

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

TYQUINE R. LEE, by and through his
guardian, TAKEISHA L. BROWN,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS; HENRY PONTON, Regional
Operations Chief; DENISE MALONE, Chief of
Mental Health Services; JEFFREY KISER,
Warden of Red Onion State Prison; EARL
BARKSDALE, Former Warden of Red Onion
State Prison; ARVIL GALLIHAR, Chief of
Housing and Programs; AMEE DUNCAN;
LARRY COLLINS; WALTER SWINEY;
MICHAEL YOUNCE; JUSTIN KISER; ROY
SYKES; GARY ADAMS; JAMES D.
LAMBERT; TERRENCE HUFF; D. TRENT;
and EVERETT MCDUFFIE

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

PRELIMINARY STATEMENT

1. Officials at Red Onion State Prison (“Red Onion”) placed Tyquine Lee in solitary confinement on May 26, 2016 and left him there for over 600 days. During that time, Mr. Lee experienced a complete mental and physical collapse. By the time a psychiatrist evaluated him

in February 2018 for medical treatment, Mr. Lee had lost the most fundamental human faculty, his capacity for language. When he spoke at all, he used an unintelligible string of numbers and nonsense words. He had long since lost the ability to handle the most basic self-care. His teeth were badly decayed, he was filthy and had terrible body odor, and he had lost nearly thirty pounds. He was unable to recognize his mother on a recent visit and he had no apparent understanding of his personal history or his present circumstances. Mr. Lee's psychological connection to the world around him and to his own identity had been severed. Even today, after months of medical care, he has not fully recovered.

2. Mr. Lee's mental and physical deterioration was a direct result of the conditions of his confinement at Red Onion and a complete lack of urgently needed medical care. He spent 22 to 24 hours a day in an 80-square-foot grey concrete cell behind a solid steel door. His only regular time outside of the cell was for showers three times a week and an hour of recreation each day alone in a cage the size of a parking space. On those occasions, he was strip-searched, shackled, and escorted by two guards. He had almost no meaningful human contact beyond brief, cursory interactions with correctional officers and staff. Communications with the outside world were strictly limited and even denied entirely for long stretches in response to minor rule infractions. The sensory stimuli that the human brain needs to function—colors, shapes, sounds, natural light, everyday conversation, mental engagement with purposeful activity—were all removed and replaced with an unbearable monotony.

3. Mr. Lee began to exhibit symptoms of severe mental illness less than two months after his placement in solitary confinement. Defendants ignored his symptoms and held him in conditions of extreme isolation for another year and a half, with no medical care and no meaningful way to work his way out of solitary confinement. The result was entirely

predictable, as the devastating effects of extended solitary confinement on mentally ill prisoners have been well-known for many years. It is a form of psychological torture with no legitimate place in our criminal justice system.

4. Defendants' decision to hold Mr. Lee in solitary confinement despite the obvious signs of his severe mental and physical decomposition violated his due process rights under the Fourteenth Amendment and his right to be free of cruel and unusual punishment under the Eighth Amendment. They also deprived Mr. Lee of the protections he is entitled to under the Americans with Disabilities Act, 42 U.S.C. § 12102, and the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and constituted medical malpractice and intentional infliction of emotional distress under state law. This lawsuit seeks redress for those violations.

JURISDICTION AND VENUE

5. This action is brought pursuant to 42 U.S.C. § 1983.

6. This Court has jurisdiction over Mr. Lee's federal law claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), because Mr. Lee's claims arise under the Constitution and the laws of the United States.

7. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

PARTIES

I. Plaintiff

8. Tyquine R. Lee is a 26-year-old prisoner of the Virginia Department of Corrections ("VDOC"). He currently resides at Wallens Ridge State Prison at 1052 Dogwood Drive, Big Stone Gap, Virginia 24219. He previously resided at Greensville Correctional Center at 901 Corrections Way, Jarratt, Virginia 23867; Marion Correctional Treatment Center at 110

Wright Street, Marion, Virginia 24354; and Red Onion State Prison at 10800 H. Jack Rose Highway, Pound, Virginia 24279.

9. Mr. Lee brings this suit by and through his legal guardian, Takeisha Brown. Ms. Brown is Mr. Lee's mother. She was appointed his legal guardian by the State of Virginia on February 1, 2019. She currently resides in Allentown, PA.

II. Defendants

10. The Virginia Department of Corrections ("VDOC") is the executive agency responsible for operating and maintaining correctional facilities within Virginia. Defendant VDOC provides supervision and control over state correctional facilities and their programs. Defendant VDOC is responsible for issuing regulations, policies, directives, and operating procedures governing the operation of state correctional facilities. Defendant VDOC is statutorily required to establish and maintain a clinical treatment program for certain prisoners within its custody, including clinical assessments of the prisoners and the development of appropriate treatment plans. Defendant VDOC has its regular place of business in Richmond, Virginia.

11. Defendant Henry J. Ponton is the VDOC Regional Operations Chief for the Western Region. Defendant Ponton has ultimate authority over decisions made by the Dual Treatment Team ("DTT"), which reviews solitary confinement classifications and mental health assessments to determine appropriate housing. He also has been a member of the External Review Team ("ERT"), which reviews the decisions of the DTT. Defendant Ponton's regular place of business is at VDOC headquarters in Richmond, Virginia. He is sued in his individual and official capacity.

12. Defendant Denise Malone is the Chief of Mental Health Services for VDOC. In that role, Defendant Malone is responsible for the supervision of all mental health clinical supervisors, including the supervisors responsible for the provision of mental health services at Red Onion. She is also responsible for VDOC mental health treatment and associated policies and procedures and for the appropriate classification of VDOC prisoners based on mental health needs. Defendant Malone is a member of the ERT. She is responsible for handling grievance appeals, for approving the mental health program and trainings at VDOC institutions, and for supervising and administering disciplinary actions for Qualified Mental Health Professionals (“QMHP”). Defendant Malone’s regular place of business is at VDOC headquarters in Richmond, Virginia. She is sued in her individual and official capacity.

13. Defendant Jeffrey Kiser is the Warden of Red Onion, where he has ultimate responsibility over the care and custody of the facility’s prisoners, including Mr. Lee. He previously held the role of Assistant Warden of Red Onion. As Warden, Defendant Kiser is also the Facility Unit Head of Red Onion, in which role he has ultimate authority to approve—or to delegate authority to approve—security-level classifications of the facility’s prisoners. Defendant Kiser’s regular place of business is at Red Onion in Pound, Virginia. He is sued in his individual and official capacity.

14. Defendant Earl Barksdale is the former Warden of Red Onion. As Warden, he had ultimate responsibility over the care and custody of the facility’s prisoners, including Mr. Lee. Defendant Barksdale was also the Facility Unit Head of Red Onion, in which role he has ultimate authority to approve—or to delegate authority to approve—security-level classifications of the facility’s prisoners. His regular place of business is at Baskerville Correctional Center in

Baskerville, Virginia, where he is currently the Warden. He is sued in his individual and official capacity.

15. Defendant Arvil Gallihar is the Chief of Housing and Programs for Red Onion and has served on the DTT. Defendant Gallihar's regular place of business is at Red Onion in Pound, Virginia. He is sued in his individual and official capacity.

16. Defendant Amee B. Duncan is the former Unit Manager of C-Building at Red Onion, where Mr. Lee was housed from January 2017 to January 2018. In her role as Facility Unit Head designee she reviewed segregation classification decisions made by the Institutional Classification Authority (ICA), a team of staffers who conduct hearings to review the progress of individual prisoners through the Step-Down Program as well as their ongoing segregation classification. Defendant Duncan's regular place of business is at Red Onion in Pound, Virginia. She is sued in her individual and official capacity.

17. Defendant Larry R. Collins is a Unit Manager at Red Onion and Facility Unit Head designee, in which role he reviews segregation decisions made by the ICA. Defendant Collins's regular place of business is at Red Onion in Pound, Virginia. Defendant Collins is sued in his individual and official capacity.

18. Defendant Walter Swiney is a Unit Manager at Red Onion and Facility Unit Head designee, in which role he reviews segregation decisions made by the ICA. Defendant Swiney's regular place of business is at Red Onion in Pound, Virginia. Defendant Swiney is sued in his individual and official capacity.

19. Defendant Michael Younce is a Unit Manager at Red Onion and Facility Unit Head designee, in which role he reviews segregation decisions made by the ICA. Defendant

Younce's regular place of business is at Red Onion in Pound, Virginia. Defendant Younce is sued in his individual and official capacity.

20. Defendant Justin W. Kiser is a former ICA member at Red Onion, responsible for reviewing and recommending Mr. Lee's segregation classification. Defendant Kiser's last known regular place of business is at Red Onion in Pound, Virginia. Defendant Kiser is sued in his individual and official capacity.

21. Defendant Roy Sykes is an ICA member at Red Onion, responsible for reviewing and recommending Mr. Lee's segregation classification. Defendant Sykes' last known regular place of business is at Red Onion in Pound, Virginia. Defendant Sykes is sued in his individual and official capacity.

22. Defendant Gary Adams is a former ICA member at Red Onion, responsible for reviewing and recommending Mr. Lee's segregation classification. Defendant Adams's last known regular place of business is at Red Onion in Pound, Virginia. Defendant Adams is sued in his individual and official capacity.

23. Defendant James D. Lambert is an ICA member at Red Onion, responsible for reviewing and recommending Mr. Lee's segregation classification. Defendant Lambert's regular place of business is at Red Onion in Pound, Virginia. Defendant Lambert is sued in his individual and official capacity.

24. Defendant Terrence Huff is a Qualified Mental Health Professional and VDOC employee. His title is Psychology Associate Senior. Defendant Huff's regular place of business is at Red Onion in Pound, Virginia. Defendant Huff is sued in his individual and official capacity.

25. Defendant D. Trent is a Qualified Mental Health Professional and VDOC employee. His title is Psychology Associate I. Defendant Trent's regular place of business is at Red Onion in Pound, Virginia. Defendant Trent is sued in his individual and official capacity.

26. Defendant Everett McDuffie is a psychiatrist. He contracts with the VDOC to provide psychiatric services to prisoners at Red Onion. Defendant McDuffie maintains a regular place of business at Red Onion. Defendant McDuffie is sued in his individual capacity.

STATEMENT OF FACTS

III. Solitary Confinement at Red Onion State Prison

27. Red Onion State Prison is a supermax prison located on a remote mountaintop in the southwest corner of Virginia. Red Onion is designed to impose an environment of complete isolation and control, including the placement of hundreds of its prisoners in solitary confinement.¹

28. Solitary confinement is a system of environmental and behavioral constraints that combine to minimize as far as possible any meaningful human interaction or sensory stimulation. The isolation begins with the physical environment. The prisoner remains in an 80-square-foot cell—roughly six paces in length and half that width—for 22 to 24 hours a day. The cell contains nothing more than a steel bed, a steel table with no chair, and a steel toilet with a sink at the top. There is no mirror inside the cell. The fluorescent lights in his cell dim but do not turn off at night, and there is little or no natural light. Cells are shut off by solid steel doors with small windows and slots, severely restricting prisoners' ability to see outside of the cell.

¹ Red Onion officials use various terms, such as "restrictive housing," "special housing," and "segregation" for the practice of isolating prisoners from human contact for 23 to 24 hours a day.

29. The severe isolation imposed by the prisoner's physical environment is reinforced by the almost complete deprivation of human contact. Prisoners in solitary confinement are not allowed to participate in any sort of social or group activities. The only human contact prisoners may have during the day are cursory encounters with correctional officers or occasional visits from attorneys and mental health professionals.

30. Prisoners are supposed to be taken to shower three times a week and allowed one hour of recreation five times a week. During recreation, prisoners are alone in a cage the size of a parking space. A prisoner must submit to a body cavity search before leaving his cell, and during the brief time he is allowed out, he is shackled and escorted by two guards. Besides infrequent medical exams, these interactions with guards are the only time a prisoner in solitary confinement will feel the touch of another human being.

31. Even these minimal opportunities to leave the cell are subject to the whims of correctional officers, and in fact, for long periods, Mr. Lee almost never left his cell. There were periods when the guards only took him to shower once a month, and he spent an hour in the recreation cage only once every two to three weeks. On occasions when he was allowed a phone call, guards would bring an ear piece to his cell instead of taking him to the phone, and often the ear piece did not work. He did not have any out-of-cell visits with medical personnel; any check-ups were brief encounters through the cell door.

32. The limited human contact that Mr. Lee had was often hostile. Correctional officers responded to Mr. Lee's symptomatic behavior by trying to provoke him with threatening language and subduing him with chemical agents. Correctional officers maced Mr. Lee approximately 25 times during his incarceration in solitary confinement in response to Mr. Lee's complaints the food, the filthiness of his cell, and other intense frustrations of life in solitary

confinement. Mr. Lee became fearful of the correctional officers, and during one visit with his mother, Mr. Lee told her to stop asking questions about his well-being, because it would cause the guards to retaliate.

33. Prison employees delivered Mr. Lee's meals through a slot in the door and ate alone in his cell, like all other prisoners on solitary confinement in Red Onion. The food was often inedible, and sometimes infested with dirt, insects, and maggots. Other times guards neglected to give him anything to eat. During his time in solitary confinement, Mr. Lee weight dropped from 174 to 140 pounds. His mother recalled Mr. Lee looked like he was starving when she went to visit him.

34. Prisoners in solitary confinement have almost no opportunity to communicate with one another. Sometimes prisoners will attempt to speak through the ventilation opening in the cell to the prisoners directly around them. They also may attempt to shout through the doors, or make silent hand signal through their window to the prisoner on the opposite side of the pod, but these highly restricted *ad hoc* means of communication are extremely difficult at best. Mr. Lee frequently heard prisoners shouting on his tier but he rarely communicated with other prisoners himself.

35. Just as human interaction inside the prison is reduced to a bare minimum, a prisoner's contacts with the outside world are severely constrained, both by prison regulations and by the remoteness of the place. Absent special privileges, prisoners are normally allowed two 15-minute calls a month, one one-hour non-contact visit a week, and no video visitation. In reality, Red Onion's location in far western Virginia makes visits with any regularity practically impossible. Mr. Lee's loved ones, for example, had to travel up to eight hours to see him. The geographic isolation of the prison adds another barrier to meaningful human contact.

36. Beyond the deprivation of human contact, prisoners in solitary confinement lack access to the kind of sensory and mental stimulation that the human brain needs to function. There is no out-of-cell programming. Access to the law library, reading material, or other media is heavily restricted. Prisoners have very little exposure to the colors, shapes, sounds, and mental engagement with meaningful activity that anyone outside of prison—and even prisoners outside of solitary confinement (known as “general population”)—would take for granted as a normal part of daily life. Prisoners in solitary confinement are largely abandoned to the sensory and mental monotony of a grey concrete and steel cell.

IV. The Dangers of Solitary Confinement

37. There is a broad consensus among mental health professionals, U.S. courts, and international bodies as to the serious risk that solitary confinement poses to the mental and physical health of prisoners, even prisoners who are otherwise healthy. These risks are well-known by correctional officials and administrators throughout the country and were known to Defendants.

38. Social interaction and environmental stimulation are as fundamental to human health as adequate nutrition, medical care, and shelter. Every person needs regular, meaningful interaction with others to maintain a connection to reality and a sense of identity. Exposure to positive sensory and mental stimuli (*e.g.*, natural light, outdoor sounds, color variety) is likewise crucial for psychological health. An unchanging, monotonous environment that deprives the brain of normal levels of stimulation prevents a person from maintaining a state of alertness and attention, causing cognitive functions to atrophy.

39. It is precisely these basic needs that go unmet in solitary confinement. Unsurprisingly, prisoners in long-term solitary confinement exhibit a range of profoundly

harmful psychological and physiological injuries, which have been confirmed by decades of research. Psychological harms include anxiety, depression, withdrawal, panic, loss of self-control, rage, hyper-sensitivity to stimuli, apathy, dementia, and detachment from reality and hallucinations; physiological injuries including chills, insomnia, deteriorated vision, headaches, hypertension, tachycardia, back pain, appetite loss, weight loss and digestive problems.

40. The damage caused by solitary confinement frequently begins within days or weeks, while the consequences often linger long after a prisoner is no longer in solitary confinement, significantly inhibiting the possibility for reintegration into society.

41. As in Mr. Lee's case, the psychological harms associated with solitary confinement frequently correspond to physical injuries. Isolation causes a decline in neural activity and shrinks the hippocampus and amygdala, the brain structures critical to decision-making, memory, and emotional regulation. The forced lack of activity is associated with a general physical deterioration, including dangerous weight loss, hypertension, heart abnormalities, and the aggravation of pre-existing medical problems.

42. While the effects of solitary confinement are deeply traumatic for prisoners who are otherwise healthy, its effect on prisoners with pre-existing mental illness is utterly devastating. For such prisoners, the harms of solitary confinement are magnified and accelerated, causing horrifying psychological damage. They can experience significant and rapid worsening of symptoms in a matter of days or weeks, worsening both the disability and the prognosis for recovery. Prolonged solitary confinement of mentally ill prisoners often leads to self-mutilation and suicide.

43. The effects of solitary confinement on mentally ill prisoners is so severe that numerous major health organizations have issued formal policy statements opposing the practice,

including the National Commission on Correctional Care, the American Psychiatric Association, Mental Health America, the American Public Health Association, the National Alliance on Mental Illness, and the Society of Correctional Physicians.

44. The severe harm that solitary confinement causes mentally ill prisoners has also been widely recognized by federal courts. One court called conditions in solitary confinement “virtual incubators of psychoses—seeding illness in otherwise healthy prisoners and exacerbating illness in those already suffering from mental infirmities.”² Another observed that the “almost total isolation and inactivity [of solitary confinement] deprives seriously mentally ill prisoners of reality checks; they receive no feedback to keep their psychosis in check. Seriously mentally ill prisoners in isolated conditions lose total control of their lives.”³ Another compared placing a mentally ill prisoner in solitary confinement to “putting an asthmatic in a place with little air to breathe” and concluded that a “risk this grave—this shocking and indecent—simply has no place in civilized society.”⁴ Indeed, nearly every federal court to consider the question of whether placing the severely mentally ill in such conditions is cruel and unusual punishment has found a constitutional violation.

45. There is such widespread consensus among the scientific community, correctional professionals, and courts about the severe harms caused by solitary confinement, and reports of its dangers have been covered so frequently in the press, that Defendants could not have avoided actual knowledge of the risks. Indeed, a recent Fourth Circuit opinion stated that “given State

² *Ruiz v. Johnson*, 154 F. Supp. 2d 975, 984 (S.D. Tex. 2001)

³ *Jones El v. Berge*, 164 F. Supp. 2d 1096, 1103 (W.D. Wis. 2001)

⁴ *Madrid v. Gomez*, 889 F. Supp. 1146, 1265–66 (N.D. Cal. 1995)

Defendants' status as corrections professional, it would defy logic to suggest that they were unaware of the potential harm" of solitary confinement.⁵ Nevertheless, Defendants held Mr. Lee in solitary confinement for more than a year while he was exhibiting symptoms of serious mental illness and he deteriorated to a state of complete psychological incoherence and physical decay.

V. Tyquine Lee

A. Mr. Lee's Documented Vulnerability to the Effects of Solitary Confinement

46. Mr. Lee has suffered from mental illness since childhood. He was diagnosed with ADHD at the age of five and placed on medication. Social Security records identify Mr. Lee as "disabled," with his disability beginning at the age of eight. From the ages of eight to ten, he was hospitalized four times for behavior associated with his mental illness.

47. Mr. Lee's mental illness led to behavioral problems that sometimes included criminal activity. In October 2011, Mr. Lee was convicted of a series of armed robberies that led to his incarceration at the age of 18.

48. Mr. Lee's mental health history, which makes him extremely vulnerable to the worst effects of solitary confinement, was well documented and known to officials at Red Onion State Prison. Indeed, VDOC policy requires a screening and review of a prisoner's health records when a prisoner is assigned to solitary confinement in order to identify at-risk prisoners. VDOC Operating Procedure 720.1, § IV.C. Defendants were therefore aware of Mr. Lee's vulnerability and of the substantial risk that solitary confinement would cause him serious harm.

⁵ *Porter v. Clarke, et al.*, No. 18-6257, Dkt. No. 58 at 20 (4th Cir. May 3, 2019) (internal alterations omitted).

B. Mr. Lee's Incarceration at Red Onion State Prison and the Collapse of His Mental Health

49. Following sentencing for the October 2011 offense, Mr. Lee was initially held at Powhatan Reception and Classification Center, and later transferred to Sussex I State Prison. On or about September 18, 2015, Mr. Lee was transferred to Red Onion.

50. On May 26, 2016, the officers at Red Onion intercepted an email from Mr. Lee that officials interpreted as a threat towards a correctional officer at another facility. The next day, Mr. Lee was placed in in solitary confinement.

51. Within two months of his placement in solitary confinement, Mr. Lee began exhibiting psychotic symptoms. He began speaking in numbers. Whereas previously he showed no difficulty in signing his name, on a July 22, 2016 ICA Hearing Notification Form, Mr. Lee's signature was a nonsensical string of letters. He signed the same type of form in the same manner on November 27, 2017, this time adding below the signature line an incoherent list of numbers and random words. Rather than recognize this writing as a sign of severe mental illness, a Red Onion official simply wrote "Refused to sign" across the top of the signature line.

52. Despite the appearance of these symptoms, Defendants held Mr. Lee in solitary confinement without any mental health treatment for a total of twenty months—from May 2016 to January 2018. Mr. Lee's descent into psychosis was precipitated and dramatically worsened by the conditions of his confinement at Red Onion.

53. As described above, the social isolation and sensory deprivation inherent in solitary confinement are devastating for individuals suffering from mental illness. The lack of positive human contact and any meaningful sensory, mental or emotional stimuli had the predictable effect of exacerbating Mr. Lee's existing symptoms and causing new symptoms to

appear. Mr. Lee began to suffer from delusions and loose thought association. He lost any coherent understanding of his own past or present circumstances. He failed to recognize his own family. Eventually, he lost the ability to perform basic personal hygiene.

54. The impact of solitary confinement on Mr. Lee's mental illness was made worse by misconduct by the officers and staff at Red Onion. As described above, Mr. Lee endured inedible food or no food at all, long periods where guards neglected to take him to the shower or recreation, threatening language from the guards, and fear of getting maced or facing other violent retaliation from the guards if he complained. The hunger and fear he endured while in solitary compounded the suffering caused by the social isolation and sensory deprivation, and further damaged his mental health.

55. Mr. Lee's inability to control his behavior due to his mental illness resulted in further disciplinary restrictions while he was in solitary confinement, which made the conditions of his confinement even harsher. On January 17, 2017, after his psychological health had been rapidly deteriorating for six months, he received a disciplinary infraction for "Refusal to submit to a drug test." There is no indication that the staff considered the fact that in Mr. Lee's state of advanced mental decomposition, he may not have been able to understand the staff who came to administer the drug test or meaningfully communicate consent. Nevertheless, Red Onion imposed a further penalty of six months without visitation.

56. Visits from his mother and other family and loved ones were a vitally important connection to the outside world during this phase of acute mental illness. Losing that connection added considerably more weight to the already crushing burden that the isolation and sensory deprivation were having on Mr. Lee's mental health. Mr. Lee was stuck in a debilitating cycle—the harsh conditions of his confinement caused mental health problems that prevented him from

following prison rules, which triggered harsher conditions, which then worsened his already badly failing mental health.

57. Despite the challenges presented by the remoteness of Red Onion and the sanctions that the prison imposed on Mr. Lee, his family made every effort to visit him. On one visit, Mr. Lee could not recognize his mother. He had no ability to communicate and spoke only in numbers and guttural sounds. He had not been showering or brushing his teeth and was visibly filthy. He appeared terrified of the guards and had lost a frightening amount of weight. Later medical records show that during his time at Red Onion, Mr. Lee had shed 34 pounds from an already slim frame, dropping in weight from 174 to 140 pounds.

58. On January 17, 2018, after over 600 days in solitary confinement without any mental health treatment, ICA finally recommended that Mr. Lee be transferred to a different facility. An evaluation conducted later that month by Defendant McDuffie reveals how completely the time in solitary had destroyed Mr. Lee's mental health. Dr. McDuffie observed:

[T]his offender presents with bizarre behaviors and delusional thought content. He does not maintain his hygiene, as evidenced by a strong foul odor coming from his person and his cell. He speaks in numbers and neologisms [*i.e.*, invented words] [and] had loose thought association. . . . Offender Lee lacks the capacity to make appropriate decisions for medical care and for mental health needs. . . . [A]ll communications were difficult to understand; he speaks in neologisms (wants a "CTB shot," wants a "shooby," [and] wants a "flavuvia"); numbers; delusions consist of a word salad; has LOAs; has delusional ideas about not showering, stating "I'm a cautionary man."

Dr. McDuffie diagnosed Mr. Lee with schizophrenia and an unspecified personality disorder, and recommended placement at Marion Correctional Treatment Center ("MCTC").

59. A subsequent VDOC "Order for Involuntary Admission to A Licensed Correctional Mental Health Facility" stated that "there exists a substantial likelihood that, as a

result of mental illness, the offender will, in the near future, suffer serious harm due to [his] lack of capacity to protect [himself] from harm or to provide for [his] basic human needs.”

60. Mr. Lee was transferred to MCTC on January 31, 2018 and underwent an intake interview the following day. The physician conducting the intake interview observed that Mr. Lee had lost all sense of his own identity, his family, or his present circumstances. He did not understand why he had been transferred to MCTC. He stated that he was incarcerated for “credit card theft,” and the he had “been in for 13 years,” both of which were incorrect. The physician reported:

[W]hen he did speak it often consisted of neologisms and for the most part was unintelligible. He presented with cognitive disorganization and evidenced LOA. When he was asked about his family he reported that he was a “homeless child” and stated, “I got no family. They got wiped out by a state-wide capital death charge.” He stated that he graduated high school and went to college at “Maury” to study “commercial canarchy . . . a T.V. host.” He reported that he has never received mental health treatment in the past. . . . [H]e appeared to be cognitively disorganized and many of his responses were unintelligible.

61. Mr. Lee received additional assessments at MCTC in the following weeks. In a February 21, 2018 Recreation Therapy Assessment, the evaluator could not understand what Mr. Lee was saying, so she asked him to write out his responses. He identified his religion as “cuityyoe,” and wrote that one his interests was “tttyope.” In a February 22, 2018 Psychosocial Assessment, Mr. Lee stated that he grew up in “Latin Angels,” referring to this as a state. Although Mr. Lee has never been married and does not have any children, he stated that he was married on “297” to “Serena Lee,” and that he had a 14-year-old daughter named Katrina Lee. He stated his religion as “Curtley.”

62. The most severe harms persisted long after Mr. Lee transferred out of Red Onion. An evaluation on March 26, 2018 shows that “Mr. Lee continues to offer very little spontaneity

of speech. When he does speak he use[s] neologisms, making much of what he says unintelligible. . . . His thought processes appear disorganized today. It remains questionable if he may be responding to internal stimuli, as he exhibits poor eye contact and has also been observed talking within his cell when no one else is around.”

63. Mr. Lee’s suffering during the year and a half he spent in solitary confinement in Red Onion was horrific, and it was the direct result of the Defendants’ conduct. Defendants failed to provide any medical care whatsoever, and failed to take any steps to effectuate his release from solitary confinement, until Mr. Lee reached a state of such complete deterioration that Defendants could simply no longer ignore his symptoms. And Defendants failed to conduct any genuine review of Mr. Lee’s confinement, which would have resulted in his removal from the destructive conditions he was in. Instead, Defendants conducted meaningless, *pro forma* reviews with preordained outcomes. Defendants’ failures were the direct cause of the harms that Mr. Lee suffered.

VI. Defendants Failed to Provide Minimally Adequate Medical Care for Mr. Lee

64. Mental health professionals at Red Onion recorded the increasing severity of Mr. Lee’s symptoms during the time period of July 2016 to January 2018, when Mr. Lee was transferred out of Red Onion. Incredibly, despite these observations, Mr. Lee received no mental health care for over eighteen months while he rapidly deteriorated in solitary confinement.

65. Defendants’ inaction in the face of Mr. Lee’s severe mental illness was contrary to VDOC policies, which require active screening, monitoring and proactive management of prisoners who are at risk of deteriorating in solitary confinement. Specifically, VDOC Operating Procedures require that:

- a. Offenders should be screened by a Qualified Mental Health Professional (QMHP) before their placement or within one working day after placement in special housing so any “at risk” offenders may be identified. VDOC Operating Policy 720.1, § IV.C.
- b. Institutions “systematically identify, monitor, and manage offenders” who are at risk of deterioration. VDOC Operating Policy 730.5, § IV.C.1
- c. QMHP should recommend removal from solitary confinement if “that placement . . . may have a deleterious effect on an offender’s mental health.” VDOC Operating Policy 730.5, § IV.C.1.
- d. Offenders with serious mental illnesses must be moved out of solitary confinement within 28 days and placed in one of four housing options designed to provide mental health care. VDOC Operating Procedure 861.3 § IV.B.4.
- e. Any offender with identified mental health problems who is placed in special housing should be monitored according to specified health service procedures. VDOC Operating Procedure 861.3 § V.C.2.
- f. No offender will be denied necessary or proper medical, dental, or mental health care while in special housing. VDOC Operating Procedure 861.3 § V.C.4.
- g. A QMHP will personally interview any offender remaining in special housing for more than 30 days, and if confinement continues for more than 30 days, any offender with an identified mental health need shall receive an assessment at least once a month, or more frequently if

prescribed by the Health Authority. VDOC Operating Procedure 861.3 § V.C.12.

66. These policies demonstrate that VDOC employees knew of the substantial risk that solitary confinement poses for mental health, particularly for inmates with pre-existing mental illness. In practice, however, the mental health screenings and evaluations at Red Onion are cursory and ineffective. Visits with a QMHP or a psychiatrist are usually conducted through a cell's steel door and without confidentiality, which severely inhibits many prisoners' ability to speak openly and with candor about their problems.

67. In Mr. Lee's case, the mental health assessments were entirely meaningless. Terrence Huff and D. Trent, the QMHPs, as well as E. McDuffie, a psychiatrist contracted by the VDOC, each of whom assessed Mr. Lee, either ignored his symptoms, dismissed them as possible "malingering," or noted them without taking any steps to treat Mr. Lee or alleviate his suffering.

68. A July 21, 2016 Mental Health Services Progress Note recorded that:

Mr. Lee was asked about his mental health and he began naming off numbers over and over. He was next asked by the QMHP if he was feeling homicidal and/or suicidal in which he shook his head back and forth and began naming various numbers over and over like "593333674222 4444." During entire interaction this was the only way Mr. Lee would respond.

Despite observing this behavior, Mr. Trent did not recommend any treatment at that time. On a follow-up visit the next day, Mr. Lee again exhibited the behavior of speaking in numbers, but Mr. Trent wrote on his assessment that there were no symptoms of mental illness because Mr. Lee was initially able to "verbally engage the clinician" and answer questions.

69. On November 15, 2016, after Mr. Lee's symptoms had persisted and worsened over a period of four months, an evaluation concluded that "[i]ncidents of acting out behavior

appear to be volitional and not a result of mental health issues.” There is no indication on the report of any assessment or basis for that decision. Mr. Lee remained untreated and stuck in solitary confinement.

70. Dr. McDuffie saw Mr. Lee on September 28, 2017 and wrote that it was “unclear what is happening with this offender; however it seems that his communication in gibberish and numbers is enduring over some time.” Rather than take any action to treat Mr. Lee or remove him from the debilitating conditions of solitary confinement, Dr. McDuffie recommended a 30-day follow-up visit, because Mr. Lee’s behavior “cannot be separated yet from malingering.”

71. A October 5, 2017 Mental Health Progress notes recorded that “Offender Lee did not answer the majority of questions asked or gave answers that were bizarre/unrelated.” Mr. Trent observed that “Offender was disheveled. Body odor was strong. Affect = incongruent. Thoughts = FOI. . . . Delusional + possible cognitive deficits observed.” Mr. Trent also noted that “Offender [is] still repeating numbers continuously.” Despite these observations, the final assessment was “No objective s/s of mental health distress observed. Appeared stable.”

72. Dr. McDuffie also saw Mr. Lee on October 5, 2017. He wrote that Mr. Lee was still speaking “in numbers and gibberish” and recorded “psychosis” as his assessment. The assessment also suggested the Mr. Lee “may be referred to an MHU [*i.e.*, Mental Health Unit].” Still, Dr. McDuffie failed to prescribe any medication or treatment beyond a follow-up visit within 90 days.

73. Mr. Trent saw Mr. Lee again on October 10, 2017. He completed a VDOC Serious Mental Illness (SMI) Determination Form indicating that Mr. Lee suffered from an unspecified bipolar disorder and concluding that he “meets the SMI diagnostic and functional impairment criteria.” At that time, Mr. Trent updated Mr. Lee’s mental health code form MS-0,

which indicates no mental health impairment in the past two years, to MS-2S, indicating “substantial impairment.” Again, Mr. Lee received no treatment; instead, the psychiatrist recommended referral to another facility “if the symptoms persisted.” Mr. Lee remained on solitary confinement without treatment for another three and a half months, during which time his symptoms grew steadily more severe.

74. The complete failure of Defendants to provide Mr. Lee with any sort of medication or treatment, or to recommend or effectuate his removal from solitary confinement for a period of eighteen months after the first documented appearance of his symptoms, was a direct cause of Mr. Lee’s complete mental and physical deterioration.

VII. Defendants Failed to Provide Meaningful Review of Mr. Lee’s Placement in Solitary Confinement

75. Defendants systematically failed to meaningfully implement VDOC programs and policies that should have afforded Mr. Lee periodic reviews of placement in solitary confinement. Genuine review of Mr. Lee’s placement would have resulted in his release and prevented many of the harms that he suffered. Instead, it was the practice of the VDOC and its employees at Red Onion to conduct meaningless *pro forma* reviews with pre-ordained outcomes. The harms the Mr. Lee suffered were greatly exacerbated as a result.

76. Since 2011, Red Onion has had a “Step-Down Program” in place that purportedly allows prisoners to earn privileges and eventually work their way out of solitary by completing a series of assignments. That program fails to take into account a prisoner’s inability to complete the program due to mental illness. For a prisoner like Mr. Lee, the Step-Down Program is not a path out of solitary confinement but an obstacle that keeps him there indefinitely.

77. Additionally, VDOC policy requires a due process hearing by the Institution Classification Authority (ICA) prior to placement in solitary confinement and reviews by the ICA of the prisoner's status every 90 days. In practice, these reviews are little more than rubber stamps that do no more than record a prisoner's progress (or lack thereof) through the Step-Down Program. As such, they fail to meet basic due process requirements.

A. Step-Down Program

78. In 2011, the VDOC implemented a Step-Down program, theoretically affording prisoners in solitary confinement the opportunity to earn additional privileges. For those in the "Special Management" track of the program, such privileges may eventually include a return to general population. For prisoners in the "Intensive Management" track, however, there is no possibility of returning to general population. Mr. Lee was classified to the Intensive Management track. Irrespective of the track, prisoners in solitary confinement who wish to earn additional privileges must, among other requirements, complete the so-called "Challenge Series." That series consists of seven workbooks which prisoners must complete.

79. The Step-Down Program does not accommodate prisoners like Mr. Lee who suffer from mental illness. Successful progress through the program requires a prisoner to read and write, as well as communicate effectively with Red Onion staff. As Mr. Lee's health records confirm, his mental illness, which was precipitated and magnified by the conditions of his confinement at Red Onion, prevented him from communicating meaningfully either orally or in writing. There was no possibility of his successfully completing the program.

80. Despite these obstacles, Mr. Lee wanted to complete the program and made a sincere effort to do so. Records show that he attempted to complete the first two journals before his mental illness became so severe that he could not continue.

81. Defendants were aware that Mr. Lee was unable to complete the program due to his mental illness. Besides the obvious deterioration of Mr. Lee's mental health, which Defendants could directly observe, Defendants were contacted frequently by Mr. Lee's mother, Ms. Brown, who spoke with the Warden and counselors at Red Onion about the Step-Down Program. Fearful for her son's mental health and concerned that he was trapped indefinitely in solitary confinement, Ms. Brown explained to Defendants and other Red Onion officials that Mr. Lee was not capable of reading or writing in his current mental state. Neither Defendants nor any other counselors or Red Onion officials took any action to address the problem.

B. The ICA Reviews and Hearings Did Not Meet Minimal Due Process Requirements

82. The VDOC purports to provide formal due process through ICA hearings and reviews of a prisoner's placement in solitary confinement. The role of the ICA is to review the progress of prisoners through the Step-Down Program as well as their on-going segregation classification. A reporting staff member makes a recommendation as to whether a prisoner should be retained in solitary confinement. The ICA then conducts an internal review of the staff member's recommendation before adopting it. All interim segregation reviews are also reviewed by the Facility Unit Head or his or her designee.

83. In addition to the ICA, at least three other administrative bodies have a role in reviewing a prisoner's status. The Building Management Committee, comprised of mental health and correctional staff with direct knowledge of the prisoners in their custody, makes recommendations to the ICA regarding assignment of prisoners to privilege levels. There is also a Dual Treatment Team (DTT), responsible for reviewing solitary confinement classifications

and making recommendations as to whether prisoners are properly classified, and a biannual External Review Team (ERT), which reviews the decisions of the DTT.

84. Although multiple levels of review provide a veneer of procedure, they fail to comport with basic procedural safeguards.

85. The records of the ICA hearings and reviews of Mr. Lee's status show that the ICA repeatedly rubber-stamped his continued confinement in solitary, despite his severely deteriorating mental health. Neither the DTT nor the ERT provided meaningful oversight of the ICA decisions. Rather than considering Mr. Lee's actual circumstances, the reviews did no more than mechanically record whether Mr. Lee was completing the Step-Down program, a program that Mr. Lee was mentally incapable of participating in. As a result, the reviews were simply a pretext for Mr. Lee's indefinite confinement.

- a. At an ICA Hearing on December 15, 2016, Mr. Lee appeared but "talked in numbers." Without any discussion of Mr. Lee's health condition, disciplinary history, or any other individual circumstances relevant to Mr. Lee, ICA recommended that Mr. Lee "remain [on his] current status and housing assignment."
- b. An ICA Hearing Report dated March 7, 2017 recommended "segregation based on offender needing to complete programs." There was no recognition of the fact that the deterioration of Mr. Lee's mental health as a result of his placement in solitary confinement was preventing him from completing the programs.
- c. An annual review dated May 22, 2017 noted that Mr. Lee had completed the first two books of the Challenge Program, "but is not currently

participating in programs at this time.” Again, there was no consideration of the fact that Mr. Lee’s mental illness was an obstacle to his completion of the programs.

- d. On June 22, 2017, nearly a year after Mr. Lee began exhibiting serious symptoms and during which time his mental health had steadily deteriorated without any treatment, the ICA held a classification hearing ordering that Mr. Lee “[r]emain in Segregation at this time” because he had “not completed all the requirements of the Step Down Program.” The record shows that Mr. Lee did not make a statement at the hearing; he was incapable by then of meaningfully communicating. The hearing did not take into account the severe deterioration of Mr. Lee’s health, the inappropriateness of solitary confinement for a prisoner in his mental state, and his inability, given the state of his health, to comply with prison regulations or complete the Step-Down Program.
- e. A September 8, 2017 ICA Hearing Report repeated the recommendation of the June 22, 2017 Report almost verbatim, demonstrating the callous indifference of the officials who were supposed to be tracking Mr. Lee’s progress or lack thereof.

86. Due process requires at minimum a legitimate consideration of the circumstances justifying ongoing detention in solitary confinement. Yet Defendants’ reviews of Mr. Lee’s status were no more than *pro forma* recitations of the fact that he had not completed the Step-Down Program. They failed to provide the minimal procedural safeguards guaranteed by the Constitution.

VIII. The Conditions of Mr. Lee's Confinement Were An Atypical Hardship In Comparison to Conditions for Prisoners in General Population

87. The conditions of solitary confinement at Red Onion represent an atypical and significant hardship as compared to the treatment of general population prisoners in VDOC.

88. General population prisoners in VDOC reside in dormitories or cells that are open-barred and permit communication amongst prisoners. They have routine, daily interactions that allow for meaningful connection and conversation, including meals in a dining area and group recreation on the yard, where they have access to equipment such as basketballs and basketball hoops, and in dayrooms where they can play card games.

89. General population prisoners are permitted to move about without shackles or restraints, and there is no requirement that general population prisoners submit to a cavity search before leaving their cell. Moreover, they have group programming opportunities, including anger management groups and cognitive behavioral therapy.

90. General population prisoners have no limitation on the number of phone calls they place each month, and they are entitled to contact visits with family and attorneys.

91. General population prisoners can go to the law library to peruse legal materials, and can go to a chapel for religious programming. They also have access to vocational training and employment opportunities.

92. Prisoners in general population do not have strict dollar limitations on the amount of commissary they may purchase, and they are not limited to commissary for hygiene products only. Prisoners in general population may purchase television sets for their cells, and may also watch television in a congregate setting in a dayroom.

93. Because the conditions of Mr. Lee's solitary confinement are substantially more restricted and harmful than the conditions of prisoners in general population, Defendants' retention of Mr. Lee in solitary confinement without due process amounts to a deprivation of a significant liberty interest.

IX. The Injuries to Mr. Lee Are Likely To Recur In The Future

94. Mr. Lee's mental health eventually began to improve as a result of the treatment he received at Marion Correctional Treatment Center. He was subsequently transferred to Greenville Correctional Center ("Greenville"). At Greenville, Mr. Lee was in general population. He participated in congregate classes and recreation. These conditions were beneficial to Mr. Lee's mental health—his ability to communicate significantly improved, and he appeared, based on visits and conversations with his mother, to have a better understanding of his circumstances.

95. Following a dispute with another inmate at Greenville, however, Mr. Lee was transferred to Wallens Ridge State Prison ("Wallens Ridge"). The conditions at Wallens Ridge are effectively identical to Red Onion State Prison. Although Mr. Lee is not currently in solitary confinement, Wallens Ridge does not provide the type of intensive, residential medical intervention that Mr. Lee requires to treat his mental illness. Since his transfer, Mr. Lee's mental health has noticeably declined. He is increasingly non-communicative and has begun to exhibit delusional thoughts—for example, he recently expressed to his mother that she was responsible for the length of his prison sentence. On another call, he told his mother that a guard was provoking him and he was afraid he would not be able to control his reaction. Indeed, absent the level of medical care necessary to manage his condition, Mr. Lee's mental illness is very likely to lead to behavioral issues.

96. VDOC's policy and practice, as implemented both at Red Onion and Wallens Ridge, is to respond to behavioral issues by placing prisoners in solitary confinement, even when the behaviors are the result of mental illness. As a result, it is nearly certain that absent prospective relief by this Court, Mr. Lee will be placed in solitary confinement again in the future.

97. Mr. Lee cannot be placed in solitary confinement without a substantial risk of a serious deterioration of his mental health.

98. Accordingly, prospective injunctive relief is necessary to prevent immediate future harm to Mr. Lee.

CAUSES OF ACTION

COUNT I:

Violation of the Eighth Amendment of the U.S. Constitution—Conditions of Confinement

Against Defendants Ponton, Malone, Jeffrey Kiser, Barksdale, Gallihar, Duncan, Collin, Swiney, Younce, Justin Kiser, Sykes, Adams, Lambert, Huff, and Trent, in their individual and official capacities; and Defendant McDuffie in his individual capacity

99. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

100. Solitary confinement creates a substantial and unreasonable risk of serious harm to prisoners like Mr. Lee who suffer from mental illness. Defendants deprived Mr. Lee of the minimal civilized measure of life's necessities, including by holding him for over 600 days in conditions that destroyed his physical and psychological health.

101. Mr. Lee's solitary confinement at Red Onion caused an ongoing mental health crisis that precipitated his extreme physical and mental deterioration. The harm continued long after his release from Red Onion and may be permanent. Mr. Lee requires ongoing pharmacological intervention in a treatment setting.

102. Each Defendant was individually aware that long-term solitary confinement causes and exacerbates mental illness. Nevertheless, Defendants held Mr. Lee in solitary confinement despite the obvious and devastating consequences to Mr. Lee's mental and physical health.

103. As VDOC Regional Operations Chief for the Western Region, **Defendant Ponton** had personal knowledge of the conditions of Mr. Lee's confinement through his involvement in the Dual Treatment Team and the External Review Team. Defendant Ponton was personally involved in approving the ICA's review of Mr. Lee's confinement. Defendant Ponton is well aware of the serious physical and psychological harm caused by solitary confinement. He was deliberately indifferent to that risk with respect to Mr. Lee by failing to adequately supervise the employees under his authority who were responsible for reviewing Mr. Lee's confinement, and by failing to take any steps to remove Mr. Lee from solitary confinement.

104. As VDOC Chief of Mental Health Services, **Defendant Malone** had personal knowledge of the conditions of Mr. Lee's confinement through her supervisory roles over mental health services in VDOC, including Red Onion. Additionally, Defendant Malone had personal knowledge through her involvement in the External Review Team. Defendant Malone is well aware of the serious physical and psychological harm caused by solitary confinement. She was deliberately indifferent to that risk with respect to Mr. Lee by failing to adequately supervise the employees under her authority who were directly responsible for providing mental health services to Mr. Lee, and by failing to take any steps to remove Mr. Lee from solitary confinement.

105. As Warden and former Warden of Red Onion State Prison, respectively, **Defendants Jeffrey Kiser and Barksdale** each had personal knowledge of the conditions of Mr. Lee's confinement through direct contact with Mr. Lee, direct communications with Mr. Lee's mother, and/or through their supervisory role over employees that had direct contact with Mr. Lee and direct communications with Mr. Lee's mother. As Warden and former Warden, each bore the ultimate responsibility for the care and custody of Red Onion prisoners, including Mr. Lee. They were also responsible for training correctional staff and for exercising oversight to ensure that his correctional officers performed their duties in a professional manner that followed correctional policy and that respected the inherent dignity of the incarcerated persons in their care. Defendants Jeffrey Kiser and Barksdale thus implicitly endorsed mistreatment of prisoners, all but ensuring that vulnerable prisoners like Mr. Lee are subjected to torment from correctional officers. Defendants Jeffrey Kiser and Barksdale are each well aware of the serious physical and psychological harm caused by solitary confinement. They were each deliberately indifferent to that risk with respect to Mr. Lee by failing to adequately supervise the employees under their authority, and by failing to take any steps to remove Mr. Lee from solitary confinement.

106. As Chief of Housing and Programs at Red Onion State Prison, **Defendant Gallihar** had personal knowledge of the conditions of Mr. Lee's confinement through his involvement in the Dual Treatment Team. Defendant Gallihar was personally involved in approving the ICA's review of Mr. Lee's confinement. Defendant Gallihar is well aware of the serious physical and psychological harm caused by solitary confinement. He was deliberately indifferent to that risk with respect to Mr. Lee by failing to take any steps to remove Mr. Lee from solitary confinement.

107. As Unit Managers at Red Onion State Prison, **Defendants Duncan, Collins, Swiney, and Younce** each had personal knowledge of the conditions of Mr. Lee's confinement through their contact with inmates in segregation housing units and through their participation in ICA reviews. Each of these Defendants either personally participated in an ICA review of Mr. Lee's confinement or personally approved an ICA review of Mr. Lee's confinement. Each of these Defendants is well aware of the serious physical and psychological harm caused by solitary confinement, and each of them was deliberately indifferent to that risk with respect to Mr. Lee by failing to take any steps to remove Mr. Lee from solitary confinement.

108. **Defendants Justin Kiser, Sykes, Adams, and Lambert** each had personal knowledge of the conditions of Mr. Lee's confinement through their contact with inmates in segregation housing units and through their participation in ICA reviews. Each of these Defendants either personally participated in an ICA review of Mr. Lee's confinement or personally approved an ICA review of Mr. Lee's confinement. Each of these Defendants is well aware of the serious physical and psychological harm caused by solitary confinement, and each of them was deliberately indifferent to that risk with respect to Mr. Lee by failing to take any steps to remove Mr. Lee from solitary confinement.

109. **Defendants Trent, Huff, and McDuffie** each had personal knowledge of the conditions of Mr. Lee's confinement in the course of providing medical services to him. Each of these Defendants is well aware of the serious physical and psychological harm caused by solitary confinement, and each of them was deliberately indifferent to that risk with respect to Mr. Lee by failing to take any steps to remove Mr. Lee from solitary confinement.

110. The acts or omissions of each of the Defendants were the legal and proximate cause of Mr. Lee's injuries and pain.

111. Each Defendant, individually and collectively, has thereby violated Mr. Lee's right under the Eighth Amendment to the Constitution to be free from conditions of confinement that amount to cruel and unusual punishment.

**COUNT II:
Violation of the Eighth Amendment
of the U.S. Constitution—Failure to Provide Medical Care**

**Against Defendants Malone, Jeffrey Kiser, Barksdale, Huff,
Trent, in their individual and official capacities; and Defendant
McDuffie, in his individual capacity**

112. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

113. Almost immediately after his placement in solitary confinement, Mr. Lee began to display symptoms of serious mental illness that required medical treatment. Mr. Lee's condition amounted to a serious medical need that was so obvious that even a lay person would easily recognize the necessity for a doctor's attention.

114. The Defendants named in this count had actual knowledge of Mr. Lee's medical condition. Defendants acted with deliberate indifference to his serious medical needs by failing to provide him with any treatment whatsoever for over 600 days, and by failing to take any steps to effectuate his release from solitary confinement, during which time Mr. Lee's physical and mental health completely deteriorated.

115. **Defendant Malone** had personal knowledge of Mr. Lee's serious medical needs through her supervisory roles over mental health services in VDOC, including Red Onion. She was deliberately indifferent to Mr. Lee's serious medical needs by allowing the medical personnel under her authority to leave Mr. Lee in solitary confinement for more than 600 days without any sort of medical treatment.

116. **Defendants Jeffrey Kiser and Barksdale** had personal knowledge of Mr. Lee's serious medical needs through their direct contact with Mr. Lee, communications from Mr. Lee's mother, and reports from the medical personnel who worked at Red Onion. They were deliberately indifferent to Mr. Lee's serious medical needs by allowing the medical personnel under their authority to leave Mr. Lee in solitary confinement for more than 600 days without any sort of medical treatment, and by failing to take any steps to effectuate his release from solitary confinement.

117. **Defendants Trent, Huff, and McDuffie** had personal knowledge of Mr. Lee's serious medical needs through their direct contact with Mr. Lee in the course of ostensibly providing him with medical care. In fact, they acted with deliberate indifference by failing to provide him any sort of medical care or recommend his release from solitary confinement for more than 600 days.

118. The acts or omissions of each of the Defendants were the legal and proximate cause of Mr. Lee's injuries and pain.

119. Each Defendant, individually and collectively, has thereby violated Mr. Lee's right under the Eighth Amendment to the Constitution by denying Mr. Lee minimally adequate care for his serious medical needs.

COUNT III:
Violation of Procedural Due Process Rights
Under the Fourteenth Amendment of the U.S. Constitution

Against Defendants Ponton, Malone, Jeffrey Kiser, Barksdale,
Gallihar, Duncan, Collins, Swiney, Younce, Justin Kiser, Sykes,
Adams, and Lambert, in their individual capacities

120. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

121. Prolonged and indefinite solitary confinement in Red Onion State Prison constitutes atypical and significant hardship relative to the ordinary incidents of life in general population at any VDOC facility.

122. Mr. Lee has a protected liberty interest in avoiding continued prolonged and indefinite solitary confinement. This liberty interest arises from (1) the VDOC regulations mandating periodic review of long-term segregation status, including the Segregation Reduction Step-Down Program and VDOC Operating Procedure 830.A, and (2) the conditions of Mr. Lee's confinement, which cause atypical and significant hardship in comparison to the general prison population.

123. As such, periodic reviews of Mr. Lee's ongoing indefinite isolation must comport with due process.

124. Defendants failed to provide meaningful proceedings to determine the continued propriety or necessity of Mr. Lee's solitary confinement. Defendants failed to articulate any legitimate basis to Mr. Lee for why he remained in solitary confinement and failed to provide him a meaningful opportunity to contest his placement. Instead, Defendants rubberstamped decisions to retain Mr. Lee in solitary confinement via rote repetition without providing a reasoned decision based on Mr. Lee's current level of risk or assessment of his mental health. Far from providing due process, these reviews were no more than a pretext for Mr. Lee's indefinite detention in solitary confinement.

125. As Warden and former Warden of Red Onion State Prison, respectively, **Defendants Jeffrey Kiser and Barksdale** each bore the ultimate responsibility for the care and custody of Red Onion prisoners, including ensuring that prisoners were placed in appropriate housing and received meaningful periodic reviews of their placement in segregation. Their

failure to ensure that Mr. Lee was appropriately placed and reviewed meaningful periodic reviews was a direct cause of harm to Mr. Lee.

126. On information and belief, **Defendant Malone** was personally involved in the review of Mr. Lee's confinement through her participation in the External Review Team. Her failure to provide meaningful oversight to the ICA reviews that Mr. Lee received was a direct cause of harm to Mr. Lee.

127. **Defendants Ponton, Gallihar, Duncan, Collins, Swiney, and Younce, Justin Kiser, Sykes, Adams, and Lambert** each personally participated in ICA reviews of Mr. Lee or personally approved ICA reviews of Mr. Lee. Their failure to provide meaningful reviews was a direct cause of harm to Mr. Lee.

128. The acts or omissions of these Defendants were the legal and proximate cause of Mr. Lee's injuries and pain.

129. Each Defendant, individually and collectively, thereby violated Mr. Lee's right under the Fourteenth Amendment to the Constitution to due process review of the ongoing necessity of his solitary confinement.

COUNT IV:
Violation of the Americans with Disabilities Act
Against the VDOC

130. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

131. Mr. Lee is an individual with a mental impairment, a record of such an impairment, and is regarded as having such an impairment within the meaning of 42 U.S.C. § 12102.

132. Mr. Lee is a qualified individual with an episodic disability as defined in 42 U.S.C. § 12102(4)(D).

133. His serious mental illness, even when mitigated through medical treatment, constitutes a mental impairment that substantially limits him in several major life activities, including but not limited to learning, reading, concentrating, thinking, communicating, and interacting with others. These limitations on his life activities have a profound effect on Mr. Lee's life as fully described above.

134. VDOC (by and through the individual Defendants, operating in their official capacities) is a public entity within the meaning of 42 U.S.C. § 12131(1)(A).

135. VDOC failed to accommodate Mr. Lee's mental disabilities and denied him the benefits and services of their facilities by reason of his mental disability by, among other things, holding Mr. Lee in solitary confinement for over 600 days despite and because of his mental impairment, failing to provide him alternate means to progress out of solitary confinement, and failing to account for his disability in period reviews of his placement in solitary confinement.

136. Specifically, VDOC violated the ADA by failing to make "reasonable modifications in policies, practices, or procedures when the modifications [were] necessary to avoid discrimination based on disability . . ." 28 C.F.R. § 35.130(b)(7). It also failed and continues to fail to "ensure that inmates or detainees with disabilities [such as Mr. Lee] are housed in the most integrated setting appropriate to the needs of the individuals." *Id.* § 35.152(b)(2).

137. Defendant VDOC's discrimination was intentional and/or represented deliberate indifference to the strong likelihood that the actions and omissions, and, to the extent applicable,

adoption of the policies that led to these actions and omissions, would likely result in a violation of federally protected rights.

138. As a proximate and foreseeable result of Defendants' discriminatory acts and omissions, Mr. Lee suffered injuries including pain and suffering, emotional distress, and exacerbation of his mental illness.

COUNT V:
Violation of the Rehabilitation Act of 1973
Against the VDOC

139. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein. Mr. Lee has a disability as defined in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Mr. Lee, with or without reasonable modifications to rules, policies or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants. Thus, Mr. Lee is an "otherwise qualified handicapped person" within the meaning of the Rehabilitation Act.

140. VDOC (by and through the individual Defendants, operation in their official capacities) receives federal funding within the meaning of the Rehabilitation Act.

141. VDOC (and through the individual Defendants, operation in their official capacities) violates the Rehabilitation Act by discriminating against Mr. Lee solely on the basis of his disability. VDOC fails to reasonably accommodate Mr. Lee's disability by, among other things, holding Mr. Lee in solitary confinement for over 600 days despite and because of his mental impairment, failing to provide him alternate means to progress out of solitary confinement, and failing to account for his disability in period reviews of his placement in solitary confinement.

142. Defendants' discrimination was intentional and/or represented deliberate indifference to the strong likelihood that the actions and omissions, and, to the extent applicable, adoption of the policies that led to these actions and omissions, would likely result in a violation of federally protected rights.

143. As a proximate and foreseeable result of Defendants' discriminatory acts and omissions, Mr. Lee suffered injuries including pain and suffering, emotional distress, and exacerbation of his mental illness.

**COUNT VI:
Medical Malpractice**

Against Defendants Trent, Huff, and McDuffie

144. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

145. Defendants Trent, Huff, and McDuffie were responsible for providing medical care to Mr. Lee during his incarceration in solitary confinement in Red Onion.

146. In July 2016, approximately two months after Mr. Lee entered solitary confinement, he began exhibiting psychotic symptoms, including rapid speech, flight of ideas, speaking only in numbers, flight of ideas, restricted affect, and an absence of insight. Mr. Lee's symptoms continued and significantly worsened over the next year and a half, during which time the Defendants provided no treatment, no medication, no referral for further evaluation, and took no steps to have him removed from solitary confinement.

147. The applicable standard of care is Virginia requires, at a minimum, that treating medical professionals avoid significant delay in the onset of treatment for individuals exhibiting psychotic symptoms, because delay increases the likelihood that the individual's baseline functioning will have deteriorated to the point that the possibility of optimal recovery is severely

limited. The applicable standard of care in Virginia also requires treating medical physicians under these circumstances to take all reasonable steps to effectuate the removal of patients exhibiting serious mental illness from solitary confinement, which is well-known among medical professionals, including the three Defendants named in this count, to severely exacerbate symptoms of mental illness.

148. The failure of Defendants Trent, Huff, and McDuffie to provide *any* medical treatment, medication, referral for further evaluation, or recommendation for a transfer out of solitary confinement for a period of a year and a half, during which time Mr. Lee was exhibiting severe symptoms of mental illness, constitutes grossly negligent and/or wanton and reckless misconduct.

149. Defendants' breach of the standard of care proximately caused Mr. Lee's injuries. The complete lack of medical care and extended incarceration in solitary confinement caused Mr. Lee's mental and physical decomposition to the point that he was no longer able to attend to basic self-care and was so psychotic that he could not communicate.

**COUNT VII:
Intentional Infliction of Emotional Distress**

**Against Defendants Ponton, Malone, Jeffrey Kiser, Barksdale,
Gallihar, Duncan, Collins, Swiney, Younce, Justin Kiser, Sykes, Adams,
Lambert, Huff, and Trent, and McDuffie**

150. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

151. The Defendants' actions, individually and collectively, in holding Mr. Lee in solitary confinement for over a year and a half was intentional and/or reckless, and constitutes behavior so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.

152. The complete collapse of Mr. Lee's mental and physical health was so severe that no reasonable person could be expected to endure it.

153. Defendants' misconduct proximately caused Mr. Lee's injuries. The complete lack of medical care and extended incarceration in solitary confinement caused Mr. Lee's mental and physical decomposition to the point that he was no longer able to attend to basic self-care and was so psychotic that he could not communicate.

PUNITIVE DAMAGES

154. Mr. Lee re-alleges the preceding paragraphs as if fully set out herein.

155. Mr. Lee is entitled to recover punitive damages related to Defendants' willful or reckless disregard of the violations of his constitutional rights under the Eighth and Fourteenth Amendments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants:

- a) Awarding Plaintiff compensatory damages for Defendants' constitutional and statutory violations, including damages for emotional pain and suffering;
- b) Awarding Plaintiff punitive damages for Defendants' pattern of outrageous and unlawful conduct;
- c) Granting permanent injunctive relief prohibiting Defendants from placing Plaintiff in solitary confinement and requiring Defendants to transfer him to a non-solitary unit with appropriate access to mental health care, programming, and supports.
- d) Awarding Plaintiff costs and reasonable attorneys' fees;
- e) Granting such other equitable, nominal, declaratory and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: July 10, 2019

Respectfully submitted:

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