**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| COMMUNITY LEGAL AID SOCIETY, INC.,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT M. COUPE, solely in his official capacity as Commissioner of the Delaware Department of Correction,<br><br>Defendant. | ) | Civil Action No. _____ |

**COMPLAINT**

**NATURE OF ACTION**

1. This action seeks to stop the cruel and unusual punishment in Delaware prisons of prisoners diagnosed with serious mental illness. The Delaware Department of Correction ("DOC") confines these men and women with mental illness in solitary confinement, without providing proper medical and mental health treatment for serious medical and mental health needs and without allowing adequate out-of-cell time. In so doing, DOC fails to promptly acknowledge or provide the minimum appropriate care for mentally ill prisoners, and instead exacerbates their illnesses. DOC's conduct violates the prisoners' rights under the Eighth Amendment of the United States Constitution, as applied through the Due Process Clause of the Fourteenth Amendment, and Article I, Section 11 of the Delaware Constitution.

2. DOC operates the state prisons in Delaware, including Howard R. Young Correctional Institution ("HRYCI"), Baylor Women's Correctional Institution ("BWCI"), James T. Vaughn Correctional Center ("JTVCC"), and Sussex Correctional Institution ("SCI") (collectively, the "Delaware Prisons").

3. Prisoners, including those with mental illnesses, are held in solitary confinement in the Delaware Prisons.

4. At JTVCC's Secure Housing Unit ("SHU"), for example, approximately 300 prisoners, other than less than 50 who have recently been moved to the Secure Treatment Unit ("STU"), including those with serious mental illnesses, are locked in extremely small cells for 24 hours a day, four days each week, and for 23 hours a day otherwise. Those in STU are permitted out of their cells slightly more often. The prisoners are completely isolated, denied adequate medical and mental health care, and prohibited from working, participating in educational or rehabilitative programs, or attending religious services.

5. DOC does not allow the prisoners meaningful human interaction and does not provide reasonably frequent mental health care. It has employees of its mental health contractor walk by the prisoners' cells three times a week to ask how they are doing. For many reasons, including the symptoms of their mental illnesses and their fear of being identified as having serious mental illness due to a lack of privacy in these interactions, prisoners routinely say they are fine or do not respond at all. This is frequently the extent of the prisoners' human interaction for the day.

6. These circumstances deprive prisoners of any meaningful mental health treatment, because they are deprived of reasonably frequent care and because they are denied the opportunity to engage in normal human interaction, such as working, participating in educational or rehabilitative programs, or attending religious services, which promote mental health and wellbeing.

7. The doors of the cells where prisoners with serious mental illness are held in solitary confinement are essentially solid, with a single four-inch-wide window. Correctional

officers deliver meals to prisoners by sliding the food through slots in the doors that are opened briefly for that purpose. Many prisoners are not allowed to view or listen to television or radio, and all have access to little reading material. Lights are on for all but approximately six hours per day.

8. Isolation under these conditions exacerbates the symptoms of prisoners' mental illnesses, which can include refusing to leave their cells, declining needed medical treatment, sleeplessness, nightmares, hallucinations, paranoia, throwing feces, banging their heads and bodies against cell walls, self-mutilation, otherwise injuring themselves and prison staff, and suicide attempts. Prison officials frequently regard these manifestations of disease as prison rule infractions, which result in additional time in solitary confinement and further limitations on privileges such as phone time, visitation privileges, and the opportunity to purchase a television or radio.

9. The result is a vicious cycle, in which many prisoners, because of mental illness, are trapped in an endless sequence of isolation and punishment, resulting in further deterioration of their mental condition, deprivation of adequate mental health treatment, and extension of their periods of extreme isolation.

10. DOC fails to adequately consider prisoners' mental health statuses before placing them into solitary confinement, fails to provide prisoners with proper mental healthcare in solitary confinement, and fails to take other reasonable measures to ameliorate the risk of serious harm to these prisoners. DOC is also insufficiently staffed to adequately address prisoners' mental health needs. DOC has knowledge of the risks these deficiencies pose to prisoners with mental illness. Nevertheless, it permits them to continue.

11. Plaintiff seeks a declaration that Defendant is violating the Eighth Amendment of the U.S. Constitution and Article I, Section 11 of the Delaware Constitution, and a permanent injunction requiring Defendant to cease violating the Eighth Amendment rights and Article I, Section 11 rights of prisoners with serious mental illness in the Delaware Prisons and protect them against dangerous and unconstitutional conditions of confinement.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

13. Plaintiff's claims are authorized by 42 U.S.C. § 1983, 42 U.S.C. §§ 10801 *et seq.*, and 28 U.S.C. §§ 2201 and 2202.

14. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b) because Plaintiff's principal office as well as the Defendant's principal offices are located in this District, and all claims alleged occurred in this District.

## THE PARTIES

15. Plaintiff Community Legal Aid Society, Inc. ("CLASI") brings this action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. §§ 10801 *et seq.* to stop DOC's continuing constitutionally inadequate treatment and housing of mentally ill prisoners in solitary confinement and to compel DOC to provide its mentally ill prisoners with constitutionally adequate care.

16. CLASI, a non-profit Delaware corporation, represents indigent clients and has been designated by the State of Delaware as the organization with responsibility under the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §§ 10801 *et seq.*, "PAIMI") to protect and advocate for the rights of people with mental illness. CLASI is charged with monitoring the compliance of correctional facilities with respect to the rights and

safety of persons with mental illness. CLASI is also charged with investigating possible abuse and neglect of prisoners with mental illness, and ensuring the enforcement of the United States and Delaware Constitutions and state and federal statutes and regulations with respect to those persons. *See* 42 U.S.C. § 10801.

17. Congress enacted PAIMI upon a finding that individuals with mental illness are "vulnerable to abuse and serious injury" and are "subject to neglect, including lack of treatment," and that "state systems for monitoring compliance with respect to the rights of individuals with mental illness … are frequently inadequate." 42 U.S.C. § 10801(a). Protection and Advocacy systems were established under PAIMI "to ensure that the rights of individuals with mental illness are protected" and to engage in "activities to ensure the enforcement of the Constitution and Federal and State statutes" and "investigate incidents of abuse and neglect of individuals with mental illness." 42 U.S.C. § 10801(b). The term "individuals with mental illness," as used in the PAIMI statute and regulations, expressly includes persons in prison. *See* 42 U.S.C. § 10802(3); 42 C.F.R. § 51.2.

18. CLASI is authorized to "pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness." 42 U.S.C. § 10805(a)(1).

19. Defendant, Robert M. Coupe, is the Commissioner of DOC and a state actor for purposes of the Fourteenth Amendment. He is statutorily authorized and responsible for the oversight, operation, and administration of Delaware's correctional system and the Delaware Prisons. He has full and active charge of DOC and its facilities and services, and is DOC's chief executive and administrative officer. He is responsible for the organization, maintenance, control, and operation of DOC, the administration, supervision, operation, management, and control of the Delaware Prisons, and the custody, study, training, treatment, correction, and

rehabilitation of all prisoners in DOC custody. 11 *Del. C.* §§ 6516, 6517. He is responsible for correcting the constitutional violations described in this complaint.

## FACTS

### A. Prisoners In Solitary Confinement Are Subjected To Extreme Isolation And Grossly Inadequate Mental Healthcare

20. According to the United States Department of Justice, "solitary confinement" or "isolation" means "the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners, that limits contact with others."

21. According to a report issued by the Delaware Supreme Court Task Force on Criminal Justice and Mental Health, in 2013, approximately 56% of Delaware prisoners had a mental health problem. Although DOC is responsible for the health and wellbeing of a significant number of prisoners with mental health issues, all too often, it fails to provide meaningful mental health treatment and isolates these prisoners in solitary confinement. This continued isolation exacerbates the mental health symptoms and illnesses of these prisoners.

22. Prisoners placed in solitary confinement are kept in conditions of extreme social isolation and environmental deprivation.

23. For example, prisoners kept in solitary confinement at JTVCC reside in SHU. Except for those in STU, each prisoner in SHU is kept, alone, in a small cell for 24 hours a day, except for one hour three times per week.

24. In July 2015, DOC established STU, where it allows less than 50 prisoners with mental illness an hour a day for recreation and showers, one hour per week of group therapy during which prisoners are in tiny individual holding cages where they can see the therapist but not each other, and one hour per month of one-on-one therapy. DOC identifies approximately 100 prisoners from SHU on its mental health roster, and more than 60 as having a serious mental

illness.

25. SHU cells are approximately 11' x 8'. They have two four-inch-wide windows, one of which allows a very constricted view of the hall outside the cell and no other view. The other allows a narrow glimpse outdoors, which lets in little, if any, natural light. The cells contain a sink, a toilet, and little furniture. Prisoners are not able to control the lights, which remain lit from approximately 6:00 a.m. through 11:30 p.m., which makes it difficult for prisoners to sleep and further contributes to prisoners' disorientation, mental deterioration, and chronic sleep deprivation.

26. Prisoners in solitary confinement must eat every meal, on a schedule set by DOC, in their cells in the same area where they sleep and defecate.

27. Three days a week, prisoners in SHU are allowed out of their cells for an hour – 45 minutes of exercise and 15 minutes for a shower. The exercise is always in solitude and in a constricted space.

28. The exercise areas have no equipment, except for a pull-up bar in some instances.

29. For half of a SHU prisoner's assigned exercise periods, he is allowed to exercise only indoors. For the other half of the time, he is allowed to exercise only outdoors, regardless of the weather. DOC does not provide suitable clothing for being outdoors in the cold or rain. If the prisoner declines to go outside for exercise because of the weather, he loses that exercise period.

30. Prisoners with serious mental illness often do not take the opportunity to exercise or shower because of their illnesses, which may manifest in symptoms such as paranoid psychosis, social withdrawal, diminished energy, unreasonable fear, and severe depression. As a result, some prisoners do not leave their cells for weeks or months at a time.

31. Evaluation and treatment by mental health staff is limited. For example, prisoners at JTVCC receive medication, may see a certified nurse practitioner once every three months, and see a therapist occasionally, without meaningful follow-up. Mental health staff responds to incidents of actual and attempted self-harm, and some prisoners have limited group therapy under circumstances not conducive to successful treatment. Prisoners, including those who are unable to read, also receive packets of worksheets designed to treat mental health issues.

32. Three times a week an employee of DOC's mental health contractor may stand in the hallway outside the prisoner's solid steel cell door and ask the prisoner if he is doing okay. Typically the prisoner, not wanting nearby prisoners and correctional officers to hear about his mental health condition or need for help, and not wanting to trigger a move to what prisoners refer to as the "naked room," will state that he is okay, and the questioner will move on. The "naked room" is an isolation cell that contains only a commode and single mattress on the floor. Prisoners are kept in those cells with only an open smock for clothing. The tri-weekly, cell-front visits do not comply with the privacy standards set forth in DOC's Policy Manual, which require that healthcare be provided "in a manner and location that promotes confidentiality" and mandate that "clinical encounters and discussions occur in private, without being observed or overheard." Nor do such visits conform to the privacy requirements of the Health Insurance Portability Accountability Act of 1996 ("HIPAA"). Such visits, which often last no more than a few seconds, and rarely more than a minute, do not constitute meaningful mental health treatment, as DOC recognizes.

33. Because of the lack of privacy and confidentiality, many prisoners refuse to speak to mental health staff. Others are so debilitated by their mental illness that they are incapable of meaningful interaction with mental health staff during these cell-front visits.

34. Prisoners who seek help for mental health problems or express suicidal concerns are often placed in the "naked room" and held for varying lengths of time in deeper isolation. In the "naked room," prisoners are not provided any sort of effective mental health treatment. Prisoners are thus given an unacceptable choice – suffer from grossly inadequate mental health treatment in silence, or express the need for mental health treatment and risk being placed in the naked room or being assigned more time in isolation.

35. Prisoners with serious mental illness need psychosocial rehabilitation services, such as frequent individual and group therapy sessions, and structured out-of-cell activities designed to decrease isolation, increase social interaction, increase treatment and medication compliance, and decrease psychiatric symptoms. These services are not provided to prisoners in solitary confinement.

36. Prisoners in solitary confinement are subject to extreme environmental deprivation and forced idleness. They cannot attend religious services, hold a prison job, or participate in therapeutic or educational programs. Prisoners in solitary confinement are also allowed to possess extremely limited property. They are permitted only a limited number of books, sometimes only a religious text, and are not permitted to receive books from the general prison library.

37. Some prisoners in solitary confinement are permitted only one telephone call and one visit per month. No prisoner in solitary confinement is permitted more than four telephone calls and four visits per month.

38. Prisoners in SHU are allowed only non-contact visits, during which they are separated from their visitors by a closed window and must speak through a speaker in the window. The speakers frequently malfunction, and prisoners and their visitors are forced to yell

and scream to be heard through the sealed window, creating a severe disruption to other prisoners and their visitors. Visits to SHU prisoners are limited in number and are often denied by DOC staff as punishment for a prisoner's alleged bad behavior.

39. A prisoner placed in SHU is given a Quality of Life Level ("Level"). Prisoners can advance to higher levels only by spending a specified amount of time at a given level without disciplinary incident. Privileges, such as access to reading materials and greater access to telephone calls and visits, increase as a prisoner's classification level increases. Access to radio and television starts (for only those prisoners who can afford to purchase such electronics) at Level Three. Most of these prisoners do not have the funds to purchase these items.

40. A prisoner's level has no bearing on when he will be allowed to leave SHU in favor of less restrictive maximum security housing. Prisoners often remain in SHU even if they have advanced all the way to Level Four without disciplinary incident.

41. A prisoner involved in a major disciplinary incident at any classification level is assigned back to Level One and must advance through all of the levels again to recoup the telephone and visitation privileges that he lost, and which are integral to his mental health.

42. DOC Prison staff consider manifestations of mental illness, such as screaming, yelling, or banging on cell doors to be disciplinary incidents, making it extremely difficult for prisoners with mental illness to advance through the Levels in order to gain privileges.

### B. Decades Of Research Establishes That Solitary Confinement Devastates Prisoners With Mental Illness

43. Placement of prisoners with serious mental illness in solitary confinement has serious physiological and psychological effects including: insomnia, anxiety, panic, withdrawal, hypersensitivity to stimuli, ruminations, cognitive dysfunction, hallucinations, loss of control, aggression, rage, paranoia, hopelessness, lethargy, depression, self-mutilation, and suicidal

ideation and behavior. Sensory deprivation – the lack of exposure to stimuli that interact with any of the five senses – is extremely harmful to the human brain.

44. The prevalence of suicide and self-harm in solitary confinement is pronounced. It is not unusual for prisoners with serious mental illness in solitary confinement to swallow razors, smash their heads into walls, compulsively cut their flesh, or try to hang themselves.

45. The devastating effects of conditions of extreme social isolation and environmental deprivation like those in Delaware's solitary confinement units are well known to DOC. Abundant psychiatric literature spanning nearly 200 years has documented the severely deleterious effect of isolation on mental health. The NCCHC *Standards for Mental Health Services in Correction Facilities*, published in 2008, directs that "[i]nmates who are seriously ill should not be confined under conditions of extreme isolation." Similarly, the American Psychiatric Association's ("APA," this country's preeminent psychiatric professional organization) *Position Statement on Segregation of Prisoners with Mental Illness* found that prolonged segregation should be avoided for prisoners with serious mental illness due to the potential for harm to such prisoners. The APA further states that if prisoners with serious mental illnesses are placed in isolation, appropriate clinical supports and out-of-cell time must be provided.

46. In Delaware, prisoners with mental illness languish in solitary confinement, without adequate mental health treatment or adequate structured and unstructured out-of-cell time. Isolation in the severe conditions of solitary confinement is predictably damaging to prisoners with pre-existing mental illness. Isolation poses a grave risk of exacerbating mental health symptoms. Deprived of the social interaction essential to keep them grounded in reality,

prisoners with mental illness experience catastrophic and often irreversible psychiatric deterioration, causing significant psychological pain.

47. Prisoners' deterioration resulting from isolation manifests itself in many ways. Some prisoners refuse their psychotropic medications. Others refuse to leave their cells for recreation or showers. Some experience suicidal thoughts, exhibit suicidal tendencies, suffer from increased depressions and paranoia, and experience increased episodes of psychosis, a debilitating disorder marked by a loss of contact with reality and disorganized thinking.

### C. DOC's Policies And Practices Inflict Severe Harm On Prisoners In Solitary Confinement

#### (i) DOC Deliberately Places Prisoners With Mental Illness In Solitary Confinement

48. DOC fails to take reasonable action to prevent prisoners with mental illness from being held in solitary confinement without proper evaluation and sufficient mental health care.

49. DOC keeps mentally ill prisoners in solitary confinement, even though it is well known to corrections professionals throughout the United States, and NCCHC and APA standards demonstrate, that extended periods of solitary confinement exacerbate the symptoms of mental illness for prisoners and result in further deterioration of their mental health.

50. DOC fails to take adequate steps to avoid placing prisoners with serious mental illness who express suicidal thoughts or attempt suicide in solitary confinement.

51. DOC fails to provide mentally ill prisoners in solitary confinement with sufficient contacts with mental health professionals. The deficiency in professional care results in further deterioration of prisoners' mental health.

(ii) DOC Personnel Do Not Properly Evaluate Mental Illness Or Distinguish Misconduct From Manifestations Of Mental Illness

52. An essential element of the treatment of prisoners with mental illness is a review by mental health staff of a prisoner's mental health records to determine whether the prisoner's existing mental health needs contraindicate placement in solitary confinement or otherwise require accommodation.

53. Many prisoners with mental illness cannot conform their conduct to DOC disciplinary rules because of their illnesses. Prisoners are often placed in solitary confinement for failing, due to their mental illnesses, to comply with prison rules. For example, DOC staff charge prisoners with disciplinary violations because they fail to "calm down," scream or yell, or use obscene language. Symptoms of mental illness – such as suicidal gestures or refusal to take medication – are also often characterized as disciplinary violations.

54. DOC's Policy Manual requires it to: review a prisoner's medical record prior to or within one hour of placement in solitary confinement for mental health conditions; identify those prisoners whose conditions would be contrary to confinement in segregation, including prisoners with serious mental illness; refer immediately to mental health personnel for follow-up prisoners who have received any treatment in the past five years for serious mental illness, prior to placement in solitary confinement; conduct an assessment of the prisoner in a private setting within 24 hours of a mentally ill prisoner's placement in solitary confinement; and after completing the assessment, review the disciplinary charges against the prisoner and evaluate what role the prisoner's mental illness played in his or her conduct.

55. In deciding to place mentally ill prisoners in solitary confinement for rule violations, DOC does not adhere to its policy and fails to consider sufficiently the role mental illness played in causing the rule violations. DOC personnel deciding on prisoner sanctions do

not consult adequately (if at all) with mental health professionals in determining the appropriateness of sanctions or the conditions or duration of the sanctions. DOC staff fail to consider meaningfully the impact of isolation in solitary confinement on the prisoner's health.

56. DOC's Policy Manual also requires it to monitor prisoners in SHU with mental illness daily and to evaluate those prisoners three times per week. Monitoring requires, at a minimum, "verbally offering the patient a sick call slip and visually observing whether the patient requires any emergent, urgent or routine health care." Evaluation must be performed by mental health personnel, and includes, at a minimum, "a face to face encounter where the clinician speaks to the patient, observes the patient's mental health condition and verifies the patient is receiving any prescribed psychotropic medication." Evaluation should also include "an assessment of potential decompensation and assessment of appropriate treatment and placement."

57. DOC fails to monitor mentally ill prisoners in SHU on a daily basis in accordance with its Policy Manual, and its "evaluation" of mentally ill prisoners in practice falls below the minimal threshold defined in its Policy Manual.

(iii) DOC Does Not Provide Adequate Housing Options Or Mental Health Staff For Prisoners With Mental Illness

58. Despite the prevalence of mentally ill prisoners confined to solitary confinement, DOC does have a different, specialized unit for prisoners with mental illness who are deemed incapable of remaining in other maximum security housing, referred to as the Special Needs Unit ("SNU"). Shockingly, some of the cells in that unit are vacant even though a substantial number of mentally ill prisoners need the treatment provided in that unit and do not receive the treatment they need in solitary confinement. Further, prisoners with mental illness also can be placed in a secure building at the Delaware Psychiatric Center ("DPC"), which can provide those prisoners

with appropriate treatment. Mentally ill prisoners are transferred to DPC only infrequently. Mentally ill prisoners who are transferred to DPC are often returned to solitary confinement in a Delaware Prison, where they deteriorate again due to the extreme isolation, harsh conditions, and lack of adequate treatment.

59. As a result, prisoners who could receive appropriate treatment at DPC or in the specialized unit suffer needlessly.

### D. Defendant Knows And Is Deliberately Indifferent To The Harm That DOC Solitary Confinement Practices Impose On Mentally Ill Prisoners

60. Defendant knows and is deliberately indifferent to the fact that DOC houses many prisoners with serious mental illness in solitary confinement.

61. Defendant knows and is deliberately indifferent to the fact that DOC's practice of housing these prisoners in solitary confinement creates a substantial risk of serious harm to those prisoners.

62. Defendant knows and is deliberately indifferent to the following:

(a) Placing mentally ill people in solitary confinement creates a substantial risk of exacerbating mental health symptoms and causing deterioration of their mental health;

(b) The severely deleterious effect of isolation on mental health has been documented for over 200 years by the mental health profession;

(c) DOC's segregation of prisoners with mental illness in solitary confinement causes serious harm to their mental and physical health;

(d) DOC keeps mentally ill prisoners in solitary confinement even though DOC knows that such confinement exacerbates symptoms of mental

illness and causes deterioration in the mental health of some of those prisoners;

(e) While in solitary confinement, prisoners receive very limited mental health treatment;

(f) Prisoners with serious mental illness need psychological rehabilitation services that are not provided to prisoners in solitary confinement;

(g) Prisoners with serious mental illness suffer and their mental health conditions deteriorate because they are not permitted to attend religious services, hold a prison job, or participate in therapeutic or educational programs and other rehabilitation services;

(h) Prisoners with mental illness in solitary confinement suffer grievously, and that suffering increases, and their symptoms do not improve or worsen, when they do not receive adequate medical treatment and psychosocial rehabilitation services;

(i) DOC increases the duration of incarceration in solitary confinement for some prisoners because some DOC employees respond to manifestations of serious mental illness by prisoners as if they were disciplinary violations. DOC does not have a sufficient number of cells in its specialized housing unit at JTVCC for all of the prisoners who need the mental health treatment that is provided only in that housing unit, and DOC has knowingly failed to increase the number of those cells;

(j) DOC does not use the cells in the unit at JTVCC that is specially designed for prisoners with severe mental illness to the fullest extent; and

(k) Some prisoners with mental illness who could be placed at DPC, and who would receive more comprehensive mental health care there than they receive in the Delaware Prisons, are not placed there. Other prisoners who are transferred to DPC from a Delaware Prison are transferred back to a Delaware Prison although the transfers are not necessary and the prisoners would receive more comprehensive mental health care if they remained at DPC.

63. Isolation to which prisoners with serious mental illness in solitary confinement are subjected, the inadequate mental health treatment that they receive, the severe sensory deprivation and lack of human contact, the inability of those prisoners to attend religious services, hold a prison job, or participate in therapeutic or educational programs and other rehabilitation services, and the reduced access to visits, telephone, reading material, television, radio, and exercise create a serious risk of substantial harm to those prisoners.

64. Prior to filing this action, CLASI interviewed mentally ill prisoners and reviewed and evaluated the records of mentally ill prisoners with the aid of a psychiatrist with significant experience in correctional mental health care. CLASI has discussed deficiencies in DOC's treatment of prisoners with mental illness with Defendant's counsel.

65. Defendant has had, and continues to have, the authority and ability to correct the DOC and Delaware Prison practices described herein by taking reasonable measures. He has not done so.

66. Defendant has had, and continues to have, the authority and ability to correct the DOC and Delaware Prison polices that have permitted the foregoing practices to continue by taking reasonable measures. He has not done so.

### E. Representative Casualties Of Defendant's Unconstitutional Policies And Practices

67. While all prisoners with serious mental health problems are suffering as a result of Defendant's policies and practices, the experiences of certain prisoners are illustrative of the problem.

(i) Prisoner #1

68. Prisoner #1 has been incarcerated at JTVCC since 2007 and spent more than a year confined to SHU for purported infractions that relate to his mental illness and its manifestations. He has a long history of serious mental illness, including diagnoses of manic-depression, schizophrenia, borderline personality disorders, and posttraumatic stress disorder.

69. Prisoner #1 has informed DOC officials of his mental health history and condition. Despite having knowledge of Prisoner #1's mental health condition, DOC did not arrange for Prisoner #1 to be evaluated by a mental health professional before he was reassigned to SHU.

70. Because of the conditions within SHU, Prisoner #1's mental condition deteriorated substantially during his confinement to SHU. He began to hear voices and would often talk to himself. He paced and hid under the bed. He banged his head against his locker and engaged in self-mutilation. He frequently had suicidal thoughts.

71. Prisoner #1 has been prescribed and dispensed many prescription drugs during his confinement, including Risperdal and Zyprexa. Prisoner #1 has made repeated requests for mental health treatment and has filed multiple grievances, but he continues to be denied treatment other than medication. DOC does not provide the programs or counseling necessary to treat Prisoner #1's mental illness and physical suffering.

(ii) Prisoner #2

72. Prisoner #2 has been incarcerated at JTVCC since 2008 and has spent significant time confined to SHU. He has a long history of mental illness and treatment, both prior to and following his incarceration. He suffers from bipolar disorder, major depressive disorder, and possibly schizophrenia.

73. Upon his initial incarceration at JTVCC, Prisoner #2 was housed in SNU, where he was diagnosed as bipolar with major depressive disorder. He was similarly diagnosed prior to his incarceration.

74. During the first three weeks of Prisoner #2's incarceration (while in SNU), he participated in one-hour therapy sessions two or three times per week. Over the following five to six weeks, mental health workers would check on him and he would have sessions two to three times per week. After the first two months, he began participating in group therapy sessions, which he found to be helpful to his mental illness.

75. None of the therapeutic opportunities available in the SNU have been made available to Prisoner #2 in SHU. Prisoner #2 has been unable to discuss his mental health concerns openly because correctional officers and fellow prisoners can hear his discussions with mental health providers and he fears reprisal from the officers and other prisoners.

76. Prisoner #2 was placed in SHU because of a behavioral outburst. He suffers from mental anguish due to the lack of treatment and fears that the lack of adequate mental health treatment will manifest itself in physical violence towards other prisoners.

77. For many years, Prisoner #2 took Sinequan, which he reports worked well to manage the symptoms of his mental illness, but DOC changed his medication and he now takes Wellbutrin. During his incarceration, he has been prescribed and dispensed many different depression and anti-anxiety medications, none of which have been as effective as Sinequan.

78. Prisoner #2's medications frequently cause his blood pressure to drop, often resulting in fainting. He has made repeated visits to the infirmary as a result of these side effects.

79. Prisoner #2 first attempted suicide when he was seven years old and has daily thoughts of suicide. He has not disclosed his suicidal thoughts to DOC out of fear that, rather than receiving help, he will be returned to the "naked room" and dropped down to Level 1. In addition to his frequent suicidal thoughts, Prisoner #2 continues to have behavioral outbursts directly related to his mental illnesses, which he fears will also lead to additional punishment.

80. He has filed multiple grievances to receive appropriate counseling and treatment, all to no avail.

(iii) Prisoner #3

81. Prisoner #3 has been incarcerated at JTVCC since January 2007 and has been in SHU for almost his entire sentence. At age 6, Prisoner #3 was diagnosed by the Pennsylvania Psychiatric Institute with schizophrenia, severe anxiety, and manic depressive disorder and spent nearly four years at the Pennsylvania Psychiatric Institute receiving treatment for his mental illnesses.

82. Prisoner #3 has been on a number of medications to treat his mental illnesses including, but not limited to, Lithium, Ritalin, Ativan, Seroquel, Thorazine, Haldol, Clozapine, and Valium. When initially placed in prison at JTVCC, Prisoner #3 was prescribed Clozapine and Ativan in SHU, which helped him manage his symptoms. DOC subsequently refused to provide him with those medications and prescribed him Haldol instead.

83. In 2009, while at JTVCC, Prisoner #3 suffered an adverse reaction to Haldol. As a result, Prisoner #3 was rushed to Kent General Hospital in Dover, DE. After his release from the emergency room, Prisoner #3 was treated in SNU. Prisoner #3 was able to manage the

symptoms of his mental illness while in SNU because of the treatment he received. In 2011, for reasons unrelated to his conduct, Prisoner #3 was removed from SNU and placed back in SHU.

84. Despite his extensive mental health history, in addition to his inability to obtain appropriate medication for his condition, Prisoner #3 does not have the opportunity to participate in therapy sessions with mental health professionals in SHU and he says he cannot discuss his mental health concerns openly for fear of reprisal from correctional officers.

85. Prisoner #3's mental health condition has deteriorated as a result of his time in SHU and his inability to secure appropriate medication for his condition. He reports feeling anxious and paranoid. He has suffered heart palpitations and vomited on multiple occasions as a result of his anxiety. Prisoner #3 experiences suicidal thoughts and has attempted suicide while in SHU. He is now reluctant to share his suicidal thoughts for fear that he will be sent to the "naked room" or lose privileges. Prisoner #3 has made numerous requests to be returned to SNU, all of which have been denied.

(iv) Prisoner #4

86. Prisoner #4 suffers from schizophrenia, manic depression, psychotic features, depression, sexual identity disorder, posttraumatic stress disorder, and attention deficit hyperactivity disorder. At age 13, Prisoner #4 received these diagnoses from multiple medical institutions. Prior to incarceration, Prisoner #4 took a number of medications and attended individual and group therapy sessions. He has spent the bulk of his sentence in SHU at JTVCC.

87. Prisoner #4 currently takes Zyprexa to treat his schizophrenia. After filing a grievance for inadequate mental health treatment, he was scheduled to have 1:1 therapy sessions once a month. Prisoner #4 says these therapy sessions are often cancelled due to "security issues" or for lack of space necessary to conduct the therapy sessions. A counselor does stop by

his cell door three times per week, but Prisoner #4 complains that she stays for mere seconds and that there is no privacy.

88. Prisoner #4 leaves his cell three times per week to shower. He does not use his allotted 45 minutes of recreation time due to a physical disability and sometimes is left in the shower by the correctional officers for the entire hour. Sometimes Prisoner #4 refuses to leave his cell and forfeits his shower.

89. Since his confinement in SHU, Prisoner #4's condition has deteriorated and he has experienced suicidal thoughts. He expressed these thoughts to the correctional officers on multiple occasions and the only response was placement in the "naked room." On other occasions, the officers ignored Prisoner #4's request for help.

(v) Prisoner #5

90. Prisoner #5 has bipolar disorder, schizoaffective disorder, and depression. Prisoner #5 also suffers from posttraumatic stress disorder as a result of physical abuse inflicted upon him as a child by his stepfather. He was diagnosed by a mental health professional at Rockford Center in 2004 and has received both inpatient and outpatient treatment for his mental illnesses. Prisoner #5 was initially incarcerated at HRYCI, but DOC transferred him to JTVCC after a suicide attempt. Since the transfer, he has served his sentence in SHU. Prior to his incarceration, Prisoner #5 was prescribed Klonopin, Wellbutrin, Risperdal, and lithium and saw a psychiatrist on a regular basis.

91. Prisoner #5 is scheduled to receive private, half-hour weekly sessions with Connections Community Support Programs, but sometimes these sessions are cancelled or rescheduled. Further, the sessions are not private because the correctional officers often stand close to the door or leave the door open, contrary to DOC's Policy Manual, which requires that "clinical encounters and discussions occur in private, without being observed or overheard."

92. Prisoner #5 experiences anxiety in SHU and often feels like he cannot breathe. He has attempted to commit suicide in SHU approximately 10 times. He says his suicide attempts have caused the correctional officers to "hold it on [him] worse" and limit his contact with family and access to other privileges. Prisoner #5 experiences symptoms of paranoia and believes that the officers listen to him in his cell through the vents and that the DOC is trying to poison him.

(vi) Prisoner #6

93. Prisoner #6 suffers from bipolar disorder, severe anxiety, and severe depression. He received these diagnoses both inside and outside of prison and has been treated for his mental illness at Wilmington Hospital and Rockford Center. He was first incarcerated at HRYCI and was subsequently transferred to JTVCC.

94. Prisoner #6 was placed in SHU upon his arrival to JTVCC. He was not able to receive his mental health medications "for a few weeks" after he was placed in SHU. He is currently taking Prozac, but has taken Haldol, Wellbutrin, and Remeron, among other medications, in the past.

95. Prisoner #6 has had suicidal thoughts since childhood, and he says he thinks about suicide often. He has attempted suicide in prison multiple times, including one attempt to slit his wrists and another attempt to hang himself. In addition to his suicidal thoughts, Prisoner #6 has severe anxiety, has trouble sleeping, and often hears voices. Prisoner #6 has requested to be placed in SNU on multiple occasions.

96. Beyond medication, Prisoner #6 does not have the opportunity for therapy sessions with mental health professionals in SHU. He says that he cannot discuss his mental health concerns openly because he fears reprisal from the correctional officers or being sent to the "naked room."

**COUNT I**
**(Violation Of The Eighth Amendment As Applied Through Due Process Clause Of The Fourteenth Amendment)**

97. Plaintiff incorporates by reference Paragraphs 1 through 96 of this Complaint.

98. The Eighth Amendment, as applied to the states by the Fourteenth Amendment, prohibits cruel and unusual punishment.

99. DOC's policies, practices, and procedures systemically violate the Eighth Amendment rights of prisoners with mental illness through institution policies, practices, and procedures that place them at substantial risk of serious harm. Such policies, practices, and procedures include, without limitation:

- confinement of prisoners with mental illness in solitary confinement, which poses a substantial risk of serious harm to those prisoners;
- confinement of those prisoners in solitary confinement for conduct caused by their mental illnesses;
- a disciplinary system that fails to adequately consider a prisoner's serious mental illness and the impact of isolation in assessing whether to assign the prisoner to solitary confinement;
- maintenance of conditions in solitary confinement that exacerbate prisoners' serious mental illnesses, including near-constant isolation with little if any human contact, resulting in unnecessary pain and suffering and a substantial risk of serious harm to those prisoners;
- failure to provide adequate psychiatric and psychological services to prisoners with mental illness in solitary confinement, resulting in unnecessary pain and suffering; and

- failure to make available, maintain, and utilize adequate therapeutic alternatives and rehabilitative activity, such as attending religious services, holding a prison job, participating in therapeutic and educational programs, and having sufficient access to visits, telephone, reading material, television and radio, and recreational opportunities.

100. Defendant has been made aware of and is deliberately indifferent to the deprivations suffered by prisoners with serious mental illness in solitary confinement. Defendant's deliberate indifference is the proximate cause of the harm suffered by these prisoners.

101. Defendant, acting under color of state law in his official capacity, is violating the rights of prisoners with serious mental illness, guaranteed by the Eighth Amendment as applied through the Due Process Clause of the Fourteenth Amendment, and will continue to violate them if this Court does not grant relief.

**COUNT II**
**(Violation Of Article I, Section 11 Of The Delaware Constitution)**

102. Plaintiff incorporates by reference Paragraphs 1 through 101 of this Complaint.

103. Article I, Section 11 of the Delaware Constitution prohibits "cruel punishments" and requires that "in the construction of jails a proper regard shall be had to the health of prisoners."

104. Defendant's practices, policies, and procedures with respect to prisoners with mental illness constitute cruel punishment and systemically violate Article I, Section 11 of the Delaware Constitution.

105. Defendant will continue to violate the Article I, Section 11 rights of prisoners with serious mental illness if this Court does not grant relief.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. issue appropriate declaratory and injunctive relief to stop the constitutional violations described above;

B. award reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988; and

C. grant such other relief as may be appropriate.

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