if he does not have surgery on his left eye, he will lose vision

in that eye. In or around 2011 and after his visit to the Callahan Clinic, PLAINTIFF TORRES put in a sick call request to see the facility optometrist. The optometrist examined PLAINTIFF TORRES by asking him to read a letter chart only. Afterwards, he informed PLAINTIFF TORRES that ADOC will not pay for his eye surgery and prescribed him a pair of glasses. PLAINTIFF TORRES stopped using the eye glasses after a short time because they did not improve his vision and gave him headaches. The glasses eventually broke and medical staff refused to give him another pair because he discarded the frames.

120. Since 2011, PLAINTIFF TORRES has experienced increasingly severe headaches that are so painful that they prevent him from sleeping. He experiences strain in his right eye due to the weakening of the left. As time passes, his vision worsens and he sees spots and fog periodically.

121. PLAINTIFF MOORE developed glaucoma in 2008. He was in the process of arranging surgery for his glaucoma with the Franklin Clinic in Mobile when he was arrested. After he was arrested, the eye doctor in the Mobile County Jail examined PLAINTIFF MOORE's eyes and stated that he needed surgery for his glaucoma immediately. The eye doctor said that he was writing this in PLAINTIFF MOORE's records that would go to ADOC. When PLAINTIFF MOORE came into ADOC custody, he had an appointment with an eye doctor every three months, later reduced to every six months. He spoke with the eye doctor three or four times about getting surgery to treat his glaucoma. The eye doctor repeatedly told him that the state would not pay for glaucoma surgery because it did not have the money. His last appointment with the eye doctor was in the summer of 2013. In or around February 2014, PLAINTIFF MOORE spoke with the Director of the Pardons and Parole Board who also told him there was inadequate money to pay for his surgery.



the doctors told him that his hepatitis had progressed far enough that he should begin receiving

told PLAINTIFF HENDERSON that all of the possible treatments for the hepatitis C would harm his liver. In 2014, medical personnel refused to provide PLAINTIFF HENDERSON treatment for hepatitis C due to his liver condition.

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mg/dL, a nurse tried to give him insulin anyway. This would have brought his blood sugar level down, likely to a dangerously low level.

137. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of not having diabetic prisoners' toenails clipped for them. PLAINTIFF HAGOOD, who is diabetic and paralyzed on one side of his body from a stroke, asked to have his toenails clipped. Clipping his own toenails is dangerous because he can easily give himself a small cut that, because he is diabetic, creates a risk of infection and amputation. The nurses laughed and told him that they were not in the prison to clip his toenails.

138. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of denying diabetic prisoners appropriate foot care. PLAINTIFF ROGERS has not seen a podiatrist since he came into ADOC custody, although he visited one regularly prior to his incarceration. Prisoner Copeland's feet and legs were consistently swollen and painful, but he did not see a podiatrist.

139. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of denying diabetic prisoners appropriate footwear. PLAINTIFF GILBERT was given an orthopedic shoe that rubbed the skin off his toe because the shoe was too small. He asked for a new shoe, but was denied. He had to cut away the top of the shoe. PLAINTIFF HAGOOD asked for diabetic shoes and was told that because he is in a wheelchair, he does not need shoes.

140. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of denying diabetic prisoners appropriate eye examinations and adequate treatment as needed.

**6. DEFENDANTS deny prisoners adequate dental treatment.**

141. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of denying prisoners adequate dental care.

142. At some facilities,

mental health dormitory in the main building at Bullock, he saw the dentist again. The dentist said to “put him on the list.” PLAINTIFF DILLARD saw the dentist again around the end of April 2014. The dentist did not work on the tooth at either of these appointments. The dentist said that he would try to save the tooth, but has not yet done anything for the tooth.

147. PLAINTIFF TERRELL’s two upper front teeth are mottled dark brown and black, particularly near the gum line. They are both loose. The last time he saw a dentist was, he believes, about one and a half years ago. He recently asked to see the dentist and was told he is “on the list” but that he could not see the dentist.

148. PLAINTIFF BUSINELLE’s dentures broke about three years ago. He has not been provided with new dentures.

**C. DEFENDANTS Routinely and Systematically Delay Diagnosis and Treatment of Serious Medical Needs.**

149. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of delaying diagnosis and treatment to prisoners with serious medical conditions, causing prisoners in Alabama unnecessary pain, suffering, disabilities and sometimes death. The policy and practice of delaying diagnosis and treatment creates a substantial risk of serious harm.

150. Numerous prisoners have complained of symptoms for months without anyone addressing their concerns, only to be diagnosed with advanced stage cancer that is terminal by the time it is diagnosed. For example, Robert Jones, a prisoner who had been treated for prostate cancer in 2006 started showing rapidly rising PSA levels in 2011. Rising PSA levels are an indication of prostate cancer, requiring additional tests. He began vomiting, sometimes vomiting blood, on a regular basis. However, he was not given necessary tests or diagnosed until a year and a half later in February 2013. By that time, his prostate cancer had metastasized, spread to his bones, and was terminal. He died in January 2014.



infections from the catheter, often requiring hospitalization. His urine is often a brownish color and may have blood in it.

155. In February 2014, an infection from PLAINTIFF SMITH's catheter had gotten so bad that he had to be taken to Jackson Hospital for a series of visits. During these visits it was determined that PLAINTIFF SMITH's bladder was now incapable of holding the normal amount of fluid. Fluid leaks from PLAINTIFF SMITH's penis and pockets of pus repeatedly form around his groin area. PLAINTIFF SMITH endures pain so severe that he is often unable to sleep.

156. In late 2014, after a seven-year delay and only a few months after the filing of this lawsuit, PLAINTIFF SMITH was finally given the surgery he needed.

157. Starting in the summer of 2010, PLAINTIFF SELLERS began to experience pain in his lower back and difficulty urinating, and occasionally saw blood in his urine. He told medical staff, but was given only Ibuprofen for the back pain. His pain and urination difficulties increased over the following three years. By July of 2013, he had blood in his urine every day, and was in so much pain that he could not lay flat on his bed. Following a heart attack in November 2013, he was transferred to Kilby. He had an MRI, from which it was discovered that he had kidney stones. PLAINTIFF SELLERS was placed on a medical hold, so that he could have the kidney stones removed. He was prescribed Flomax to treat the kidney stones and Norco for pain, and was scheduled for surgery. However, on December 31, 2013, he was transferred to St. Clair. His medical records were not transferred to St. Clair. His diagnosis was not promptly communicated to staff at St. Clair, he was not provided with his medications, and it was months before his surgery was scheduled. PLAINTIFF SELLERS finally had kidney surgery on March

7, 2014, more than three and a half years after he began having symptoms from the kidney stones, and more three months after the kidney stones were ultimately diagnosed.

158. The day of PLAINTIFF SELLERS's

hands, one of which was injured, to wash his face in the sink that is a single unit with the toilet that had been stopped up for a week. He was given 20 days of restriction in segregation. He was not taken to medical that day for his hand. He was taken the following day and given aspirin. It was not until four days after the incident that his hand was x-rayed. He does not know the results. As of June 16, his hand continues to cause him significant pain and he has difficulty moving his thumb.

162. In or around June 2012, PLAINTIFF BUSINELLE began complaining of serious tooth pain in two teeth, and asking for the two teeth to be removed. PLAINTIFF BUSINELLE put in repeated sick call requests relating to the pain from these two teeth for two and a half years, before they were finally extracted in late 2014.

**D.**



had time, but did not come back. At approximately 9:00 p.m., PLAINTIFF DUNN was taken out of his cell and placed in a cell outside. He was beaten by two officers in the cell, then left there for another hour. At approximately 10:00 p.m., he was taken to the infirmary. The nurse at the infirmary attempted to staunch the blood flow from PLAINTIFF DUNN's arm, but was unable to do so. At approximately 11:00 p.m., PLAINTIFF DUNN was taken to Brookwood Medical Center ("Brookwood"), where several staples were put into his arm to hold the wound closed. The doctor at Brookwood instructed that PLAINTIFF DUNN should be returned to the hospital for follow-up care if he experienced weakness as a result of the cut in the tendon. Although PLAINTIFF DUNN did experience weakness in his arm, he received no care for the weakness.

**E. DEFENDANTS Fail to Adequately Provide and Manage Medications, Medical Supplies, and Medical Devices.**

166. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of not consistently providing and managing medications and other medical supplies. The medical staff in Alabama prisons makes frequent medication errors or otherwise deprive prisoners of prescribed medications.

167. Prisoner Bobby Copeland took medication for high blood pressure and diabetes. Many months his medications ran out before he was scheduled to see the doctor again. When this happened he had to ask to be seen in sick call, first by a nurse, then by a doctor. The process could take several days. The longest he went without his medications was about two weeks. When he was not on his medications, he sweated, got dizzy and suffered from headaches. Several prisoners describe medications running out before the end of the prescription.

168. PLAINTIFF ROGERS takes medication for diabetes. In March 2014, the medication was abruptly discontinued without any discussion with a doctor. PLAINTIFF ROGERS went for appro

173.

do not have the medications in stock and that PLAINTIFF SULLIVAN will have to wait until

with TB worked in the kitchen until the day he was diagnosed. Many prisoners at St. Clair did not have a TB test done during their physicals in 2013.

183. A correctional officer who was known by DEFENDANT DUNN's predecessor and DEFENDANT NAGLICH to have active TB was allowed to continue working at Tutwiler during September 2013. He was stationed in places in the facility where it was deemed that he would have limited contact with prisoners and other employees and contractors of ADOC, but he was allowed to continue working until he was physically unable to do so.

184. At Donaldson in the summer of 2012, Dormitory K, which houses 130 men, was under purportedly under quarantine for TB. The people in Dormitory K mixed freely with the people in the adjacent dormitory and, to a lesser degree, with the prisoners housed in two more dormitories of the same size.

185. There is an outbreak of scabies at Ventress that has been ongoing for three years or more. Early on in the Ventress scabies outbreak, prisoners were instructed to place their mattresses over a fence in the yard during the day to air them out. When the prisoners collected them at night, there was no way to ensure that each person got the same mattress he had had before. Such mixing of mattresses creates a high risk of infections spreading from one person to another.

186. There has also been an outbreak of scabies at St. Clair, Holman and Tutwiler in recent months.

187. Moreover, the conditions in the prisons make the spread of disease nearly inevitable. The prisons are grossly overcrowded. Prisoners in every facility report the presence of vermin, especially rats and spiders. The vermin live in the housing units and in the kitchens. In various prison units, birds enter and leave droppings.









rescinded. DEFENDANTS did not rescind it. To the contrary, DEFENDANTS relied on it in their response to the lawsuit Shepherd had filed seeking to have cataract surgery.

199. An Incident Report from Hamilton A & I reflects that on September 9, 2009, a prisoner was found in crisis. Life saving measures were started, and the doctor was called. The doctor told the staff that was present with the prisoner to “make him a DNR.”

200. Moreover, the OFFICIAL CAPACITY DEFENDANTS cease to provide medical treatment to people with DNRs. As discussed above, DEFENDANT

203. In December 2013, PLAINTIFF PRUITT was on suicide watch. At approximately 3:00 a.m. on December 13, 2013, another prisoner threw burning fabric into PLAINTIFF PRUITT's cell and the other suicide watch cell, burning PLAINTIFF PRUITT's legs. Prisoners on the second floor of the unit where the suicide watch cells are located also threw burning items into the cell. The correctional officers came and put out the fires, but failed to do anything to stop this assault. The assault continued for approximately three hours. When PLAINTIFF PRUITT asked to go to see the medical staff, the correctional officers refused, dismissing his injuries as "minute" and "nothing." He was not taken to see medical staff until the morning of December 14, 2013.

204. Starting on December 14 or 15, 2013, prisoners started throwing disinfectant onto PLAINTIFF PRUITT. Some of the disinfectant went into his eyes. Correctional officers did not take him to get medical attention until the following day.

205. On June 12, 2014, PLAINTIFF PRUITT was in segregation. He had been asking for mental health care for months. He cut himself with a razor on both arms. When he informed the corrections officer that he was bleeding, the officer ignored him and left him in the cell for approximately four to five hours before taking him to the nurse.

206. In March 2014, PLAINTIFF WILLIAMS was in segregation at Fountain. She had an infection from a wound that had not been properly treated by the medical staff. After she had returned to the infirmary and gotten the infected wound properly cleaned and dressed, medical staff told her she should return to the infirmary twice a day to have it re-dressed. Correctional officers in the segregation unit did not permit her to return to the medical unit, and the wound became infected again.

207. Corrections officers are often present before or during medical examinations. They sometimes make comments during the examinations suggesting or stating that the prisoner is lying to the medical professional. PLAINTIFFS ROGERS, BRAGGS and PRUITT have experienced correctional officers interfering in their discussions with medical staff.

**II. DEFENDANTS FAIL TO PROVIDE ADEQUATE MENTAL HEALTH CARE TO PRISONERS.**

208. The OFFICIAL CAPACITY DEFENDANTS fail to provide constitutionally adequate mental health care in a number of ways. Their mental health care delivery system is severely understaffed, and lacks adequate personnel with sufficient expertise to properly treat the individuals within its care. The OFFICIAL CAPACITY DEFENDANTS fail to identify, treat and medicate individuals with mental illness. Additionally, these systematic failures rise to the level of causing significant injuries and the unnecessary and wanton infliction of pain. Each of these deficiencies, in isolation and in conjunction, result in a violation of the Eighth Amendment.

209. The OFFICIAL CAPACITY DEFENDANTS

are receiving treatment for serious mental illness must be promptly evaluated when placed in segregation. *Id.* r. 625 (2004).

210.



223. As of April 2014, Ventress had 200 people on the mental health caseload. Of these, 139 were on psychiatric medications, including two people on involuntary medication orders. Ventress had no psychiatrist.

224. As of April 2014, there was only one work release center that had any psychiatric coverage at all. Altogether, the other work release centers housed 113 people on the mental health caseload, of whom 75 were on psychiatric medications.

225. At other facilities, the level of psychiatric staffing was so low as to be clearly insufficient. As of April 2014, Bibb had 161 people on the mental health caseload. Of these, 116 people were on psychiatric medications, including one person on an involuntary medication order. Bibb had less than a quarter-

population, of whom 201 were prescribed psychiatric medications, including five on involuntary medication orders. Bullock had one full-time and one half-time psychiatrist.

229. Donaldson maintains two RTUs. As of April 2014, Donaldson had 71 prisoners housed in the RTUs. In the RTUs, 60 people were prescribed psychiatric medications, including 16 on involuntary medication orders. There were an additional 142 people on the mental health caseload in the general population, of whom 73 were prescribed psychiatric medications, including 3 on involuntary medication orders. Donaldson had a three-quarters time psychiatrist.

230. Tutwiler also maintains an RTU and an MDC /TT0 2(ns)-1( a)4(S1002 w932uha)4(l)-2i( )Tj

234. When ADOC issued its request for proposals for a mental health services contract in 2013, it identified the minimum staffing need from the provider to be 144.95 full-time equivalent employees. Under the current contract, MHM Correctional Services (“MHM”) is not providing even this inadequate number of mental health staff. The staffing provided under the new MHM contract is just 126.5 full-time equivalent employees.

235. The OFFICIAL CAPACITY DEFENDANTS require MHM to provide reports of their staffing and provision of care every month. In the month of April 2014, these reports showed that MHM had fewer than 120 full-time equivalent employees providing mental health related services. Of 2,738 prisoners on the outpatient mental health caseload, just 258 were scheduled to participate in any mental health group during the month.

**A. DEFENDANTS Fail to Identify Mentally Ill Prisoners and Understate the Acuity of Mental Illness Even in Those Identified.**

236. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of under-identifying mentally ill prisoners and understating the acuity of prisoners’ mental illness. As a result, mentally ill prisoners go untreated and severely mentally ill prisoners receive a far lower level of treatment than they need.

237. Just 12.3 percent of the ADOC population is identified as having a mental health code of MH-1 or greater. This almost certainly indicates that Alabama is not identifying prisoners with mental health disorders. In a 2006 study of prison and jail prisoners throughout the country, the Department of Justice concluded that on average, about half of prisoners in state correctional facilities meet the DSM-IV criteria for a mental illness.

238.



on suicide watch for approximately 10 days. He has previously been treated for depression. He asked for mental health treatment several times since December 2013. PLAINTIFFS' counsel informed DEFENDANT DUNN's predecessor and DEFENDANT NAGLICH of PLAINTIFF PRUITT's urgent need for mental health care on May 16, 2014. PLAINTIFF PRUITT has not been given any treatment or placed on the mental health caseload.

239. Similarly, PLAINTIFF WILLIAMS engaged in self-harm repeatedly in March

243. PLAINTIFF JOHNSON is obviously severely mentally ill, but not being treated by mental health staff. PLAINTIFF JOHNSON has also not been sent to a neuropsychologist to determine what, if any, treatment is appropriate to address his possible brain injury.

244. Further, DEFENDANT DUNN's predecessor and DEFENDANT NAGLICH informed PLAINTIFFS' counsel that they are aware of 30 prisoners who have diagnosed DSM-IV Axis I clinical disorders who are not on the mental health caseload. Of the 30, 23 are housed at the Elmore, Staton and Draper, complex, facilities that do not have a psychologist or psychiatrist on staff.

245. The OFFICIAL CAPACITY DEFENDANTS also dramatically understate the level of acuity of those who are mentally ill. According to ADOC mental health codes, MH-1 and MH-2 are used for prisoners with "mild impairment in mental functioning, such as depressed mood or insomnia," MH-3 is for moderate impairments "such as difficulty in social situations and/or poor behavior control," MH-4 is for severe impairments "such as suicidal ideation and/or poor reality testing," MH-5 is used for severe impairments "such as delusions, hallucinations, or inability to function in most areas of daily living." MH-6, the code for the most acutely mentally ill, is reserved for prisoners who have been committed to a mental hospital. As of April 2014, just 242 prisoners in ADOC custody – less than 1 percent – were classified at greater than MH-2. In contrast, the Department of Justice study cited above found that nationally some 43 percent of state prisoners met the DSM-IV criteria for mania and 15 percent met the criteria for psychotic disorders.

246. Numerous prisoners who clearly meet the criteria for MH-3 or above are classified as MH-1 or MH-2.

247. PLAINTIFF MCCOY is acutely mentally ill and has poor reality testing. He is housed at Bibb. He is given psychiatric medications against his will. PLAINTIFF MCCOY is classified as MH-1 or MH-2.

248. PLAINTIFF DILLARD is classified as MH-1. He continues to have hallucinations.

249. Similarly, PLAINTIFF TERRELL is classified as MH-2. He is housed in the Mental Health Unit at Bullock and has hallucinations.

250. PLAINTIFF HARTLEY has been in and out of mental hospitals since he was a child. He has difficulty carrying on a coherent conversation. He does not know what his diagnosis is or what his mental health code is, but he is housed at St. Clair, where the highest mental health code is MH-3.

251. The OFFICIAL CAPACITY DEFENDANTS' own documents reflect the understatement of acuity of mental illness. According to an April 2014 report to DEFENDANTS DUNN's predecessor and NAGLICH, only 230 people in ADOC custody were categorized as MH-3, and just 12 people were classified at higher mental health codes. Yet 753 people were receiving antipsychotic medications. Similarly, a March 2013 report to DEFENDANTS DUNN's predecessor and NAGLICH from MHM showed that 242 people were categorized as MH-3 or higher, but 853 people had psychotic disorders. Per the OFFICIAL CAPACITY DEFENDANTS' description of mental health classificath(lth2.00(Y DE5t)-2(i)-8(e)4(rn.74

253. The OFFICIAL CAPACITY DEFENDANTS have designated a total of 3,059 prisoners as having a code of MH-1 or greater. Only 2,209, or 8.9 percent of the ADOC





hours a night. Also, as stated above, there are 30 people DEFENDANT ADOC has identified as not being on the mental health caseload who have Axis I diagnoses.

267. There is little regard for side effects of psychiatric medications. The OFFICIAL CAPACITY DEFENDANTS are aware that one of the potentially life-threatening side effects of many psychiatric medications is that they make patients more sensitive to heat and more vulnerable to heat-related illnesses, such as heat stroke. Yet, prisoners on psychotropic medications that increase heat sensitivity are exposed to levels of heat that pose potentially lethal

270. Other side effects are also inadequately addressed. For example, PLAINTIFF TERRELL's right hand and wrist shake. This is a recognized side effect of first-generation antipsychotics, including Haldol and Prolixin. He told the doctor about the shaking, and the doctor increased the Benadryl to three pills per night. This has not controlled the shaking but has increased PLAINTIFF TERRELL's sleepiness. PLAINTIFF TERRELL sometimes sleeps for a day and a half straight. Sleepiness is a side effect both of Haldol and Prolixin, and of Benadryl.

271. In or about 2005, PLAINTIFF PRUITT was diagnosed with depression. He was prescribed Haldol, an antipsychotic used to treat schizophrenia and known to carry a risk of a variety of side effects. He was given no medications to address the side effects and developed what he describes as "lockjaw" after about a year. He then asked to be taken off Haldol. Muscle movements in the jaw and muscular rigidity are known and serious side effects of Haldol. The lockjaw lasted on and off for about a year after he stopped taking Haldol. He has not been provided with any mental health care since requesting to be taken off Haldol due to the side effects, although he continues to have suicidal ideations.

272. Similarly, PLAINTIFF JACKSON was given no medications for the shakiness caused by taking Haldol. When he complained of it, he was offered neither side effect medication nor a different psychiatric medication that carries a lower risk of this particular side effect.

273. PLAINTIFF BUI takes Haldol. It causes him to shake. He does not, to his knowledge, receive any medications to combat this well-known side effect of Haldol and has not been offered an alternative medication to Haldol that would not cause him to shake.

**C. DEFENDANTS Fail to Provide Mentally Ill Patients with Adequate Care.**



274. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of providing almost no mental health treatment other than medication to mentally ill prisoners.

275. In April 2014, there were six individuals at St. Clair who have involuntary medication orders. Individuals cannot be given involuntary medication orders unless they have a serious mental illness and are dangerous to themselves or others. St. Clair has neither a psychiatrist nor a psychologist, and there were no psychiatrist or psychologist contacts at St. Clair during the entire month. The same is true for Ventress where there were two individuals with involuntary medication orders.

276. The OFFICIAL CAPACITY DEFENDANTS maintain a total of 375 beds in RTUs. According to an April 2014 MHM report provided to the OFFICIAL CAPACITY DEFENDANTS, there were 249 individuals in the RTUs. Despite having 249 patients sufficiently ill to warrant inpatient mental health care, there were just 160 individual contacts by psychiatrists with the patients in the RTUs over the course of the month, 29 individual contacts with a psychologist and 96 contacts with a nurse practitioner. According to another MHM report provided to the OFFICIAL CAPACITY DEFENDANTS, in March 2013, there was one individual in an RTU at Limestone who was in the RTU for the entire month and he was classified as MH-3. MHM reported that, over the course of the month, this individual met with a psychologist two times and a nurse practitioner one time, and had no other mental health contacts.

277. The OFFICIAL CAPACITY DEFENDANTS also maintain specialized units for the most acutely mentally ill within its control at Bullock and Tutwiler, labeled as the “Intensive Stabilization Units” (SU) with a total capacity of 38. The April 2014 report to the OFFICIAL CAPACITY DEFENDANTS indicates that as of the end of the month, there were 11 men in the

SU at Bullock and one woman in the Tutwiler SU. All were classified as MH-5, the highest level mental health designation before DEFENDANTS are required to transfer individuals to a mental health facility. The woman in the SU at Tutwiler was placed on “precautionary watch” in a safe cell for 15 days. The totality of her contacts with mental health during the month of April was two contacts with the psychiatrist and five with a mental health professional.

278. The contacts with mental health staff are often perfunctory. For example, while he was in the Bullock RTU, PLAINTIFF DILLARD had appointments with a counselor at varying frequencies that lasted roughly 10 minutes. He estimates that he has met with his Treatment Team approximately two times in the nine years he has been incarcerated. He is now in the mental health dormitory at Bullock, where he sees a counselor one or two times a month for five to 10 minutes. He continues to hear voices, and feels he would be helped if he had the chance to talk through his problems more thoroughly. Other than the five to 10 minute counseling sessions and medication, PLAINTIFF DILLARD receives no additional mental health treatment or programming. The last time he had mental health programming other than the “Know your Medication” class was in or around September 2013. To his knowledge there are no mental health groups or programs for prisoners in the mental health dormitory at Bullock.

279. PLAINTIFF TERRELL is housed in the Bullock RTU. This is the unit for the most acutely mentally ill prisoners in ADOC custody. PLAINTIFF TERRELL has been diagnosed with bi-polar disorder, schizophrenia, depression and PTSD. PLAINTIFF TERRELL experiences auditory and visual hallucinations. He has great difficulty placing events in relation to each other in time. He sleeps most of the time, sometimes for a day and a half at a time. In addition to taking medication, he sees a counselor for about five minutes every two weeks and a





286. PLAINTIFF BRAGGS has been diagnosed with anxiety and depression and is

289. Near the end of March 2014, PLAINTIFF WILLIAMS asked to see mental health. She was told that she had to ask Ms. Nichols, the ADOC psychological associate at Fountain. She spoke with Ms. Nichols and asked to be placed on the mental health caseload and expressed that she thought she needed psychiatric medication. PLAINTIFF WILLIAMS has in the past been on the mental health caseload and has been prescribed psychiatric medications. She repeatedly cut herself earlier in the month and had been threatened with forced medication.



**D. DEFENDANTS Place the Mentally Ill in Segregation Without Regard for Their Mental Health.**

297. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of placing mentally ill prisoners in segregation without regard for the harmful effects segregation has on the mentally ill. The OFFICIAL CAPACITY DEFENDANTS are aware that this is a dangerous practice that can cause harm to mentally ill prisoners. The OFFICIAL CAPACITY DEFENDANTS have a regulation requiring prompt evaluation and ongoing monitoring of the mental health status of mentally ill prisoners who are placed in segregation.

298. At St. Clair, Holman and Tutwiler, there are no general mental health checks in the segregation units.

299. In May 2012, PLAINTIFF HARDY who has a long history of serious mental illness, was taken off the mental health caseload and placed in segregation at St. Clair, where he has remained since.

300. PLAINTIFF JACKSON, who has been diagnosed with schizophrenia and has auditory hallucinations, has been on the administrative transfer program between the segregation units at St. Clair, Holman, and Donaldson for seven years.

301. PLAINTIFF CARTER, who has been diagnosed with schizophrenia and several other serious mental health disorders, has been in segregation continuously for last three years. He has been in either an RTU or segregation most of the time he has been in ADOC custody.

302. PLAINTIFF WALLACE has been in either a RTU or segregation since 2010.

303. PLAINTIFF TERRELL has been diagnosed with bi-polar disorder, schizophrenia, depression and PTSD. He estimates that he has been placed in segregation four or five times. Each time, he suffers exacerbated symptoms, including increased auditory and visual hallucinations and increased nightmares.



**E. DEFENDANTS Fail to Adequately Protect Its Most Seriously Mentally Ill Who Exhibit Self-Injurious and Suicidal Actions.<sup>8</sup>**

304. The OFFICIAL CAPACITY DEFENDANTS have a policy and practice of not protecting mentally ill prisoners from self-inflicted injuries or suicide.

305. The OFFICIAL CAPACITY DEFENDANTS distribute razor blades throughout their facilities for prisoners to shave. They are distributed in the RTUs, mental health dormitories, segregation units and other housing units. The razors are not collected or accounted for in any way.

306. On January 21, 2011, a prisoner at Limestone committed suicide using a state-issued razor blade. The death and instrument used were both reported in an ADOC Incident Report.

307. Prisoners who have a recent history of using razors to injure themselves are still provided with razors.

308. PLAINTIFF WILLIAMS has a long history of self-harm with DUNN objects. She is nonetheless provided with razors for shaving, and the razors are left with her in her cell. On or about March 2, 2014, PLAINTIFF WILLIAMS was housed in segregation at Fountain. She cut herself with a razor. After PLAINTIFF WILLIAMS cut herself, she called out to a correctional officer, who took her to the medical unit. PLAINTIFF WILLIAMS's wound was dressed but not cleaned. She was placed in suicide watch until the following day. She was then asked by mental health staff if she was suicidal. Upon her negative response, she was returned to her segregation cell. The razor she had used to cut herself the previous day was still in her cell. She was not provided with any mental health counseling either while in suicide watch or while in segregation afterwards. She continued to be allowed to have razors in her cell.

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<sup>8</sup> As noted in a previous footnote, the parties have preliminarily settled Defendants' alleged failure to protect the mentally ill from self-harm with razor blades, subject to a monitoring phase to ensure the issue's actual resolution.

309. On or about March 10, 2014, PLAINTIFF WILLIAMS again cut herself with a razor blade in her cell, this time in front of a correctional officer. The correctional officer walke





seven months. When he is confined in the padded cell, mental health personnel come to check on him two or three times a week for 15 to 30 minutes. PLAINTIFF HARTLEY is unaware of having gone through a process to determine whether he can be medicated against his will.

319. In or around 2009, PLAINTIFF BUI was asked, as he understood it, to volunteer to take a medication. This medication was Haldol. At that time, PLAINTIFF BUI agreed to take the medication. In or around the fall of 2012, PLAINTIFF BUI informed mental health staff that he no longer wanted to take the medication. He requested to be taken off the medication because it made him shake and he did not want to be medicated. He was told that he would be placed in

that he needed to see the psychiatrist because he was suffering from side effects from the  
medicat

his arm from the shot. To his knowledge, PLAINTIFF MCCOY has never had a hearing to determine whether he can be medicated against his will.

**IV. DEFENDANTS FAIL TO REASONABLY ACCOMMODATE PRISONERS WITH DISABILITIES.**

325. DEFENDANT ADOC discriminates against prisoners with disabilities in numerous ways, including, but not limited to, failing to remove architectural barriers, failing to provide reasonable modifications in policies and procedures, failing to provide auxiliary aids and services necessary for effective communication, improperly segregating prisoners with disabilities, engaging in contractual arrangements that limit access to appropriate health care for prisoners with disabilities. Further, the constitutional violations alleged with regard to the provisions of 109A-12(a)-12(is)1(a) and 109A-12(i)-2(m)8(i) of the Massachusetts General Laws, Chapter 127B, § 12, are as follows:

access to the outside in many facilities involves going down stairs. While ADOC need not make sure that all its facilities are accessible to persons with mobility impairments, it cannot house those with mobility impairments in locations that are not accessible to them. Wardens indicated, during monitoring visits conducted by Plaintiffs' counsel, that individuals were not housed in dormitories that were not accessible. However, these assertions were repeatedly belied by the presence of prisoners with disabilities in such dormitories and confirmation that they did indeed live there.

329. PLAINTIFF SEARS suffers from scoliosis. He uses a back brace and a cane. Walking is difficult and painful for him, as is standing for long periods. PLAINTIFF SEARS was housed in Hamilton A & I from April 2012 until January 2013. He was then moved to Limestone, where he stayed until May 2013, and then Ventress. Initially, he was housed in

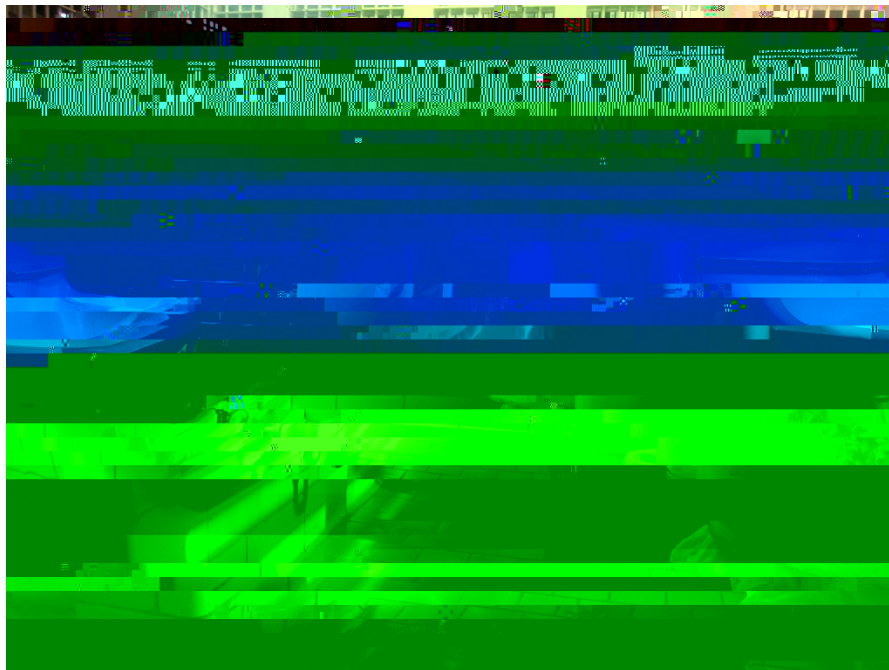


PLAINTIFF SEARS be more appropriately accommodated. He was then moved to Dormitory A, which is close to the infirmary. However, Dormitory A is an honor dormitory in which

priso

navigate between the toilets and urinals to reach the accessible toilet, and there is inadequate space to do so. The shower has an unstable chair, and several prisoners have reported falling while trying to get in and out of the shower chair. The ramp to the yard is too steep, resulting in prisoners in wheelchairs being unable to control themselves going down and unable to mount the ramp to return to the infirmary from the yard. There are frequently prisoners who use wheelchairs who stay in the infirmary.

334. The Kilby infirmary also has several individual cells. The toilet and sink in the infirmary cells are a single unit with the sink directly above the toilet. The toilet and sink are also located in the corner of the cells. They are inaccessible to prisoners in wheelchairs. DEFENDANT ADOC has housed prisoners who are in wheelchairs in the cells in the infirmary. Also at Kilby, wheelchair users who do not need to be in the infirmary are concentrated in Dormitory A. PLAINTIFF HAGOOD was housed in Dormitory A from around late 2012 until May 2, 2014. There were, as of May 1, 2014, 10 wheelchair users in the dorm. There have been as many as 17 wheelchair users housed in Dormitory A at one time in the period PLAINTIFF HAGOOD has been housed there. There is just one purportedly accessible toilet in the dorm. Although the toilet has grab bars, it is not accessible because it is at the end of a narrow walkway with toilets on one side and sinks on the other, not leaving adequate room for maneuvering a wheelchair. Moreover, the purportedly accessible toilet was out of order for months at a time. The bunks in Dormitory A are so close together that PLAINTIFF HAGOOD cannot maneuver easily through the aisles between the bunks.



(Kilby Dormitory A bathroom, showing garbage can on top of accessible toilet)

335. At the Fountain chapel, the only bathroom for prisoners has a very narrow door that a person in a wheelchair would not be able to go through.

**B. DEFENDANT ADOC Has Not Made Reasonable Modifications in Policies and Procedures.**

336. DEFENDANT ADOC has not made reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

**1. DEFENDANT ADOC discriminates against prisoners with disabilities in the provision of medical care.**

337. DEFENDANT ADOC has a policy that discriminates against prisoners with disabilities by requiring prisoners complete a written form to request medical care. Some prisoners with vision or intellectual disabilities cannot complete the necessary forms to receive



341. However, many prisoners with disabilities are not given profiles for accommodations that they need and that are reasonable. Further, even when prisoners have profiles, the profiles are not consistently followed by prison staff. PLAINTIFF SEARS has severe scoliosis. Prolonged standing and walking causes him pain. From his arrival at Ventress on May 9, 2013 until May 5, 2014, PLAINTIFF SEARS did not have a profile that exempted him from prolonged standing. PLAINTIFF SEARS routinely had to wait in line at pill call, sometimes for as long as three hours. On May 5, 2014, PLAINTIFF SEARS was given a “no prolonged standing” profile. This has reduced the amount he is required to stand. However, there are several officers who have informed PLAINTIFF SEARS that they will not honor his profile and make him stand for long periods.

342. As discussed above, in June 2014, PLAINTIFF SEARS was informed that his health code had been changed from 4 to 1. Because he was a 1, he was told he would be required to work. PLAINTIFF SEARS asked if there were jobs he would be able to do sitting down, as he has a “no prolonged standing” profile. He was told there were not, and that if he did not begin to work, he would be subject to disciplinary action.

343. Due to the difference in the length of PLAINTIFF GILBERT’s legs, standing for lengthy periods of time is painful. He has a profile from the doctor stating that he should not be required to stand for long periods. He is nonetheless often required to stand for pill call and in line for food. Shortly after coming into ADOC custody, he was provided with a single crutch. This gave some relief, but still left him in significant pain. PLAINTIFF GILBERT did not receive a wheelchair for eight months after he arrived at the prison.

344. PLAINTIFF BROOKS develops keloids at the site of broken skin. Therefore, PLAINTIFF BROOKS has a profile that allows him to abstain from shaving for extended

periods of time. Despite this profile, ADOC correctional officers often refuse to allow PLAINTIFF BROOKS to eat at meal times because he has not shaved. On at least six or seven occasions, PLAINTIFF BROOKS was ordered to shave before he could eat despite his shaving profile. On all six or seven occasions, PLAINTIFF BROOKS has shaved and cut himself, causing another keloid to develop. On three of these occasions, PLAINTIFF BROOKS was not allowed to eat even after he shaved.

345. Prisoner Baker had a profile for use of a wedge to accommodate her acid reflux. For a period of time, she was not allowed to use a wedge, even though she had had a wedge profile for several years. Prisoner Baker began to use extra blankets to substitute for the wedge but the blankets were taken away. ADOC subsequently refused to give out extra blankets or replace the wedge. Without the wedge, Prisoner Baker's acid reflux became so bad that she developed ulcers in her esophagus and experienced irritation in her voice box. Sometime after suffering these problems, Prisoner Baker was re-issued a wedge.

346. PLAINTIFF TORRES fell and injured his knee, requiring him to use crutches for approximately six months. During the first two weeks, DEFENDANT ADOC would not change his bed assignment, even though he was assigned to an upper bunk.

### **3. DEFENDANT ADOC has numerous housing policies that discriminate against**

have disabilities or medical needs, yet are not in need of infirmary care, are placed.” This is a dormitory that also houses violent offenders with high security classifications. There is a great deal of violence that the blind and wheelchair-bound prisoners are subjected to solely because of their disabilities. Further, due to the level of violence in the dormitory generally, the dormitory is often on lockdown. The prisoners wi





354.



hearing aid, sometimes for as long as three days. The facility administration requires that he submit a sick call request for new batteries and pay the corresponding fee, and he often must make several such requests to get replacement batteries.

360. ADOC officials have promised PLAINTIFF BROYLES that he will receive new hearing aids, but he has yet to receive one.

361. PLAINTIFF PEARSON is deaf. He has signed up for GED classes. However, there is no one to provide sign language for him in the class. He stayed with the class for two months, but ultimately dropped it because, without the reasonable accommodation of a sign language interpreter, he could not understand the material. PLAINTIFF PEARSON has requested to go to trade school, but has been denied because he does not have a GED. There is no sign language interpreter at Limestone. PEARSON was also required to attend classes which all individuals are required to attend shortly before their release to prepare them for a successful transition to life outside the ADOC. He was unable to understand the information contained in the mandatory training because no sign language interpreter was present. The facility uses another prisoner to provide sign language interpretation, but he is not qualified and his signs are incomprehensible to PLAINTIFF PEARSON.

362. PLAINTIFF TURNER is also deaf. He has tried to go to GED classes and to church, but there are no staff members at Limestone who can communicate with him using sign language. He was unable to follow the GED classes or the church services without a sign language interpreter.

363. Prisoner Baker had rheumatoid arthritis. Her arthritis frequently caused pain and swelling in her hands. At times she was unable to perform physical tasks which required use of her hands. In February 2012, Prisoner Baker was ordered to fold sheets, blankets, and a pillow



368. PLAINTIFF DILLARD is housed in a dormitory in the main facility at Bullock that houses prisoners with less acute mental illness than those in Mental Health Unit. He currently has the mental health code MH-1, the lowest level of mental health code a prisoner can have and still be on the mental health caseload. About a year ago, PLAINTIFF DILLARD had a mental health code of MH-3 or MH-4. He asked to become an outpatient, which he understands to require being an MH-1, because he will be up for parole in 2015 and cannot be paroled if he is still considered an inpatient. PLAINTIFF DILLARD is foregoing mental health treatment because otherwise he will be excluded from the possibility of parole.

369. PLAINTIFF MANER has a disabled leg as a result of a gunshot wound prior to coming into prison. Prior to 2010, PLAINTIFF MANER had several profiles (accommodations from facility administration in consideration of his disability) that permitted him to: (1) wear shower shoes to prevent falls in the shower, (2) use a cane to assist in walking, (3) abstain from prolonged standing, and (4) sleep on a bottom bunk. PLAINTIFF MANER received these profiles in 1998 when he entered ADOC's custody.

370. In 2010, PLAINTIFF MANER learned that the various profiles created to accommodate his disability render him ineligible to participate in work release programs or to transfer to facilities designated for prisoners who have made substantial rehabilitative progression, known as honor camps, because the profiles raise his health code level. Participation in work release programs and residence in honor camps results in several benefits to prisoners and serves as evidence of rehabilitation helpful to gain parole. Because he could not access these benefits if his disability was accommodated through the use of the profiles, PLAINTIFF MANER asked medical staff at his residence facility in 2010, Hamilton A & I, to remove the profiles.

371. PLAINTIFF NAYLOR was most recently housed at Hamilton A & I. There are no programs at Hamilton A & I for prisoners who are blind. PLAINTIFF NAYLOR requested to participate in the G.E.D. program and was told that the staff would have to “check into it.” He did not receive a response.

372. PLAINTIFF NAYLOR had a security classification of 2. Prisoners without disabilities who have a security classification of 2 are eligible for work release.

373. PLAINTIFF NAYLOR was not eligible for work release because he is blind.

374. Prior to March 2014, PLAINTIFF NAYLOR was housed at Kilby in Dormitory A because he is blind. PLAINTIFF MOORE is currently housed in Dormitory A because he is blind. PLAINTIFF HAGOOD was housed in Dormitory A until May 2014 because he is in a wheelchair. For prisoners who are not disabled, Dormitory A is a transit dormitory to which prisoners are sent for a short period of time before being sent to a more permanent placement. However, PLAINTIFF NAYLOR spent over two years in Dormitory A, PLAINTIFF MOORE has spent approximately four years in Dormitory A, and PLAINTIFF HAGOOD spent

376. ADOC does not provide auxiliary aids and services necessary to achieve effective communication with prisoners with disabilities. Examples of such measures may include large print materials for prisoners with low vision or a sign language interpreter for prisoners with deafness.

377. PLAINTIFF TOOLEY is deaf. He has never been offered a sign language interpreter, even though he requested one on numerous occasions. He does not understand certain ADOC policies as they relate to prisoners and cannot participate in any programs offered by the prison due to his lack of ability to communicate. DEFENDANT ADOC often relies on other prisoners with limited sign language ability to “communicate” with PLAINTIFF TOOLEY. In or around January 2014, PLAINTIFF TOOLEY was denied a sign language interpreter for a disciplinary hearing. He did not understand the proceedings. He was sentenced to a 30-day segregation term.

378. PLAINTIFF BROYLES is mostly deaf in both ears. For a time, he had two hearing aids, but eventually, personnel of both ADOC and Corizon 2.99 0oor m-2(e)4(d )hmehe o t0T

pill calls. PLAINTIFF BROYLES had trouble accomplishing this task because of the malfunctioning hearing aids and the inconsistent times for pill call. At Draper, PLAINTIFF BROYLES received approximately five disciplinary infractions over a year period for failing to obey orders that he could not hear. The warden at Draper ultimately rescinded each of these infractions.

380. DEFENDANT ADOC has refused to provide PLAINTIFF BROYLES with instructional materials to learn sign language.

381. Several blind prisoners have reported that they are routinely asked to sign documents that they cannot read. Another prisoner, Larry Shepherd, now deceased, had his hand was placed on the spot where he needed to sign, and believed that he was signing a property sheet relating to his transfer; he later discovered the form was a Do Not Resuscitate order.

382. In 2013, PLAINTIFF TURNER was accused by another prisoner of using an unauthorized credit card to make telephone calls. A disciplinary hearing was held without a sign language interpreter. PLAINTIFF TURNER was not able to understand much of the proceeding, and was unable to present his side of the story. He received 15 days in segregation as a result.

383. PLAINTIFF MOORE has asked for books on tape approximately 10 times, but has never been provided any.

384. PLAINTIFF MOORE cannot go to sick call without filling out a sick call request form. If PLAINTIFF MOORE needs to go to medical, he must ask another prisoner to write down his medical complaint on a sick call request form. When PLAINTIFF MOORE goes to sick call or to visit the eye doctor, the doctors and nurses write down notes from the visit but do not explain his diagnosis or treatment.



385. PLAINTIFF MOORE, who is blind, was written up for the incident described above where he did not stand up promptly because he did not know that the correctional officer telling people to stand for count was speaking to him and the standard practice in the dormitory was that the prisoners who are blind did not stand for count. He was not brought to his disciplinary hearing and did not admit to any misconduct or sign the disciplinary report, but the documentation from the disciplinary hearing states that he pled guilty. He was given a 10-day segregation term.

386. PLAINTIFF NAYLOR was previously housed at Hamilton A & I. Hamilton A & I does not have written materials in alternative formats such as books on tape.

387. PLAINTIFF TERRELL was in Special Education classes starting at the beginning of school. He completed ninth grade, but does not know his reading level. Sometimes documents are read to him, sometimes they are not. Sometimes he understands documents, whether he reads them or they are read to him, sometimes he does not. PLAINTIFF TERRELL is not being adequately accommodated for his apparent learning or cognitive disability.

388. PLAINTIFF DILLARD believes he reads at about a sixth grade level. He attended school up until seventh grade. He was in Special Education classes for all of his classes throughout his schooling. He sometimes signs documents without understanding them. When he is in medical, some of the nurses tell him what is in the documents, others do not. Some nurses simply say, "how are your medications?" then tell him to sign a paper.

**F. Prisoners with Disabilities Are Verbally Harassed, Physically Assaulted, and Punished for Their Disabilities.**

389. Several prisoners have reported incidents where they were verbally or physically mistreated due to their disabilities. In Dormitory A at Kilby, where prisoners who are blind or in wheelchairs have been concentrated, prisoners report correctional officers taunting prisoners

about their disabilities. A blind prisoner reported that correctional officers waive their hands right in front of his face, refer to him as “blind man”, and make jokes about the blind train when the blind prisoners line up to lead each other to go to the dining room or pill call. A prisoner also reports that the correctional officers say to people in wheelchairs who complain about something, “What are you going to do about it? You can’t get up.”

blind names, such as “blind motherfucker.” When he tried to move around the housing unit, prisoners routinely stood in his way.

393. On one occasion, PLAINTIFF MOORE was sitting on his bunk. Correctional officers came in and called out “count time.” Ordinarily, at count, PLAINTIFF MOORE and other blind prisoners remain seated on their bunks, and PLAINTIFF MOORE did so on this occasion as well. A correctional officer yelled to stand up. PLAINTIFF MOORE did not know the correctional officer was yelling at him, until the correctional officer yelled “That goes for you too, blind motherfucker!” PLAINTIFF MOORE asked the correctional officer not to speak to him that way. The correctional officer grabbed PLAINTIFF MOORE and slammed him to the ground, then whispered to PLAINTIFF MOORE that he should have killed him.

394. PLAINTIFF BROYLES is harassed, threatened, and subjected to physical violence by correctional officers and prisoners due to his disability. Correctional officers often yell at PLAINTIFF BROYLES because he does not hear their orders and threaten to physically assault him. Correctional officers also often accuse PLAINTIFF BROYLES of pretending to have hearing limitations. PLAINTIFF BROYLES has had these experiences at Draper, Elmore, Kilby, St. Clair, and Bullock. A correctional officer at Bullock threw a baton at PLAINTIFF BROYLES when PLAINTIFF BROYLES did not respond to the officer, because he did not hear him.

395. Mentally ill prisoners in the RTU at Bullock are subjected to a great deal of physical violence. PLAINTIFF MCCOY was brutally beaten by correctional officers while he was housed at the Bullock RTU. PLAINTIFF BUSINELLE had four teeth knocked out by correctional officers in 2009. Correctional officers broke PLAINTIFF TERRELL’s jaw and rib in one incident when PLAINTIFF TERRELL was in the midst of a psychotic episode, and beat

his head with a baton on another occasion. PLAINTIFF DILLARD was slammed to the ground by correctional officers when he refused his medications because he was having difficulty with the side effects. Correctional officers knock over bunks in the mornings in the Bullock RTU if they think the prisoners are not getting up quickly enough in the morning, although many of the prisoners in the RTU take medications that cause them to sleep.

**V.**



by his medical profile. PLAINTIFF SEARS suffers from severe scoliosis and is frail from untreated extreme weight loss. When PLAINTIFF SEARS finishes his shower, he must ring a bell to receive assistance to return to his dormitory. PLAINTIFF SEARS rang the bell and called out for assistance for approximately 20 minutes after he finished his shower. Officer David Pullom came into the infirmary and began yelling at PLAINTIFF SEARS, saying, "You think you're a smart ass. You think you run something. You don't run shit here. You're causing all this trouble around here. Well, you don't scare me. You're a fuck boy. Get on the fucking ground now." Officer Pullom then forced PLAINTIFF SEARS to the ground, handcuffed him behind his back forcefully, and pushed his face into the floor. Officer Pullom then pushed his knee into PLAINTIFF SEARS' back and ground PLAINTIFF SEARS' face into the floor with his hand, while continuing to yell obscenities at him. Officer Pullom continued to assault PLAINTIFF SEARS until two prisoners arrived and yelled for him to stop. Officer Pullom then said, "You think you're a big shot around here, well, you ain't shit to me. You ain't nothing to me and I'm going to show you. Give me your fucking I.D. card. I'm going to write your stupid ass up." Officer Pullom then left the area. At that point PLAINTIFF SEARS realized that a correctional officer and two Corizon nurses witnessed the assault. PLAINTIFF SEARS asked the nurses to evaluate him for injuries, but they refused. PLAINTIFF SEARS also requested that the correctional officer initiate an investigation pursuant to ADOC policy. The correctional officer left the area without responding. Unable to get up because of his physical condition and the handcuffs, PLAINTIFF SEARS remained on the bathroom floor for approximately two hours until a correctional officer returned to escort him back to his dormitory. PLAINTIFF SEARS

found that no excessive force had been used, but agreed to turn the matter over to I & I. PLAINTIFF SEARS nevertheless received a disciplinary report regarding the incident on or about June 30, 2014 and has received no further information about any I & I investigation or findings.

403. On or about September 1, 2014, PLAINTIFF SEARS was at the pill call window at 2:00 a.m. Another prisoner came up to the window, reached around PLAINTIFF SEARS and asked for his medication. After giving the other prisoner his medication, the nurse yelled at PLAINTIFF SEARS for cutting the line. PLAINTIFF SEARS said that he did not cut the line, but the nurse continued to yell at him. A correctional officer started to yell at PLAINTIFF SEARS. Three officers pulled PLAINTIFF SEARS across the yard, leaving PLAINTIFF SEARS' cane behind. Eventually PLAINTIFF SEARS fell to the ground. When he was on the ground, he could not get up without his cane. The officers ordered PLAINTIFF SEARS to get up. He explained that he could not. A lieutenant came over and ordered that PLAINTIFF SEARS be handcuffed with his hands behind his back. The lieutenant then ordered PLAINTIFF SEARS to get up and go to F-Dorm, a disciplinary dorm. PLAINTIFF SEARS explained that he could not and showed the lieutenant that he had a no standing, no walking profile. The lieutenant tore the profile in half. PLAINTIFF SEARS was then picked up, taken to F-Dorm and reassigned to F-Dorm. PLAINTIFF SEARS was given three disciplinaries for not getting up off the ground when he could not do so, due to his disabilities, as well as two other disciplinaries from this incident. The disciplinaries were delivered to PLAINTIFF SEARS by leaving them on his bed while he was in the bathroom area, and stated that he had refused to sign, although he had not been given the opportunity to sign.

404.



staff be reminded of the rules against retaliation and that signs be posted in prominent places in each facility explaining that prisoners should not be retaliated against for speaking with legal counsel. DEFENDANT DUNN's predecessor acknowledged receipt of the letter, but did not indicate whether or how the matter would be addressed.

408. Employees of DEFENDANT DUNN who are the subject of investigations into the violations of prisoners' rights are frequently not disciplined and may even be promoted. For example, following a finding by the United States Department of Justice of numerous constitutional violations, wardens at Tutwiler were transferred to other prisons, where they continued to work, and one warden was even promoted.

409. ADOC employees and medical staff often threaten retaliation/use the threat of retaliation to control/manipulate. On or around June 4, 2014, Plaintiffs' Counsel met with PLAINTIFFS BUSINELLE and TERRELL at Bullock. While Plaintiffs' Counsel met with another prisoner, PLAINTIFFS TERRELL and BUSINELLE sat outside the room in which the

411. On March 17, 2014, Plaintiffs' counsel informed DEFENDANT DUNN's predecessor of PLAINTIFF SELLERS's need for medical attention. Shortly thereafter, he was moved from his dormitory to another dormitory in which he had enemies. He informed ADOC correctional officers of the problem and refused to go. The officers physically assaulted him and then moved him anyway. He asked to speak with personnel from the Investigations & Intelligence Division (I & I) but was not allowed to do so. After Plaintiffs' Counsel contacted DEFENDANT DUNN's predecessor to request that PLAINTIFF SELLERS speak with personnel from I & I, he was permitted to do so. The I & I officer asked PLAINTIFF SELLERS the subject of his conversations with Plaintiffs' Counsel.

### **CLASS ACTION ALLEGATIONS**

#### **PLAINTIFF Class**

412. All prisoner PLAINTIFFS bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of all prisoners who are now, or will in the future be, subjected to the medical care policies and practices of the OFFICIAL CAPACITY DEFENDANTS and ADOC (the "PLAINTIFF Class").

Numerosity: Fed. R. Civ. P. 23(a)(1)

413. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). At the time this lawsuit was commenced and at all times since, there have been in excess of 24,000 prisoners in in-house custody of the ADOC, all of whom are dependent entirely on the OFFICIAL CAPACITY DEFENDANTS for the provision of health care. Due to policies and practices of the OFFICIAL CAPACITY DEFENDANTS, all in-house ADOC prisoners, numbering tens of thousands annually, receive or are at risk of receiving inadequate health care while in ADOC prisons.

414. The PLAINTIFF Class members are identifiable using records maintained in the ordinary course of business by the ADOC.

Commonality: Fed. R. Civ. P. 23(a)(2)

415. There are questions of law and fact common to the members of the class. Such questions include, but are not limited to:

(a) whether the OFFICIAL CAPACITY DEFENDANTS have a custom, policy, or practice of systematically failing to operate a health care system providing minimally adequate health care that violates the Cruel and Unusual Punishments Clause of the Eighth Amendment,

(b) whether the OFFICIAL CAPACITY DEFENDANTS have a custom, policy, or practice of deliberate indifference to the serious health care needs of class members.

(c) whether ADOC's policies, procedures, and practices reflect de dece

416. The OFFICIAL CAPACITY DEFENDANTS are expected to raise common

420. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because DEFENDANTS' policies, practices, actions, and omissions that form the basis of this complaint are common to and apply generally to all members of the class, and the injunctive and declaratory relief sought is appropriate and will apply to all members of the class. All state-wide health care policies are centrally promulgated, disseminated, and enforced from the central headquarters of ADOC by the OFFICIAL CAPACITY DEFENDANTS. Medical care is provided pursuant to a single contract with a single medical provider with policies and practices that are centrally promulgated, disseminated, overseen and enforced by the medical provider's Medical Statewide Management team and by the OFFICIAL CAPACITY DEFENDANTS. The injunctive and declaratory relief sought is appropriate

Corizon reported 39,494 total dental care “encounters”<sup>9</sup> at ADOC facilities. Due to the policies and practices of the OFFICIAL CAPACITY DEFENDANTS all ADOC prisoners, numbering tens of thousands annually, receive or are at risk of receiving dental care while in ADOC prisons. The Dental Subclass members are identifiable using records maintained in the ordinary course of business by the ADOC.

Commonality: Fed. R. Civ. P. 23(a)(2)

423. There are questions of law and fact common to the members of the Dental Subclass. Such questions include, but are not limited to:

- (a) whether the OFFICIAL CAPACITY DEFENDANTS have a custom, policy, or practice of systematically failing to operate a dental care system providing minimally adequate dental care that violates the Cruel and Unusual Punishments Clause of the Eighth Amendment;
- (b) whether the OFFICIAL CAPACITY DEFENDANTS have a custom, policy, or practice of deliberate indifference to the resulting harm and risk of harm to Dental Subclass members who are deprived of minimally adequate dental care;
- (c) whether ADOC’s policies, procedures, and practices reflect deliberate indifference to the serious dental needs of class members such that ADOC has violated their right to be free from cruel and unusual punishment as proscribed by the Eighth Amendment;
- (d) whether the OFFICIAL CAPACITY DEFENDANTS’ capitated contract system permits improper cost considerations to interfere with treatment of serious dental conditions; and

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<sup>9</sup> “Encounters” include intake dental screens, 30-day intake dental exams, dentist encounters and dental hygienist encounters. Corizon Monthly Client Report, September 2014 at ADOC043336.



result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

Fed. R. Civ. P. 23(b)(2)

428. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because DEFENDANTS' policies, practices, actions, and omissions that form the basis of this complaint are common to and apply generally to all members of the class, and the injunctive and declaratory relief sought is appropriate and will apply to all members of the class.

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DEFENDANTS. The injunctive and declaratory relief sought is appropriate and will apply to all members of the Mental Health Subclass.

**ADA Subclass**

438. PLAINTIFFS DUNN, BRAGGS, BROOKS, BROYLES, BUI, BUSINELLE, CARTER, DILLARD, GILBERT, HAGOOD, HARDY, HARTLEY, HENDERSON, JACKSON, JOHNSON, MANER, MCCOY, MITCHELL, MONCRIEF, MOORE, MOSELEY, NAYLOR, PEARSON, PRUITT, SEARS, TERRELL, TOOLEY, TORRES, TURNER, WALLACE, and WILLIAMS bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a subclass of all prisoners (hereinafter “ADA Subclass”) who are now, or will in the future be, persons with disabilities as that term is used in the ADA

434. Due to the policies and practices of DEFENDANT ADOC, all ADOC prisoners with disabilities risk being discriminated against on the basis of their disabilities in accessing facilities, programs, benefits and services while in ADOC prisons. The ADA Subclass members are identifiable using records maintained in the ordinary course of business by the ADOC.

Commonality: Fed. R. Civ. P. 23(a)(2)

435. There are questions of law and fact common to the members of the ADA Subclass. Such questions include, but are not limited to:

- (a) whether DEFENDANT ADOC

438. The named PLAINTIFFS are capable of fairly and adequately protecting the interests of the ADA Subclass because the named PLAINTIFFS do not have any interests antagonistic to the subclass. The named PLAINTIFFS, as well as the ADA Subclass members, seek to enjoin the unlawful acts and omissions of the OFFICIAL CAPACITY DEFENDANTS and DEFENDANT ADOC. Finally, the named PLAINTIFFS are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class action litigation.

Fed. R. Civ. P. 23(b)(1)(A) and (B)

439. Because the number of ADA Subclass members is so large, the prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for DEFENDANT ADOC. Additionally, the prosecution of separate actions by individual members could result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

Fed. R. Civ. P. 23(b)(2)

440. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because the policies, practices, actions, and omissions of the OFFICIAL CAPACITY DEFENDANTS and DEFENDANT ADOC that form the basis of this complaint are common to and apply generally to all members of the class, and the injunctive and declaratory relief sought is appropriate and will apply to all members of the class. All state-wide policies regarding the treatment and accommodation are centrally promulgated, disseminated, and enforced from the central headquarters of DEFENDANT ADOC. The budget and planning for modifications to the physical structure of the ADOC facilities are established at the central headquarters by the

OFFICIAL CAPACITY DEFENDANTS. The injunctive and declaratory relief sought is appropriate and will apply to all members of the Mental Health Subclass.

**ADAP's Associational Standing**

441. ADAP is the duly authorized protection and advocacy agency for the state of Alabama. ADAP asserts its associational standing to bring its claims on behalf of its

claims, in part, because the interests ADAP seeks to protect through its claims in this case, *i.e.*, the rights prisoners with disabilities in the custody of DEFENDANT ADOC, are germane to ADAP's central purpose.

445. ADAP maintains advisory councils, has conducted an administrative investigation into DEFENDANT ADOC's practices with respect to ADAP's constituents, and has received communications from its constituents incarcerated in DEFENDANT ADOC's facilities regarding DEFENDANT ADOC's practices. ADAP further asserts its associational standing to bring its claims to express these collective views and protect the collective interests of its constituents who are now incarcerated or will in the future be incarcerated in DEFENDANT ADOC's custody.

### **CLAIMS FOR RELIEF**

#### **First Cause of Action: Inadequate Medical Care**

All Prisoner PLAINTIFFS and the PLAINTIFF CLASS v.

DEFENDANTS DUNN and NAGLICH

(42 U.S.C. § 1983; Eighth and Fourteenth Amendments, Cruel and Unusual Punishment)

446. Plaintiffs reassert and incorporate by reference the allegations contained in Paragraphs 1-440 above.

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officials, employees, and all persons acting in concert with ADOC under color of state law, in their official capacities, and are the proximate cause of the PLAINTIFFS' ongoing deprivation of rights secured by federal law.

457. DEFENDANT ADOC has been and is aware of all the deprivations complained of herein, and has condoned or been deliberately indifferent to such conduct.

**Fifth Cause of Action: Retaliation in Violation of Prisoners' First Amendment Rights to Communicate with Counsel and to File Lawsuits Regarding Conditions of Confinement**  
PLAINTIFFS DUNN, HAGOOD, SEARS v. DEFENDANTS DUNN and NAGLICH in their  
official capacity  
(42 U.S.C. § 1983; First and Fourteenth Amendment)

458. Plaintiffs reassert and incorporate by reference the allegations contained in Paragraphs 1-440 above.

459. By their policies and practices described herein, the OFFICIAL CAPACITY DEFENDANTS subjected PLAINTIFFS SEARS, DUNN and HAGOOD to retaliation for communicating with attorneys and filing a lawsuit regarding conditions of confinement, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

460. The OFFICIAL CAPACITY DEFENDANTS have been and are aware of the retaliatory actions complained of herein, and have condoned or been deliberately indifferent to such conduct.

**PRAYER FOR RELIEF**

461. PLAINTIFFS and the classes they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this complaint. PLAINTIFFS have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of the OFFICIAL CAPACITY DEFENDANTS and DEFENDANT ADOC, as alleged herein, unless PLAINTIFFS and the class they represent are granted the relief they request. The



1. Staffing: Medical, Mental Health, Dental and Correctional staffing shall be sufficient to provide prisoner PLAINTIFFS and the PLAINTIFF Class with timely access to qualified and competent clinicians who can provide routine, urgent, emergent, and specialty health care;  
3.
2. Access: Policies and practices that provide timely access to health care;
3. Screening: Policies and practices that reliab(1)-6(id(f)5(inc-10(eS)-8(cr)-1(9(d)f)-4(r)-1(p)-4(r i

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

RESPECTFULLY SUBMITTED this 28th day of September, 2016.

SOUTHERN POVERTY LAW CENTER

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**CERTIFICATE OF SERVICE**

I hereby certify that I have filed the foregoing electronically on this 28th day of September, 2016, with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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