COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION 1873CV 00020

DANYEL BATTLE,[1] MEGAN DOWNEY, and ANDREW WELCH, on Behalf of Themselves
and
All Others Similarly Situated,

Plaintiffs,

v.

BRISTOL, SS SUPERIOR COURT
FILED
JAN 09 2018
MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

THOMAS M. HODGSON, Sheriff, Bristol County, STEVEN SOUZA, Superintendent, Bristol County Sheriff's Office, and JUDITH BORGES, Director of Medical Services, Bristol County Sheriff's Office, in their official capacities,

Defendants.

COMPLAINT

Introduction

1. Plaintiffs and the class they represent are prisoners with mental illness in the custody of the Bristol County Sheriff's Office (BCSO) who have suffered severe harm as a result of their confinement in solitary confinement or "segregation."

2. The Plaintiffs are, or have been, held in tiny cells in BCSO segregation units for substantial periods of time under extremely harsh conditions and are denied the programs and services available in the general prison population.

3. It is well-known that exposing prisoners with serious mental disorders to segregation for more than a brief period of time places them at significant risk of serious harm. They experience mental deterioration and an aggravation of symptoms. Self-mutilation, suicide, and suicide attempts are distressingly common.

[1] Also known as Danyel Battle-Moore.

4. BCSO officials have known for years that prisoners with mental illness in their custody are at risk. The suicide rate in BCSO facilities is alarmingly high, twice that of other Massachusetts county correctional facilities and three times the suicide rate for jails nationally. There were at least four suicides in 2016, two of which took place in segregation, and another while the prisoner was confined to an observation cell under even more austere conditions.

5. By relying on segregation to house prisoners with mental illness rather than providing adequate mental health treatment, Defendants' policies and practices have increased the risk of psychological deterioration, self-injurious behavior, and suicide in this vulnerable population.

6. These policies and practices include: the failure to exclude from segregation prisoners whose mental disorders place them at serious risk of substantial harm; the failure to take mental illness into account in the disciplinary process; and the failure to adequately assess prisoners before they enter segregation to determine whether such placement is clinically contraindicated or otherwise dangerous.

7. The Defendants also have a policy and practice of failing to provide adequate mental health care to prisoners in their custody, particularly to those in segregation. Systemic deficiencies include the failures: to adequately screen and evaluate incoming prisoners for mental illness and the need for treatment; to offer regular or meaningful mental health therapy to prisoners in segregation; to adequately prescribe, monitor, and evaluate the use of psychotropic medication; to ensure that clinical rounds in segregation will identify those with mental illness who may be decompensating or experiencing a psychiatric emergency; to implement adequate suicide prevention practices; and to provide a secure residential treatment unit as an alternative to segregation where prisoners can receive enhanced clinical services, including more frequent out-

of-cell programming and recreation time, which correctional standards require in order to mitigate the harmful effects of segregation.

8. BCSO also fails to provide appropriate treatment and supervision to prisoners who are at risk of suicide. Its harsh and humiliating mental health watch practices discourage prisoners from reporting thoughts of self-harm or suicide and are counter-therapeutic.

9. Plaintiffs, on behalf of themselves and other similarly situated prisoners, seek a declaration that BCSO's ongoing practices violate their constitutional and statutory rights, and injunctive relief prohibiting Defendants from continuing to house prisoners with mental illness in segregation and ordering them to provide prisoners with constitutionally adequate mental health care.

10. Plaintiffs and the class are entitled to such relief under the Eighth and Fourteenth Amendments to the United States Constitution, as secured by 42 USC § 1983; Articles 1,10, 12, 26, and 114 of the Massachusetts Declaration of Rights; Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act; G.L. c. 127, § 32; 103 CMR 943.03(2); G.L. c. 127 § 41, G.L. c. 93, § 103; 103 CMR 943.09, and G.L. c. 231A § 2.

Parties

11. Plaintiff Danyel Battle is a 27-year-old man with a long history of mental illness, including bipolar disorder and depression. He was hospitalized for the first time when he was about six or seven years old. He has been incarcerated in BCSO since March 2016 and has several previous incarcerations at Bristol, starting in August 2013. He was housed in segregation from the outset of his current stay in BCSO even though he suffers from serious mental illness and repeatedly attempted suicide during previous incarcerations. Since then, he has been placed in segregation multiple times, and was still in segregation as of December 29,

2017. While in segregation, he feels he is "losing his mind." He has received numerous disciplinary reports for impulsive behavior related to his mental illness, such as threats and abusive language, fighting, disobeying orders, and "conduct which disrupts," which have kept him in segregation. While in BCSO custody, Mr. Battle has received only minimal and inadequate mental health care.

12. Megan Downey is a 31-year-old woman with a long history of mental illness, including multiple psychiatric hospitalizations for treatment for depression and anxiety, as well as a suicide attempt. She has been in BCSO custody since November 2016 and has spent much of her time in segregation, accumulating disciplinary reports for things like being "out of place," receiving a book from somebody else at that prisoner's cell door, and refusing to be placed in a cell with a woman who had previously fought with her. While in BCSO custody, she has received little or no mental health care and her depression and anxiety has worsened.

13. Plaintiff Andy Welch is a 43-year-old man who suffered severe childhood abuse. He entered BCSO custody on November 4, 2014, reporting a history of suicide attempt by overdose, psychiatric hospitalization, sexual abuse, posttraumatic stress disorder, bipolar disorder, and substance use disorder. He was diagnosed with a mood disorder in while in BCSO custody and prescribed several psychiatric medications. Nevertheless, he has repeatedly been housed in segregation for prolonged periods where at times he has become delusional as his mental health deteriorates. While in BCSO custody, his mental health treatment has been cursory and inadequate.

14. Defendant Thomas M. Hodgson is the Sheriff of Bristol County. Under G.L. c. 126, § 16, he is responsible for the custody and control of all prisoners held by Bristol County. His

business address is 400 Faunce Corner Road, North Dartmouth, Massachusetts. He is acting under color of law and is sued in his official capacity.

15. Steven Souza is the Superintendent of the Bristol County House of Correction (HOC). Under G.L. c. 126, § 16, he shares responsibility with Defendant Hodgson for the custody and control of all the prisoners committed to the HOC. He appoints and supervises HOC staff. He is acting under color of law and is sued in his official capacity.

16. Defendant Judith Borges is the Director of Medical Services at the BCSO with responsibility for ensuring that prisoners receive adequate medical and mental health care. She is acting under color of law and is sued in her official capacity.

FACTS

The Bristol County House of Correction and Jail

17. BCSO facilities hold approximately 1,300 adults who are either awaiting trial or sentenced to up to 2.5 years of incarceration. The HOC has approximately 1000 male and 100 female prisoners, about half of whom are pre-trial detainees and half are sentenced, while the nearby Ash Street Jail houses some 200 additional male pretrial detainees. Prisoners from either facility may be sent to segregation in the HOC.

18. There are approximately 80 segregation beds in the HOC. Three segregation units are for male prisoners: the EE unit, with one bed in each of its 16 cells; the EC unit, with two beds in each of its 16 cells; and the ED unit, which has eight cells with two beds each. The EA segregation unit houses female prisoners, with two beds in each of its eight cells. In addition, the FB unit is outside of the secure area where the segregation units are located but some of the male prisoners it holds can be confined under segregation conditions for 22 or 23 hours a day.

19. There are two types of segregation at the HOC: "disciplinary segregation" and "administrative segregation."

20. Administrative segregation is for prisoners perceived to constitute a threat to institutional security or to need protection from other prisoners. Administrative segregation may continue indefinitely.

21. Disciplinary segregation is for prisoners found guilty of disciplinary infractions and sanctioned to a term in segregation. Prisoners subject to discipline for alleged infractions are also maintained in segregation, in so-called "awaiting action" status, pending the completion of any investigatory and disciplinary procedures. Since this time is not credited against any disciplinary sanction ultimately imposed, time spent on "awaiting action" status has the effect of lengthening the overall time in segregation.

Conditions in Segregated Confinement

22. Plaintiffs and other prisoners housed in segregation units spend all but five hours per week in their cells, not including brief periods for showering.

23. Segregation cells are small. Single cells are approximately 6 feet wide by 9 feet long. Cells occupied by two prisoners measure approximately 7 feet wide by 12 feet long.

24. Cells are austere. They contain nothing but a cot-sized bed, a small desk, and a toilet/basin fixture, which prisoners use to urinate, defecate and wash in plain view not only of their cellmates, but also of other prisoners and correctional staff.

25. While prisoners in the EE unit are housed one per cell, prisoners in other segregation units are frequently locked in with a cellmate. The presence of a cellmate does not mitigate, and indeed tends to aggravate, the stresses of segregation.

26. Prisoners housed in segregation are typically permitted out of their cells for exercise no more than one hour per day, five days a week, weather permitting. They are placed in restraints whenever they leave their cells.

27. Exercise is alone in small outdoor cages resembling dog pens.

28. Segregated prisoners receive meals though a slot in their cell door and eat in their cells. Prisoners in other housing units eat collectively.

29. Meal portions may be significantly smaller than those provided to prisoners in regular housing. Prisoners in segregation have no or limited access to the jail canteen and therefore are unable to supplement their diet, as do non-segregated prisoners, or purchase other essential items, such as toiletries.

30. Prisoners in segregation are denied ordinary social interaction, recreation, education, and rehabilitative programs enjoyed by prisoners in the general population.

31. There is very little to relieve the boredom of segregated confinement. Prisoners are afforded no or extremely limited opportunities for visits or telephone calls with families and friends, and may even be denied books.

32. The deprivations of segregation are exacerbated by filth and noise. Prisoners describe a pervasive stench when disturbed prisoners flood their cells and the tier floors with human waste. All too often, correctional staff persons respond to such events with verbal or even physical abuse.

33. Prisoners are often housed in segregation for weeks, months, or even years. For example, Plaintiff Battle has spent six- and three-month stints in segregation; Plaintiff Welch has spent some 23 months of his sentence in segregation; and Downey has also suffered significant periods in segregation.

The Impact of Segregation on Prisoners with Mental Illness

31. The clinical literature has long documented that persons living under segregation conditions, such as those at HOC, suffer serious psychological harm.

32. Their symptoms include anxiety and panic attacks, hypersensitivity, difficulty with concentration and memory, insomnia, compulsivity, uncontrollable rage, acute confusion, social withdrawal, hopelessness, depression, hallucinations, suicidal ideation and behavior, and paranoia.

33. While segregation can be deleterious even in psychologically healthy individuals, if a prisoner is already psychologically impaired, the harsh conditions of segregation can be devastating. The result is often a catastrophic deterioration in mental health and, in some cases, permanent and serious psychological harm.

34. Prisoners with mental illness held in segregation manifest a variety of symptoms. They may experience withdrawal and lethargy. They may refuse to leave their cells for exercise, showers, or even to meet with a therapist, either out of fear or depression. Paranoia is rampant. Some prisoners are afraid to sleep, fearing guards will open their cell doors and attack them.

35. It is common for mentally ill prisoners in segregation to cut their arms, necks, or bodies. Many are obsessed by suicidal thoughts, and may repeatedly attempt to hang or cut themselves. Some swallow razor blades, radio or television parts, wrist braces, or batteries. Others insert metal objects in their stomachs or penises. Suicides take place far more frequently than in general population units.

BCSO Fails to Divert Prisoners with Mental Illness from Segregation

36. Because of the widely-known risks that segregation poses to prisoners with mental illness, accepted professional standards require that correctional facilities identify prisoners who face a risk of harm from segregation due to mental illness and exclude them from segregation.

37. All prisoners should be screened for immediate risk by a mental health professional before they are placed in segregation.

38. The BCSO medical records reviewed by Plaintiffs' consulting psychiatrist, Dr. Pablo Stewart, show that there is often no clinical review prior to placement in segregation. When such a clinical review is documented in the records, it often appears to be cursory.

39. Rarely, if ever, is a prisoner diverted from segregation, even when there are clear contraindications for segregation. For example, Plaintiff Battle was placed in segregation immediately upon arriving at the HOC in 2016 despite documentation of his prior treatment for depression and past suicide attempts by "pills" and "hanging."

40. There is also little indication in prisoner records of ongoing review during the course of confinement to segregation to assess whether the prisoner may be deteriorating and should be moved to a less toxic setting. For example, Plaintiff Downey was retained in segregation despite a history of suicide attempts and a diagnosis of major depressive disorder.

BCSO Disciplinary Policies and Practices Fail to Take Account of Prisoners' Mental Illness or Allow for Punishments to be Mitigated in Response

41. Because prisoners with mental illness are at risk of serious harm from being placed in segregation, it is important that correctional facilities engage mental health professionals in the disciplinary process.

42. Mental health professionals should have input into the disciplinary process to help determine the prisoner's ability to understand and participate in the disciplinary proceedings; to

explain the role mental illness may have played in the prisoner's conduct; and to help decide an appropriate disciplinary disposition.

43. Despite these generally accepted standards, BCSO's policy on Inmate Discipline, 17.01.00 *et seq.*, does not provide for input by mental health clinicians in the disciplinary process.

44. Prisoners with mental illness receive no assistance from staff, regardless of the extent to which their disability affects their ability to present a defense.

45. Even where the prisoner's compromised mental health status is evident at the time of the disciplinary proceeding, or the hearing officer is aware of his or her mental health status or history, it is not taken into account. For example, Plaintiff Battle was sanctioned with 25 days of disciplinary segregation after spending more than a week on a mental health watch as a result of his suicidal thoughts.

46. Plaintiffs have all been disciplined under the procedures described in the preceding paragraphs.

47. Typically, Plaintiffs and other BCSO prisoners convicted of jail rule infractions are sentenced to determinate periods of time in segregation, also known as "the hole."

48. Pursuant to G.L. c. 127, § 41, prisoners in county houses of correction cannot be sanctioned to disciplinary segregation for more than ten days per offense. However, Plaintiffs and other prisoners often receive a single sentence of up to 30 days, not including the sometimes considerable periods of time spent in segregation pending the completion of investigations into the disciplinary infraction.

49. In segregation, prisoners' mental health often deteriorates, causing them to earn more disciplinary reports and additional segregation time, continuing or even accelerating the cycle of decline.

50. Plaintiff Battle's lengthy time in segregation, for example, stemmed from multiple disciplinary tickets, most of which were incurred while he was segregated. Plaintiffs Welch and Downey also had their segregation time extended for incidents linked to their mental illness that took place in segregation.

Deficiencies in BCSO's Mental Health Care Place Prisoners with Serious Mental Illness at a Substantial Risk of Serious Harm

51. The failure to treat mental illness can cause unnecessary suffering, mental deterioration, and the risk of self-harm or suicide. Prisoners with untreated mental illness also are more likely to have difficulty controlling their behavior and therefore are more likely to end up in segregation.

52. The first requirement of an adequate system of mental health care is a process to screen prisoners for mental illness immediately upon admission to the jail and, if any mental illness is disclosed or otherwise identified, such prisoner should then be given a thorough mental health evaluation.

53. Although BCSO's policy does require an initial mental health screening within 24 hours of arrival at the HOC, many of the initial mental health screenings in the records of BCSO prisoners reviewed by Dr. Stewart were incomplete or otherwise inadequate even for the limited purposes of flagging prisoners for further evaluation.

54. The post-screening mental health evaluations at BCSO facilities are routinely delayed, often for weeks, and when they do occur, they are often deficient. For example, when Plaintiff Andrew Welch was admitted to the HOC, he reported a history of suicide attempt by overdose,

psychiatric hospitalization, sexual abuse, posttraumatic stress disorder, bipolar disorder, and substance use disorder. Despite this complex and serious mental health history, the conclusions drawn by the mental health evaluator regarding Mr. Welch were minimizing and inadequate. The evaluator simply diagnosed him with an unspecified mood disorder and made no mention of his other reported pre-existing mental health conditions or his past suicide attempt. Mr. Welch received no formal treatment plan and no medication until after a long delay.

55. Mental health evaluations are routinely conducted without any consideration of easily accessible outside psychiatric records, even when the prisoner is transferred to BCSO custody directly from Bridgewater State Hospital, the public psychiatric hospital for criminally involved prisoners.

56. When BCSO evaluators do review mental health records, they routinely reject past diagnoses without explanation and ignore the prisoner's mental health history, even when faced with evidence that a prisoner's serious mental illness continues. They effectively ignore mental health symptoms that are well-established in the prisoners' history.

57. For example, when Plaintiff Megan Downey entered BCSO custody in November 2016, her initial intake screening noted hospitalization for a suicide attempt the previous March and listed multiple mental health diagnoses. The record also documented Ms. Downey's long history of depression and past treatment for depression and anxiety. BCSO staff then conducted a mental health evaluation, but gave her a diagnosis of only opiate and sedative dependency, with no discussion of why her previous diagnoses were rejected. No mental health follow up was recommended. Soon after, Ms. Downey was caught "snorting" Tylenol, placed on mental health watch, and sent to segregation.

58. BCSO prisoners can be placed directly in segregation immediately after admission even without any mental health evaluation. Plaintiff Battle was put in segregation immediately upon arriving at the HOC despite a documented diagnosis of bipolar disorder and a history of suicide attempts, including a prior attempt to hang himself during an earlier stay at the HOC only months before.

59. The failure to properly evaluate prisoners who enter the facility with reports or indications of mental illness contributes to the HOC staff's subsequent failure to deliver mental health care, such as clinical visits or psychiatric referrals.

60. Plaintiffs and other prisoners that are denied prescribed medications for mental illness upon their arrival at the HOC or are untreated for depression or other psychological issues frequently deteriorate following admission. This trajectory makes prisoners less able to withstand the rigors of prison life or comply with rigid rules, which heightens the potential for confinement in disciplinary segregation.

61. The records of the Plaintiffs and many other prisoners demonstrate the connection between a poor evaluation process (or lack of an evaluation entirely), inadequate mental health care in general population, and consequent placement and deterioration in segregation.

62. Prisoners who end up in segregation at the HOC do not receive mental health care that meets national standards for correctional mental health care. Indeed, BCSO has a policy and practice of failing to provide adequate mental health care to prisoners in segregation.

63. A correctional facility should provide for regular, scheduled mental health rounds in its segregation units. During such rounds, prisoners should be able to request mental health care and staff can ascertain the inmate's mental status, monitor medication effectiveness and side effects, and intervene when necessary. In violation of accepted standards of correctional mental health

care, BCSO fails to ensure that clinical rounds in segregation will identify those with mental illness who may be decompensating or experiencing a psychiatric emergency.

64. Mental health staff persons at the HOC rarely conduct more than cursory, cell-front checks on prisoners. They generally do nothing more than to stop in front of cells to ask if the prisoner intends to harm him or herself.

65. Though accepted correctional standards require that prisoners have the opportunity for private communications with professional staff, the superficial rounds at the HOC are conducted through a crack in the cell door frame, fully within earshot of other prisoners.

66. Prisoners are reluctant to provide information regarding their mental health status in such a public setting where what they say can be heard by other prisoners.

67. Psychotropic medication is another critical element of an adequate mental health care program in a correctional facility, particularly for prisoners in segregation. BCSO fails to adequately prescribe, monitor, and evaluate the use of psychotropic medication. Prisoners reporting current psychiatric medication regimens upon their arrival at BCSO facilities routinely have their medications discontinued once incarcerated.

68. Correctional standards require that psychiatric consults for persons with histories of mental illness occur promptly after the initial screening and evaluation. But weeks or even months may go by before Plaintiffs and other prisoners are seen by medical staff with authority to prescribe psychotropic medication.

69. For example, Plaintiff Downey arrived at the HOC in November 2016, and shortly thereafter was placed in segregation. She worsened there, experiencing poor concentration and increased depression. Then, on February 15, 2017, after ten weeks in jail suffering needlessly, she finally had a psychiatric evaluation, was given a diagnosis of Major Depressive Disorder,

and started on Paxil. Even then, Ms. Downey continued to be held in segregation with no additional monitoring. Her diagnosis of serious mental illness and her prescription for psychotropic medication should have triggered her removal from segregation.

70. Treatment records suggest that clinicians working at the HOC are careless in their choice of psychotropic medications or are apparently motivated by factors that have nothing to do with the patient's best interests, such as costs. HOC clinicians at times prescribe a given medication even when the prisoner explains that the drug has proved ineffective previously and that another, comparable medicine was effective. Plaintiff Battle, for example, fruitlessly told staff at the HOC for months that Prozac had worked for him in the community, but he was nonetheless prescribed Depakote (to which he claimed he is allergic) and Risperdal (which he feared due to FDA concerns and lawsuits regarding side effects). During a prior six months sentence to the HOC, Defendants did not even screen him on admission, and denied his repeated requests over the entirety of the six months for treatment with medication or therapy. Mental health staff told him he was "fine" and concluded he did not need medication, though they did not conduct an evaluation that justified this conclusion.

71. Mental health therapy is another key component of treatment for individuals with mental illness in segregation. Prisoners in segregation, like their counterparts in general population, should receive individualized and specialized mental health treatment, which may include management of psychotropic medications and group therapy supplemented with individual treatment.

72. Prisoners should continue with at least the same level of clinical services in segregation that they received in the general population, or with enhanced services if they suffer from chronic mental illness and functional impairments.

73. Consistent with best practices, Massachusetts Department of Correction regulations governing county facilities requires that prisoners may only be given psychotropic medication as one facet of a program of therapy. *See* 103 CMR 932.15(2)(a).

74. Despite these requirements, the BCSO provides little or no group or individual psychotherapy, or "talk therapy," to prisoners in segregation.

75. The lack of access to psychotherapy exacerbates the harms that segregation causes to prisoners with serious mental illness.

<u>BCSO Lacks Both Residential Treatment Capacity and Adequate Secure Treatment Capacity.</u>

76. While most prisoners with mental illness can be successfully maintained in the general population with adequate outpatient treatment, certain other prisoners cannot adapt to the prison environment and require more intensive treatment. Such prisoners require a residential treatment unit staffed with medical and mental health care providers and appropriately trained corrections officers.

77. Since the HOC has no such capacity, Plaintiffs and other prisoners face a high likelihood of placement in segregation due to the manifestations of their mental illness.

78. Some prisoners with serious mental illness cannot be safely held in a residential treatment setting, but due to their illness should not be held in segregation. These prisoners require a secure treatment setting. Such housing, commonly referred to as a Secure Treatment Unit (STU), provides group and individual psychotherapy in a secure setting. When necessary to ensure added security during group sessions, such units may employ "therapy cages" or "re-start" chairs, which limit prisoners' movement.

79. Because these prisoners have a serious mental illness contraindicating segregation, generally accepted correctional standards require that they be afforded ten hours per week of

structured out-of-cell programming activities, ten additional hours of unstructured out-of-cell time for recreation and showers, and at least one hour weekly of individual therapy in a private setting.

80. Defendants have designated a handful of beds at the HOC for what appears to be a secure treatment program called the "Dartmouth Behavioral Unit" or DBU. However, the DBU fails to offer the requisite out-of-cell activities, including enhanced clinical contact, that are required to mitigate the harmful effects of segregation on prisoners with mental illness.

81. The DBU has only four beds, is not staffed with medical and mental health clinicians, and essentially operates as a modified segregation unit. Prisoners in this unit spend most of their time locked up or restrained, and do not receive adequate treatment or programming to address their needs.

BCSO Uses Harsh and Counter-Productive Suicide Prevention Measures.

82. Prisoners at imminent risk of suicide or self-harm should be placed under observation in a suicide-resistant cell. In correctional settings, this practice is often called mental health watch or suicide watch.

83. Prisoners under observation for self-harm should receive mental health care, including supportive clinical interventions. Additionally, while the environment of a prisoner on mental health watch must be carefully monitored, conditions on watch should not be so harsh as to discourage prisoners from reporting thoughts of suicide and self-harm because they are afraid to be put on watch.

84. However, at the HOC, as a matter of policy, and without individualized determinations of necessity, Plaintiffs and other prisoners maintained on mental health watch are left with nothing but suicide proof "Fergie" smocks for clothing. Moreover, they are allowed no property or

anything to engage them or to absorb their attention (except, perhaps, for a book after several days in this status). They have no access to recreation, visits, telephone calls, or other means of social contact.

85. Mental health watch, as practiced by Defendants, is not a legitimate crisis intervention. Instead, it often exacerbates the impetus of Plaintiffs and other prisoners to do themselves harm and deters prisoners from seeking help.

86. Plaintiff Battle, for example, when he voiced a desire to "hang it up," was not seen by a psychiatrist, but instead was placed in an observation cell dressed in a "Fergie," until he said that he felt better just so he could be taken off mental health watch.

87. Mental health watch will not necessarily prevent suicide. On November 16, 2016, a prisoner named James Pritchard committed suicide while on mental health watch just a few days after he was brought to the HOC. Mr. Pritchard had a history of depression, cutting himself, and suicide attempts and had been at Bridgewater State Hospital within a year of his death. Shortly before his death, he told his family that he had been taken off all his psychotropic medications upon admission to the HOC.

Class Action Allegations

88. The plaintiff class consists of all persons who are now or may later be placed in the custody of the BCSO and have mental illness.

89. The plaintiff class is so numerous that joinder of all members is impractical.

90. Questions of law and fact relevant to plaintiffs' claims are common to the class of all persons who are now or may later be placed in defendant's custody. These questions predominate over questions affecting only individual class members.

91. Plaintiff's claims are typical of the claims of the class. All of the Plaintiffs have suffered from the segregation and mental health care policies and practices described herein, which fall considerably below the generally accepted standard of care for similar correctional facilities.

92. Plaintiffs will adequately protect the interests of all class members as they are represented by competent counsel with experience in prisoner class action litigation.

93. A class action is superior to other available methods for a fair and efficient adjudication of this action. Separate actions could result in inconsistent and varying decisions and in conflicting and incompatible standards of conduct for the defendants.

94. Plaintiffs and the class they represent have no adequate remedy at law.

CLAIMS

First Cause of Action

(Violation of the Right to be Free from Cruel and Unusual Conditions and the Right to Substantive Due Process Guaranteed by the Constitution of the United States, and 42 U.S.C. § 1983)

95. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

96. By holding Plaintiffs and other class members with serious mental illness in segregation, and by failing to provide adequate mental health care to prisoners in segregation or at risk of segregation, Defendants are deliberately indifferent to the substantial risk of serious harm suffered by Plaintiffs in violation of Plaintiffs' right to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments, and, with respect to federal and pre-trial detainees, the Fifth and Fourteenth Amendment to the United States Constitution, and as secured by 42 U.S.C. § 1983.

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

of herein and have condoned or been deliberately indifferent to such conduct. It should be obvious to Defendants and to any reasonable person that the conditions imposed on class members cause tremendous mental anguish, suffering, and pain to such individuals. Moreover, Defendants have repeatedly been made aware, through administrative grievances and written complaints, that class members are currently experiencing, or are at risk of, significant and lasting injury.

Second Cause of Action

(Violation of the Right to be Free from Cruel and Unusual Conditions and the Right to Substantive Due Process Guaranteed under the Massachusetts Declaration of Rights)

98. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

99. By holding Plaintiffs and other class members with serious mental illness in segregation, and by failing to provide adequate mental health care to prisoners in segregation or at risk of segregation, Defendants are deliberately indifferent to the substantial risk of serious harm suffered by plaintiffs in violation of Plaintiffs' right to be free from cruel or unusual punishment as guaranteed by Article 26 of the Declaration of Rights of the Massachusetts Constitution, and with respect to pre-trial detainees, the right to substantive due process protected by Articles 1,10, and 12 of the Declaration of Rights, and G.L. c. 231A, § 2.

Third Cause of Action

(Violation of G.L. c. 127, § 41 and Department of Correction Regulations)

100. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

101. By holding Plaintiffs and other class members with mental illness in "isolation" for periods in excess of three days without notice to the Sheriff and for longer than ten days for any one offense, Defendants violate G.L. c. 127, § 41 and 103 CMR 943.09.

102. By failing to review segregation placements in awaiting action status within 72 hours in order to determine if the placement is designed to protect institutional security and not to punish; by failing to ensure that awaiting action segregation placements last no longer than is necessary; and by failing to offset terms in segregation in awaiting action status pending disciplinary charges against ultimately imposed sentences, thus utilizing awaiting action status to lengthen terms of punishments for rule infractions, Defendants violate 103 CMR 943.03(2).

Fourth Cause of Action

(Disability Discrimination under the Americans with Disabilities Act and the Rehabilitation Act)

103. Plaintiffs incorporate the preceding paragraphs of this complaint as if fully set forth herein.

104. Plaintiffs suffer from mental illnesses that substantially limit one or more of their major life activities and therefore have a disability within the meaning of the Americans with Disabilities Act.

105. By not adequately considering Plaintiffs' disabilities before placing them in segregation or when reviewing their status while in segregation, not taking Plaintiffs' disabilities into account in the disciplinary process, and denying Plaintiffs the mental health treatment and other accommodations that would enable them to live in the general population and participate as fully as possible in services, programs and activities available to prisoners generally, Defendants have violated Plaintiffs rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and Title II of the Americans with Disabilities Act (42 U.S.C. § 12132).

Fifth Cause of Action

(Disability Discrimination under G.L. c. 93, § 103 and Article 114 of the Declaration of Rights)

106. Plaintiffs incorporate the preceding paragraphs of this complaint as if fully set forth herein.

107. By not adequately considering Plaintiffs' disabilities before placing them in segregation or when reviewing their status while in segregation, not taking Plaintiffs' disabilities into account in the disciplinary process, and denying Plaintiffs the mental health treatment and other accommodations that would enable them to live in the general population and to participate as fully as possible in services, programs and activities available to prisoners generally, Defendants violate Plaintiffs rights under G.L. c. 93, § 103 and Article 114 of the Declaration of Rights.

Sixth Cause of Action

(G.L. c. 127, § 32)

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

109. By treating Plaintiffs and other prisoners cruelly as a result of behaviors that stem from disabling conditions, and effectively punishing them more severely than non-disabled prisoners by subjecting them to the deleterious impact of confinement in segregation, Defendants deny Plaintiffs the kind treatment to which they are entitled under G.L. c. 127, §32.

PRAYER FOR RELIEF

110. Plaintiffs, on behalf of themselves and other class members, requests that this Court:

a. Declare that Defendants' conduct, as set forth above, violates each of the legal authorities set forth in Plaintiffs' claims for relief;

b. Permanently enjoin Defendants from housing Plaintiffs and other class members

with serious mental illness in segregation;

c. Order Defendants to develop and implement appropriate disciplinary policies and practices regarding prisoners with mental illness;

d. Order Defendants to ensure that Plaintiffs and class receive appropriate and necessary mental health care, including adequate screening and evaluations upon admission; appropriate medication practices; adequate mental health rounds in segregation; access to appropriate therapy, including residential and secure treatment units; and appropriate suicide prevention policies and practices.

e. Appoint an independent mental health professional who is empowered, for a reasonable period of time, to ensure future compliance with the Court's permanent injunction;

e. Order Defendants, for a reasonable period of time sufficient to ensure compliance with the Court's permanent injunction, to provide the court-appointed monitor and Plaintiffs' counsel with regular statistical reports and other documents from which compliance with the Court's Order in this matter may, at least in part, be ascertained;

f. Award Plaintiffs reasonable attorneys' fees and costs, pursuant to 42 U.S.C. §§ 1988, 12205, and 12133; and other applicable law;

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

h. Grant such other and further relief as this Court considers just and proper.

Dated: January 9, 2018

Respectfully submitted,
For the Plaintiffs,

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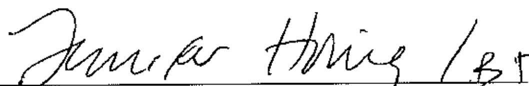

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CIVIL ACTION COVER SHEET	DOCKET NUMBER 1873CV00020	Trial Court of Massachusetts The Superior Court

PLAINTIFF(S): Danyel Battle-Moore, et al

COUNTY: Bristol

ADDRESS: Bristol County House of Correction

DEFENDANT(S): Thomas Hodgson, et al

ATTORNEY: Phillip Kassel

ADDRESS: c/o Mental Health Legal Advisors Comm. 24 School St. Boston, MA 02108

ADDRESS: Bristol County House of Correction

BBO: 555845

BRISTOL, SS SUPERIOR COURT
FILED
JAN 09 2018
MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
PD1	Equity action involving incarcerated parties	F	☐ YES ☒ NO

*If "Other" please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

A. Documented medical expenses to date:
1. Total hospital expenses .... $
2. Total doctor expenses .... $
3. Total chiropractic expenses .... $
4. Total physical therapy expenses .... $
5. Total other expenses (describe below) .... $
Subtotal (A): $

B. Documented lost wages and compensation to date .... $
C. Documented property damages to dated .... $
D. Reasonably anticipated future medical and hospital expenses .... $
E. Reasonably anticipated lost wages .... $
F. Other documented items of damages (describe below) .... $

N/A

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):$

CONTRACT CLAIMS
(attach additional sheets as necessary)

Provide a detailed description of claims(s): N/A

TOTAL: $

Signature of Attorney/Pro Se Plaintiff: X [signature] Date: 1/9/18

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

N/A

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X [signature] Date: 1/9/18