

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DISABILITY LAW CENTER, INC.,

Plaintiff,

v.

CIVIL ACTION
NO. 07-10463-MLW

MASSACHUSETTS DEPARTMENT OF CORRECTION,
KATHLEEN DENNEHY, COMMISSIONER OF THE
MASSACHUSETTS DEPARTMENT OF CORRECTION,
in her official capacity; JAMES BENDER, DEPUTY
COMMISSIONER OF THE MASSACHUSETTS
DEPARTMENT OF CORRECTION, in his official
capacity; VERONICA MADDEN, ASSOCIATE
COMMISSIONER OF REENTRY AND
REINTEGRATION OF THE MASSACHUSETTS
DEPARTMENT OF CORRECTION, in her official
capacity; JOHN MARSHALL, JR., ACTING
SUPERINTENDENT OF MCI-CEDAR JUNCTION AND
ASSISTANT DEPUTY COMMISSIONER – NORTHERN
SECTOR, in his official capacities; and TIMOTHY HALL,
ACTING ASSISTANT DEPUTY COMMISSIONER –
SOUTHERN SECTOR, in his official capacity,

Defendants.

ANSWER

Introduction

These paragraphs contain only an introductory statement that requires no responsive pleading. To the extent that these paragraphs allege that the Department of Correction and each individual defendant is acting in violation of the rights of Massachusetts prisoners with mental illness, the defendants deny all allegations contained in these paragraphs. In further answer, the defendants assert that the Department of Correction is committed to providing safe and humane treatment for all inmates

committed to its care and custody, including inmates with mental illness, while also fulfilling its mandate of maintaining safety and security within the Commonwealth's correctional institutions. The defendants deny that they have acted with deliberate indifference towards inmates with mental illnesses, and further deny that they subject inmates with mental illnesses to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. The defendants state that all other allegations contained in these paragraphs are conclusions of law that require no responsive pleading.

Parties

1. Defendants admit that the Disability Law Center is the plaintiff and is a not-for-profit corporation. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading.
2. Defendants admit that the Department of Correction is an agency within the Executive Office of Public Safety of the Commonwealth of Massachusetts.
3. Defendants deny that Kathleen Dennehy is the Commissioner of Correction, and in further answering state that James Bender is the Acting Commissioner of Correction and that his duties are generally as listed in Massachusetts General Law, chapter 124, section 1. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading.
4. Defendants deny that James Bender is the Deputy Commissioner of Correction, and in further answering state the duties of Deputy Commissioner of Correction include serving as the appellate authority for prison disciplinary convictions in

which a Department Disciplinary Unit sanction is recommended. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading.

5. Defendants admit that Veronica Madden is the Associate Commissioner of Reentry and Reintegration, and has supervisory authority over the Division of Health Services. Defendants deny that Ms. Madden has supervision of mental health care, and in further answering state that the Department of Correction has, at all times relevant to the complaint, contracted with a health services provider for the provision of medical and mental health services to inmates within the Department of Correction's custody. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading.

6. Defendants deny that John Marshall, Jr. is the Assistant Deputy Commissioner – Northern Sector and acting Superintendent of MCI-Cedar Junction, and further deny that he has the authority for supervising the operations of eight correctional facilities. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading. In further answer, defendants state that Timothy Hall is the Assistant Deputy Commissioner – Northern Sector and that Peter St. Amand is the Superintendent of MCI-Cedar Junction.

7. Defendants deny that Timothy Hall is the Assistant Deputy Commissioner – Southern Sector, and further deny that he has the authority for the supervising the operations of nine correctional facilities. All other allegations contained in this paragraph are conclusions of law that require no responsive pleading. In further answer, defendants state that Kenneth Nelson is the Assistant Deputy Commissioner – Southern Sector.

Jurisdiction and Venue

8. This paragraph contains only conclusions of law that require no responsive pleading.

9. This paragraph contains only conclusions of law that require no responsive pleading.

10. This paragraph contains only conclusions of law that require no responsive pleading.

Facts

Background and Types of Segregated Confinement

11. Defendants admit the first sentence of this paragraph only to the extent that there are inmates in Massachusetts prisons who have been diagnosed with mental illness as the term “mental illness” may be broadly defined. In answering further, the term “mental illness” is defined in a Massachusetts Department of Mental Health regulation at 104 CMR 27.05(1) as “a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include alcoholism or substance abuse which is defined in M.G.L. c. 123, § 35.” In further answer, defendants state that the determination whether an inmate is to be an open mental health case is a clinical determination made by qualified mental health clinicians on a case by case basis. Defendants deny the characterization as to the prevalence of mental illness in Massachusetts prisons, and in further answer state that a rising prevalence of mental illness in prisons is a national trend. Defendants deny the factual allegation contained in the third sentence of this paragraph that the percentage of mentally ill prisoners in segregated confinement is much higher than the percentage of mentally ill prisoners in the general population, and in further answer, state that the percentages would depend

upon how the term “mentally ill prisoner” is defined. In further answer, defendants state that as a general matter, a higher percentage of the population in the Department Disciplinary Unit (“DDU”) have open mental health cases compared with general population, and that a higher percentage of each facility’s segregation population have open mental health cases compared with each facility’s general population.

12. Defendants admit the factual allegation contained in the first sentence of this paragraph. Defendants deny the factual allegation contained in the second sentence of this paragraph, but in further answering state that, on April 20, 2007, the Department of Correction segregation bed and inmates statistics are as follows:

Facility	Number of Segregation Beds in the Unit	Number of Inmates as of April 20, 2007
Department Disciplinary Unit	124	102
MCI-Cedar Junction	90 (30 of 90 not utilized)	51
SBCC	96 (33 of 96 not utilized)	63
Old Colony Correctional Center	31	31
NCCI-Gardner	23	9
MCI-Concord	60	60
MCI-Norfolk	99 (60 of 99 not utilized)	37
MCI-Shirley	59	57
MCI-Framingham	31	31
Treatment Center	12	3
Total	625 (123 of 625 not utilized)	444

13. Defendants admit the factual allegation contained in the first sentence of this paragraph only to the extent that the Department of Correction operates the Department Disciplinary Unit (“DDU”) and Special Management Units (“SMU”). Defendants deny the factual allegation that the Department of Correction operates any unit designated as a Departmental Segregation Unit (“DSU”), and in further answering state that certain restrictive housing units require the procedures set forth in the

Department of Correction's Departmental Segregation Unit regulation, 103 CMR 421, to be followed. Defendants admit the factual allegation contained in the second sentence to the extent that the DDU, SMU's and restrictive housing units are each intended to serve a different purpose.

14. Defendants admit the factual allegations contained in the first and second sentences of this paragraph. Defendants deny the factual allegation that a DDU sentence can be extended for misbehavior in the DDU, and in further answer state that misbehavior in the DDU may result in an additional DDU sentence if the inmate is duly convicted pursuant to 103 CMR 430, and that a guilty finding on a major disciplinary report may result in the DDU inmate not receiving credit for the monthly period in which the offense occurred and the loss of certain privileges. Defendants deny the allegation that an inmate's sentence to the DDU cannot be reduced, and in further answering state that any inmate in the DDU can be released before the completion of his sentence by order of the Superintendent.

15. Defendants admit the factual allegations contained in this paragraph.

16. The defendants deny the first sentence contained in this paragraph, as the regulation governing Department Segregation Units, 103 CMR 421, speaks for itself. The defendants further deny that a DSU currently exists within the Department of Correction, but rather that the procedures as set forth in 103 CMR 421 are met in two restrictive housing units in the East Wing of MCI-Cedar Junction. The defendants deny the second sentence of this paragraph, and in further answer state that pursuant to 103 CMR 421.15(2)(c), upon the commitment of an inmate to a restrictive housing unit, a conditional release date of up to six months is set "based on the specific aspects of the

inmate's record and other information on which the recommendation is based, including any mitigating information,” and that said conditions are reasonably imposed for the purpose of maintaining safety and security within the correctional system. In further answer, defendants state that pursuant to 103 CMR 421.19, inmates placed in a restrictive housing unit are reviewed monthly for the purpose of evaluating “the current behavior of the inmate including disciplinary reports, a summary of the program involvement of the inmate, including, for example, education, counseling and recreation activities, and an evaluation of the behavior and attitude of the inmate, and recommendations, if any, for releasing the inmate from the DSU.” In further answer, defendants state that inmates in the restrictive units of MCI-Cedar Junction receive three hours a day of out of cell compared with four hours out of cell for general population. The defendants deny the factual allegations contained in the third sentence of this paragraph, and in further answer, state the longest current period of residence in a restricted unit pursuant to 103 DOC 421 is approximately fourteen (14) months.

17. The defendants admit that there are two restrictive housing units in the East Wing of MCI-Cedar Junction for which the procedural requirements of 103 CMR 421 are followed, and admit that there are approximately 45 cells in each of the two restrictive housing units in the East Wing of MCI-Cedar Junction. Defendants admit the factual allegation contained in the second sentence contained in this paragraph.

18. Defendants deny the characterization of the SMU as a “catchall,” and in further answer, state that the SMU’s are operated in accordance with 103 CMR 423. By way of further answer, defendants state that the Special Management Unit regulation, 103 CMR 423, speaks for itself, and that the reasons for placement in a SMU include

administrative segregation, protective custody, and disciplinary detention, as set forth in 103 CMR 423.07. Defendants further state that inmates who have been deemed in need of protective custody, are ordinarily housed in general population conditions at either the medium security protective custody unit at the Old Colony Correctional Center or the maximum security protective custody unit at Souza Baranowski Correctional Center, which are operated pursuant to 103 DOC 422. Defendants deny the characterization of “several years” in the third sentence of this paragraph. In further answer, defendants state that inmates are held in the SMU only so long as the reason for their housing there dictates. In further answer, defendants state that the SMU is not designed to be a permanent housing unit and, while there is one inmate who has been held in the SMU at MCI-Cedar Junction for more than three years, this is because this inmate refuses to leave the SMU and enter general population.

19. Defendants admit the factual allegation contained in this paragraph.

20. Defendants admit the factual allegations contained in this paragraph only to the extent that prisoners may be held on restrictive confinement in their cells on a temporary basis while awaiting action on a referral to a restrictive housing unit at MCI-Cedar Junction and the Old Colony Correctional Center as set forth in 103 CMR 421.08, or under investigation for a disciplinary offense or have been charged or found guilty of a disciplinary offense as set forth in 103 CMR 430.21. In further answer, defendants state that on infrequent occasions, restrictive cell confinement for short periods is utilized at MCI-Framingham. Defendants deny all other allegations contained in this paragraph.

21. Defendants admit the factual allegations contained in the first sentence of this paragraph only to the extent that inmates may be moved from a segregation cell to a

health services unit and that inmates may be placed on mental health watches in a health services unit. In further answer, defendants state that any staff member may place an inmate on “observation” status but only a clinician may place an inmate on mental health watch. In further answer, defendants state that clinicians may utilize therapeutic restraints, and that security staff may place inmates in restraints in accordance with the provisions of 103 CMR 505.10, Use of Force, for the purposes set forth in 103 CMR 505.07. In further answer, defendants state that an inmate in restraints pursuant to 103 CMR 505.10 may be placed on mental health watch by clinical staff. In further answer, defendants state that in accordance with Recommendation 24 of the Lindsay M. Hayes Report (“Hayes Report”), security watches are no longer utilized for situations in which staff have concerns about an inmate’s behavior, that the Department of Correction has directed the health services vendor to modify its policy to reflect that placement on mental health watch is for specified behaviors, regardless of perceived motivation or clinical diagnosis. Defendants state in further answer that mental health watches employed in health services units are clinical procedures and that their use is determined by qualified clinicians. In further answer, defendants state that in accordance with Recommendation 13 of the Hayes Report, the placement and length of stay on suicide precautions is solely based upon the clinical judgment of mental health staff. Defendants deny the allegations contained in the second and third sentences of this paragraph. In further answer, defendants state that the health services vendor’s therapeutic supervision policy provides that clinicians are to set property and privilege levels to be the least restrictive based upon clinical risk. Defendants admit the factual allegation contained in the fourth sentence of this paragraph that placement on a mental health watch is not

segregation. In further answer, defendants state that the MCI-Framingham is in the process of implementing the housing of inmates on watch status together where there are no clinical contraindications. Defendants need make no response to the factual allegation concerning the content of the Hayes Report, as the report speaks for itself.

Conditions in Segregation

22. Defendants deny the factual allegation contained in the first sentence of this paragraph that the cells in each type of dedicated segregation unit are “very small.” and in further answer, state that the cell sizes are comparable to those in general population, as cells in 10 Block and DDU are larger than cells in the East Wing at MCI-Cedar Junction, with the exception of the Modular Unit, and cells in the DDU are larger than cells in the West Wing. In further answer, defendants state that DDU cells are approximately 84 square feet, Ten Block cells are approximately 54 square feet; and Nine Block cells are approximately 70 square feet. In comparison, West Wing cells approximately 65 square feet; East Wing Cells are approximately 40.5 square feet; and Modular Unit cells are approximately 70 square feet. Defendants admit the factual allegation that walls are constructed from “solid concrete,” and in further answer state that the same construction is used throughout MCI-Cedar Junction, and that such construction is appropriate for the maintenance of safety and security in all living areas of a maximum security correctional facility. Defendants admit the factual allegation that some segregation cells, such as those in 10 Block, have a solid outer door and an inner barred door, and state in further answer, that solid door is ordinarily left open except in event of emergency (e.g., inmate throws things) or at night, when it is closed at the request of the inmate. Defendants admit the factual allegation that there is typically one

small window to the outside. Defendants deny the allegation that it allows in little, if any, natural light. Defendants deny the factual allegation that some segregation cells such as those at 10 Block, MCI-Norfolk and NCCI-Gardner have no windows at all to the outside. In further answer defendants state that all 99 cells in the MCI-Norfolk SMU have windows to the outside. In further answer, defendants state that all cells in the SMU at NCCI-Gardner have outside windows, except for approximately 5 cells. In further answer, defendants state that 10 Block cells receive natural light from windows in the corridor outside the cells. Defendants deny the factual allegation that all segregation cells have minimal furnishings, and in further answer, state that segregation cells are generally furnished in the same manner of general population cells in that they are equipped with a bed, desk, chair, toilet, sink, shelf and mirror.

23. Defendants admit the factual allegation that inmates confined in segregation may remain in their cells for approximately twenty-three hours per day, with the qualification that inmates may leave their cells for a variety of reasons, including outdoor exercise five days a week, regular visits and attorney visits (as provided by 103 CMR 423.09(1)(e)), shower three times a week (as provided by 103 CMR 423.09(1)(b)), use of the law library, visits to the health services unit for medical, dental or mental health care, visits to outside hospitals, court trips, and attendance at administrative hearings and proceedings.

24. Defendants admit the factual allegations contained in the first sentence of this paragraph only to the extent that inmates held in segregation are allowed one hour of outdoor exercise five days a week. In further answer, defendants state that for reasons of safety and security, outside exercise is conducted in individual exercise enclosures

designed to provide inmates with visual and voice contact with other inmates, but not physical contact with other inmates. Defendants admit the factual allegation contained in the second sentence of this paragraph that outdoor exercise areas are at least partially open to weather to provide fresh air, and deny the characterization that outdoor exercise is often cancelled. In further answer, defendants state that when inclement weather precludes the utilization of the outdoor exercise areas, inmates may exercise in their cells. Defendants are without sufficient information to respond to the generalizations made in the third and fourth sentences concerning inmates with mental illness.

25. Defendants admit the first sentence of this paragraph only to the extent that where contact with others is minimized, it is for the proper purpose of ensuring safety, security and order. Defendants deny the factual allegations contained in the second sentence of this paragraph. Defendants state in further answer that inmates in the SMU and DDU are provided the same opportunity for writing and receipt of letters as inmates in general population.

a. Defendants admit the factual allegation that inmates cannot see other prisoners from their cells, with the qualifications that certain segregation cells face other cells across the corridor and inmates see other inmates when inmates are moving within the unit. In further answer, defendants state that inmates see other inmates in the law libraries, in visiting areas, in health services units, when being escorted within the facility, and during exercise periods.

b. Defendants admit the factual allegations contained in this sub-paragraph.

c. Defendants deny the factual allegations contained in this paragraph, and in further answer, state that inmates can hear other inmates through the cell doors and walls,

and at MCI-Cedar Junction, through the outer grill doors when the solid doors are open. Defendants state in further answer that segregation inmates who are *pro se* co-plaintiffs in litigation can seek permission to correspond by mail.

d. Defendants admit the factual allegation that inmates held in segregation cannot physically attend religious services, cannot work in a prison job and cannot physically attend programs. Defendants deny the factual allegation that inmates cannot participate in rehabilitative activities. In further answer, defendants state that inmates may pray privately, that chaplains conduct rounds in segregation units to provide individual religious contact to inmates, and that treatment videos, as well as entertainment and religious videos, are provided in the DDU by closed circuit television. In further answer, defendants state that the Department of Correction recently awarded a program contract to Spectrum Health System to provide non-residential treatment services for male offenders. The target population for this program will consist of inmates with a history of assaultive and/or disruptive behavior, inmates with gang affiliations, and inmates who have displayed generally high levels of resistance to treatment interventions. This program includes a High Risk Offender program to be delivered in the DDU. It will offer DDU inmates both group and individual intervention strategies designed to provide information and rehearsal on a variety of skills which inmates lack. The program will employ cognitive behavioral treatment as the major treatment methodology, covering a broad range of topics, including cognitive restructuring, criminal thinking, anger management, choices and consequences, and social skills training. Where appropriate, the characteristics of motivational enhancement therapy will be used to engage this population in treatment. The program will also address treatment needs of inmates with

mental health issues including PTSD or PTSD-like symptoms, and where necessary, employ learning techniques to address any learning deficits such as attention deficit disorder (A.D.D.), and/or attention deficit hyperactivity disorder (A.D.H.D.). The program contractor will coordinate services with the Department's mental health services provider. This contract went into effect April, 1, 2007. Spectrum has hired a staff person to facilitate this program. Spectrum is in the process of coordinating a series of trainings about the program for the MCI-Cedar Junction staff and DDU correction officers on all 3 shifts. In further answer, defendants state that jobs are not provided for reasons of safety and security.

e. Defendants admit the factual allegation that inmates in segregation are allowed only non-contact visits, and in further answer state that non-contact visits are required for reasons of safety and security. Defendants deny the characterization of visits as infrequent, and in further answer, state that the Department of Correction has established visiting schedules, but that it is not within control of DOC how frequently persons choose to visit inmates. Defendants further answer that if visits are denied, it is for the reason that the inmate has lost visits as a sanction imposed for a disciplinary conviction, or that the particular visitor is barred for attempts to bring contraband into the institution or for other behavior in violation of the Department of Correction Visiting Procedures policy at 103 CMR 483.16.

f. Defendants deny the characterization that access to telephones, reading material and radios is highly restrictive, and in further answer state that inmates in segregation are allowed to make telephone calls, to access library material and to have

“Walkman” radios, and that state-supplied radios and televisions are earned privileges in the DDU.

Placement of Prisoners with Mental Illness in Segregation

26. This paragraph contains plaintiff’s general characterization of the behavior of inmates with mental illness, to which no answer is required, but insofar as one is required, defendants deny the allegations contained in this paragraph.

27. Defendants deny the allegations contained in this paragraph. In further answer, defendants state the following: In accordance with Section 1 of 103 DOC 218, Recruit Training, the recruit training curriculum includes suicide awareness/signs of mental illness and signs and symptoms of mental retardation/chemical dependency. In accordance with Recommendation 1 of the Hayes Report, a revised eight hour pre-service suicide prevention curriculum has been implemented for new Department of Correction employees, which includes the objectives of instructing participants to: recognize the signs, symptoms, risk factors and the role of a correctional professional in dealing with suicidal incidents; develop an understanding of the policies and procedures governing mental health watches, suicide, and death in a correctional setting; demonstrate the proper communication skills in dealing with a possible mental health/suicidal inmate during the intake and screening process; and demonstrate the proper intervention skills when observing abnormal/bizarre behavior in various correctional settings. In accordance with Recommendation 2 of the Hayes Report, a revised two hour in-service curriculum for correctional, medical and mental health staff has been implemented. In accordance with Recommendation 4 of the Hayes Report, revisions to address immediate needs are being made to 103 DOC 650, Mental Health Services. In further answer, defendants state that,

as noted in 103 DOC 610.01, matters of medical and mental health are solely the province of the responsible physicians and psychiatrists. In further answer, defendants state that revised in-service training began during the week of April 2, 2007 at both regional training centers (Shirley Training Academy and Warren Hall), and that the training covers signs and symptoms of mental illness and interacting with mentally ill inmates. Additionally, an emergency response drill involving a suicide attempt by hanging is now incorporated as part of CPR and first aid training.

28. Defendants need make no response to the allegation in the first sentence concerning the content of 103 DOC 650 because the policy speaks for itself. Defendants have insufficient information to form a belief as to the veracity of the factual allegation contained in the second sentence of this paragraph. By way of further answer, however, defendants state the following: In response to Recommendation 8 of the Hayes Report, superintendents have been directed to attend, and have been directed that mental health staff must attend, all segregation review meetings and all morning “climate” meetings, with attendance to be documented; and a tracking system has been established to monitor compliance with the meetings and intra-facility communication required by 103 DOC 650, Mental Health Services. Moreover, the Assistant Deputy Commissioners are monitoring compliance regarding superintendent attendance and clinical presence at segregation review meetings. In response to Recommendation 9 of the Hayes Report, all health services vendor mental health staff have access to the segregation review screens in the Inmate Management System (“IMS”), the Department’s automated information system that provides processing, storage and retrieval of inmate information utilized in daily operations by Department personnel to carry out their functions. Section 15.3 of the

Department's Request for Response for Comprehensive Health Services to the Massachusetts Prison Population, mandates that vendor staff receive IMS "profiles," receive IMS training, and utilize IMS by viewing and entering data. In response to Recommendation 10 of the Hayes Report, the health services vendor is to develop an alternative to the current "at risk" list, which will be superseded by daily case reviews through climate meetings and segregation review meetings.

29. Defendants admit the factual allegation contained in the first sentence of this paragraph only to the extent that as of the date of this answer, there is no secure treatment program designed to serve as an alternative to segregation and that alternatives to segregation placement are made on a case-by-case basis. In further answer, defendants state that there is a Residential Treatment Unit in operation at the Old Colony Correctional Center. In further answer, defendants state the following: the outstanding Request for Response for Comprehensive Health Services to the Massachusetts Prison Population, which was issued on December 15, 2006, requires that bidders submit a proposal for a 60-bed maximum security residential treatment unit for inmates with serious and persistent mental illness to open on July 1, 2007, and additionally, a 15-bed male behavioral management unit to open and female behavioral management services to begin on January 1, 2008. The DOC is evaluating the responses of six bidders, and the contract commencement date will be July 1, 2007. In accordance with Recommendation 8 of the Hayes Report, an assessment has been conducted of Block 9 at MCI-Cedar Junction to determine the costs and work needed to establish a Behavioral Management Unit, which will house ten inmates and an assessment is being conducted of a block in

SBCC as an alternative unit to segregation. Defendants deny all other allegations contained in this paragraph.

30. Defendants deny the allegations set forth in the first and second sentences of this paragraph. In further answer, defendants state the following: The outstanding Request for Response for Comprehensive Health Services to the Massachusetts Prison Population, which was issued on December 15, 2006, requires that bidders submit a proposal for a 60-bed maximum security residential treatment unit for inmates with serious and persistent mental illness, and additionally, a 15-bed male behavioral management unit and an 18 room female behavioral management unit at MCI-Framingham, some of which rooms will be double bunked. The Request for Response requires that the bidders provide plans for a contract commencement date of July 1, 2007. The DOC is evaluating the responses of six bidders, and the contract commencement date will be July 1, 2007. In accordance with Recommendation 8 of the Hayes Report, an assessment has been conducted of Block 9 at MCI-Cedar Junction to determine the costs and work needed to establish a Behavioral Management Unit, which will house ten inmates, and an assessment is being conducted of a block in SBCC to determine the costs and work needed to establish an alternative unit to segregation. Defendants deny all other allegations contained in this paragraph.

Effect of Segregation on Prisoners with Mental Illness

31. Inasmuch as this paragraph sets forth non-referenced clinical conclusions, defendants have insufficient information to form a belief as to the veracity of the conclusory allegations set forth in this paragraph. To the extent that this paragraph

references a syndrome called “special housing unit syndrome,” the defendants deny that this is a "syndrome" generally accepted as a diagnosable condition in the *Diagnostic and Statistical Manual of Mental Disorders–Fourth Edition (DSM–IV-TR)* or in the medical community.

32. This paragraph contains general behavioral characterizations, and therefore, no responsive pleading is required. To the extent a response is required, defendants deny the allegations contained in this paragraph.

33. This paragraph contains general behavioral characterizations, and therefore, no responsive pleading is required. To the extent a response is required, defendants deny the allegations contained in this paragraph.

34. Defendants deny the allegations set forth in the first sentence of this paragraph. Defendants admit the allegations contained in the second sentence only to the extent that pursuant to 103 CMR 430, segregation time and loss of privileges are possible disciplinary sanctions for any inmate. In further answer, defendants state that in accordance with Recommendation 15 of the Hayes Report, disciplinary reports solely for self-injurious behavior are now prohibited. Inasmuch as the Hayes Report speaks for itself, defendants need make no response to allegations describing the report. Defendants deny all other allegations contained in this paragraph.

35. Defendants deny all allegations contained in this paragraph.

Provision of Mental Health Care in Segregation

36. Defendants deny the allegations contained this paragraph. In further answer, defendants state that treatment videos, as well as entertainment and religious videos, are provided in the DDU by closed circuit television and that the Department of

Correction recently awarded a program contract to Spectrum Health System to provide non-residential treatment services for male offenders. The target population for this program will consist of inmates with a history of assaultive and/or disruptive behavior, inmates with gang affiliations, and inmates who have displayed generally high levels of resistance to treatment interventions. This program includes a High Risk Offender program to be delivered in the DDU. It will offer DDU inmates both group and individual intervention strategies designed to provide information and rehearsal on a variety of skills which inmates' lack. The program will employ cognitive behavioral treatment as the major treatment methodology, covering a broad range of topics, including, cognitive restructuring, criminal thinking, anger management, choices and consequences, and social skills training. Where appropriate, the characteristics of motivational enhancement therapy will be used to engage this population in treatment. The program will also address treatment needs of inmates with mental health issues including PTSD or PTSD-like symptoms, and where necessary, employ learning techniques to address any learning deficits such as attention deficit disorder (A.D.D.), and/or attention deficit hyperactivity disorder (A.D.H.D.). The program contractor will coordinate services with the Department's mental health services provider. This contract went into effect April, 1, 2007. Spectrum has hired a staff person to facilitate this program. Spectrum is in the process of coordinating a training series about the program for the MCI-Cedar Junction staff and DDU correction officers on all 3 shifts.

37. Defendants admit the factual allegation that mental health sessions may occur while the inmate is within his cell with the health care provider standing outside the cell and speaking to the inmate through the food slot or a crack at the side of the door.

Defendants deny the characterization of “typically.” In further answering, defendants state that such sessions may now take place outside of the cell upon the request of a mental health clinician or if the inmate is on mental health watch. Defendants admit the factual allegation contained in the second sentence only to the extent that privacy and confidentiality may be limited.

38. Defendants admit the factual allegations in the first sentence only to the extent that the Department of Correction allows private meetings between therapists and inmates. Defendants have insufficient information to form a belief as to the veracity of the allegation that therapists and inmates are reluctant to request private meetings. Defendants admit the factual allegation in the second sentence that inmates leaving and returning to segregation units are strip searched, and in further answer state that such searches are necessary to ensure the safety and security of both inmates and staff. Defendants admit the factual allegation that cell searches may be conducted while prisoners are outside of their cells, and in further answer, defendants state that segregation cell searches must be conducted weekly to ensure the safety and security of inmates and staff and that the inmates must be outside of the cells when the searches are conducted. In further answer to the third sentence, defendants state that correctional officers searching inmates' cells in segregation have discovered various and numerous forms of contraband, including but not limited to, heroin, weapons, razors and home brew, and that such items are dangerous to inmates and staff. In further answer, defendants state that searches of Mr. A's cells resulted in the discovery of razor blades, an altered mattress and scrubs, and two Trazadone pills. Additionally, searches of Mr. A's person revealed an envelope full of sexually explicit material tucked in his waistband

and three razors in his sock. In further answer, defendants state that searches of Mr. D's cells resulted in the discovery of nail clippers, altered eyeglasses, a "stinger" or contraband electrical heating device, tattoo paraphernalia, three darts with needle tips and blow darts, two 7" plexiglass weapons, 6" flatstock, 6" piece of plastic and copper wire, and razor blades. In further answer, defendants state that searches of Mr. D's person revealed a razor blade and a homemade dart that Mr. D threw at staff. In further answer, defendants state that searches of Mr. H's cells revealed two pieces of glass, a sharpened eyeglass arm, two razor blades, and a 1" piece of sharpened steel. Additionally, searches of Mr. H's person revealed two 2-3 foot altered shower rods. In further answer, defendants state that searches of Mr. I's cells resulted in the discovery of two 1.5" steel pieces used as a tool, headphone jacks fashioned as a stinger, two pieces of metal, an eyeglass arm, six tablets of Baclofen and one pill of Seroquel, a 5.5" piece of sharpened plexiglass, a 6" piece of sharpened plexiglass, and two pills of Robaxin muscle relaxer. In further answer, defendants state that searches of Mr. L's cells resulted in the discovery of a 1" piece of metal, a round piece of metal, a razor blade, a 1" piece of metal, a 4" piece of sheet metal, a 3" fence band, a 6" piece of plexiglass, two steel rods, a razor weapon, and 3" flatstock. Additionally, searches of Mr. L's person revealed a razor blade, broken glass, broken glass that had been ingested, broken cable wire, and a piece of 3" flatstock. In further answer, defendants state that searches of Mr. M's cells resulted in the discovery of numerous items of contraband. In further answer, defendants state that searches of Mr. N's cells resulted in the discovery of a tampered radio, homemade altered ear jacks, stereo system and wire, and a missing piece of metal from an air vent. Additionally, searches of Mr. N's person revealed a 6.5" piece of sharpened steel rod. In

further answer, defendants state that searches of Mr. O's cells resulted in the discovery of sharpened plexiglass (from a broken temp tech tray), a damaged footlocker, a smashed TV and glass, a makeshift sap weapon, a metal weapon made from a piece of sink, 2 gallons of "homebrew," a 4" pick-type weapon, two pieces of plate steel from a desk, and two envelopes of pornography. Additionally, searches of Mr. O's person revealed a sap weapon. Defendants deny all other allegations contained in this paragraph.

39. Defendants admit the factual allegations contained in this paragraph only to the extent that inmates in segregation receive intensive attention from mental health staff, and that inmates may be transferred to Bridgewater State Hospital pursuant to Massachusetts General Law, chapter 123, section 18(a). In further answering, defendants state that Bridgewater State Hospital is a continuum of the provision of mental health care. Defendants deny all other allegations contained in this paragraph.

40. Defendants deny the factual allegations contained in this paragraph. In further answer defendants state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. Defendants deny the factual allegation that inmates spend time at Bridgewater State Hospital in "segregation like conditions," and in further answer, state that segregation is not used at Bridgewater State Hospital, but that clinical seclusion may be utilized by clinical staff in accordance with the provisions of G.L. c. 123, § 21. With respect to the allegation that "[m]any prisoners have shuttled back and forth between segregation and Bridgewater State Hospital more than ten times," defendants state in further answer that records indicate that only three inmates were

admitted under G.L. c. 123, § 18(a) from a Department of Correction prison to Bridgewater State Hospital more than ten times during the last five years.

41. Defendants admit the factual allegation that since November 2004, fifteen inmates have committed suicide, and deny the factual allegation that said suicides all occurred while the inmates were held in segregated confinement. In further answer, defendants state that seven suicides occurred in segregation, four in health services units, one in the multipurpose unit of a residential treatment unit, and two in general population, and one in general population at Bridgewater State Hospital. The defendants admit the factual allegation contained in the second sentence of this paragraph only to the extent that ten of the fifteen inmates had documented mental health histories.

Examples of Mentally Ill Prisoners in Segregation

42. Defendants admit the allegations of the first sentence only to the extent that Mr. A was a 26-year-old prisoner. In further answering, defendants state that Mr. A had been diagnosed as mildly mentally retarded and described as having Major Depressive Disorder with Psychotic Features and that no clinician ever stated that Mr. A could never be placed in segregation, only that should he placed in segregation and begin demonstrating certain behaviors, then close mental health assessments would be appropriate. On November 15, 2004, Dr. Holtzen from Bridgewater State Hospital, stated in his G.L. c. 123, § 18(a) Addendum that “prison conditions that approximate solitary confinement (23-hour per day isolation/segregation) have been shown to have a deleterious impact on the mental health of some inmates” and “[s]hould Mr. A be housed under such conditions in the future and should his mental status subsequently deteriorate to the point where he is exhibiting bizarre, inappropriate behavior, then it is likely that he

is one such inmate for whom solitary confinement would not be indicated for any protracted period of time. Given that he deteriorated mentally after having been in segregation at Souza-Baranowski, and given his low level of intelligence and his maladaptive personality style, upon his return to his regular penal facility Mr. A (and should he be housed in segregation), then close mental health assessments of him appear indicated". Defendants admit the allegations of the second sentence only to the extent that Mr. A was placed in the Health Services Unit at MCI-Cedar Junction on December 7, 2005 after inflicting superficial cuts to his arms and throat, and an emergency medical code was called. In further answering, defendants state that Mr. A spit on staff responding to the emergency medical code, and bit one of the officers, which, when coupled with his self-mutilation, warranted Mr. A's placement in four point restraints, which ceased on December 8, 2005. In further answering, defendants also state that prior to Mr. A inflicting harm to himself, a correctional officer referred Mr. A to mental health and that a mental health clinician determined that Mr. was not at risk after Mr. A indicated he was upset about property issues and did not indicate he would harm himself. Defendants admit the allegations of the third sentence only to the extent that Mr. A. was moved from the Health Services Unit to 10 Block on December 15, 2005, and in further answering state that this move was made after five meetings between Mr. A and mental health staff in the Health Services Unit in which Mr. A informed staff that he no longer wanted to harm himself or anyone else, as well as his preference for being housed at Bridgewater State Hospital as opposed to general population at MCI-Cedar Junction. Defendants admit the allegations of the fourth sentence that, on December 19, 2005, Mr. A met with an attorney and paralegal from Massachusetts Correctional Legal Services,

Inc. Defendants have insufficient information to form a belief as to the fifth and sixth sentence, as the attorney and paralegal from Massachusetts Correctional Legal Services, Inc. did not relate any information concerning Mr. A's appearance or express wishes of suicide to correctional staff, who were not present for said meeting. Defendants admit the allegations of the seventh sentence, and in further answering state that Mr. A's solid cell door was closed at approximately 11:35 a.m. on December 20, 2005. Defendants admit the allegations of the eighth sentence, and in further answering, state that the investigation revealed that rounds were done at 12:41 and 12:45 p.m., but not thereafter until Mr. A was discovered hanging in his cell at approximately 4:20 p.m. In further answering, defendants state that there is now a standard definition of "round" and that the Department of Correction is conducting audits to ensure that the rounds are occurring as required. Defendants admit the allegations of the ninth sentence, and in further answering state that Mr. A was discovered hanging in his cell at approximately 4:20 p.m. on December 20, 2005.

43. Defendants admit the allegations of the first sentence. Defendants admit the allegations of the second sentence to the extent that Mr. B had been diagnosed with Attention Deficit Hyperactivity Disorder and, by way of further answer, state that the mental health notes "a rule out diagnosis of Bipolar Disorder," as well as "viewed as presenting with symptoms more consistent with an Adjustment Disorder with Depressed Mood, and a Personality Disorder with 'Cluster B' features," and "seen as primarily presenting with an Antisocial Personality Disorder with paranoid features and although he could become quite suspicious it was felt to be more of an expression of his personality structure." Defendants admit the allegations of the third sentence. Defendants

admit the allegations of the fourth sentence to the extent that Mr. B was placed in the Special Management Unit after he assaulted another inmate while in general population. Defendants admit the allegations of the fifth sentence to the extent that, the G.L. c. 123, § 18(a) referral note of Dr. Marianne Smith noted that after his return to the Souza Baranowski Correctional Center, Mr. B decompensated after becoming only partially compliant with medication and voiced paranoid delusions to mental health and security staff. Defendants admit the allegations of the sixth sentence. Defendants admit the allegations of the seventh sentence to the extent that Dr. Smith noted that Mr. B lost was losing weight and was voicing suspicions about what might be in his food. In further answering, defendants state that Mr. B had a history of weight fluctuation that was somewhat dependent on his level of compliance in taking prescribed medicine. Defendants admit the allegations of the eighth sentence, that Mr. B was admitted to Bridgewater State Hospital on September 14, 2005 for purposes of an evaluation pursuant to G.L. c. 123, § 18(a). Defendants admit the allegations of the ninth sentence to the extent that this was Mr. B's second evaluation at Bridgewater State Hospital. Defendants admit the allegations of the tenth sentence, and in further answering state that Mr. B was transferred back to the Souza-Baranowski Correctional Center on October 18, 2005, after a finding by mental health clinicians that Mr. B did not meet the clinical and legal criteria for commitment to Bridgewater State Hospital, and was placed in segregation at SBCC after being cleared by mental health staff for placement there and that the Department of Correction was never informed by any mental health clinician that Mr. B could not be held in segregation. Defendants admit the allegations of the eleventh sentence that Mr. B was placed on mental health watch on October 19, 2005, and in further answering state

that Mr. B was ordered by mental health staff to be moved to the Health Services Unit at that time. Defendants admit the allegations of the twelfth sentence that Mr. B was cleared from mental health watch on October 22, 2005, and in further answering state that he was terminated from mental health watch by mental health staff at approximately 12:37 p.m. on October 22, 2005, and returned to the Special Management Unit at approximately 1:13 p.m. on October 22, 2005. Defendants deny the allegations of the thirteenth sentence, and in further answering state that the nurse did not have Mr. B's medications at the time of the medication pass at approximately 8:30 p.m. on October 22, 2005, but had informed Mr. B that he would bring him his medication at the end of the medication pass, and a different nurse returned at approximately 9:45 p.m. on October 22, 2005 with Mr. B's medications. Defendants admit the allegations of the fourteenth sentence that the nurse and officer found Mr. B hanging from the bars on his cell window at approximately 9:45 p.m. on October 22, 2005, approximately one hour and fifteen minutes after the nurse conducted the medication round at 8:30 p.m. on October 22, 2005. Defendants admit the allegations of the fifteenth sentence only to the extent that Mr. B wrote "Dust in the wind" with soap, and in further answering state that he wrote it on his soap enclosure, not his cell desk, and that Mr. B also had written "Love, [peace sign] and dead police! May I rest in peace or get a tan in Hell at least" on his mirror. Defendants admit the allegations of the sixteenth sentence only to the extent that the Department of Correction conducted a mortality review after Mr. B's death, but deny the remaining allegations of this sentence.

44. Defendants admit the allegations of the first sentence only to the extent that Mr. C committed suicide by hanging in the Special Management Unit at SBCC on

January 29, 2007, but in further answering state that Mr. C was 37 years old at the time. The defendants are without sufficient information to form a belief as to the veracity of the factual allegations in the third sentence and, in further answer, defendants state that Mr. C denied receiving any inpatient mental health treatment or having any other mental health history prior to incarceration. In further answer, defendants state that Mr. C had once been diagnosed by a psychiatrist with Psychotic Depression in Remission and that, on or about April 14, 2006, a clinician from Bridgewater State Hospital diagnosed Mr. C with Dysthymic Disorder and Personality Disorder with Borderline Features. Defendants admit the allegations of the third sentence to the extent that Mr. C had attempted to kill himself on a prior occasion, on May 1, 1995 at Bridgewater State Hospital before his conviction to the Department of Correction, but are without sufficient information as to whether this attempt was in segregation and that while in the SMU on March 18, 2006, two days after being cleared by a mental health clinician for entry into segregation, Mr. C attempted to hang himself, ingested foreign objects and superficially cut his arms, wrists and legs. Defendants admit the allegations of the fourth sentence. Defendants admit the allegations of the fifth sentence only to the extent that Mr. C did break apart his breathing machine and, in further answer, state that Mr. C ingested pieces of the machine and superficially cut his arms, wrists and legs. Defendants admit the allegations of the sixth sentence only to the extent that he ingested parts of the machine. Defendants admit the allegations in the seventh sentence. Defendants admit the allegations in the eighth sentence only to the extent that this incident resulted in his transfer to Bridgewater State Hospital where he went for an evaluation pursuant to G.L. c. 123, § 18(a) and Mr. C was returned to SBCC approximately one month later when the evaluating psychiatrist opined

that Mr. C did not require ongoing psychiatric hospitalization secondary to being at risk to himself or others by reason of mental illness. In further answer, defendants state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. In further answer, defendants state that the evaluating psychiatrist found that Mr. C demonstrated little motivation to engage in any treatment while at Bridgewater and had been resistant to efforts to integrate him into population, but that Mr. C had stabilized. Defendants admit the allegations of the ninth sentence only to the extent that the evaluating psychiatrist believed that Mr. C's suicide attempt was "an impulsive reaction to unbearable feelings in conjunction with his being socially isolated and without his usual sources of support" and deny that the clinician made any specific reference to segregation.

45. Defendants admit the allegations of the first sentence, and in further answering state that Mr. D is currently serving a fourteen-month sentence in the DDU for assaulting another inmate with a weapon, causing lacerations and puncture wounds to the other inmate. Defendants deny the allegation in the second sentence that Mr. D is diagnosed with "severe depression" and defendants are without sufficient information to form a belief as to the veracity of the remainder of the allegations in this sentence, and in further answering, state that Mr. D may have received psychiatric treatment for hyperactivity in childhood and that a provider diagnosed Mr. D with a Generalized Anxiety Disorder in 1995. In further answer, defendants state that Mr. D has been diagnosed by a psychiatrist with Antisocial Personality Disorder, Polysubstance

Dependence and a Rule-Out Adjustment Disorder with Depressed Mood v. Depressive Disorder Not Otherwise Specified, based on self-reported symptoms. In further answer, defendants state that on April 5, 2007, a psychiatrist opined that, although Mr. D self-reported signs and symptoms of situational depression, Mr. D is not currently clinically depressed or suicidal. Defendants deny the allegations in the third sentence. In further answer, defendants state on August 24, 2005, during chow time and in front of a correction officer, Mr. D placed a razor in his mouth, drank water and then said, "Now medical will see me." In further answer, defendants state that on or about November 28, 2006, Mr. D sent a letter to the Central Office Grievance Coordinator, in which he claimed to have swallowed razor blades and, upon receipt of such letter on December 1, 2006, Mr. D was taken to a hospital and x-rayed, but no razors were found. Defendants deny the allegations of the fourth sentence and, in further answer state that Mr. D has not been transferred or committed to Bridgewater State Hospital since his present term of incarceration began in 1996. Defendants admit the allegations in the fifth sentence only to the extent that Mr. D has reported chronic back pain and, in further answering, state that qualified medical providers have treated Mr. D's reported back pain and Mr. D has received medication for this condition. Defendants deny the allegations of the sixth sentence and, in further answering, state that Mr. D has self-reported that he feels depression, secondary to alleged inappropriate treatment of back pain. Defendants deny the allegations in the seventh sentence and, in further answering, state that, on or about April 5, 2007, a psychiatrist reported that Mr. D denied suicidal ideas and that this psychiatrist opined that Mr. D is not clinically depressed or suicidal.

46. Defendants admit the allegations of the first sentence only to the extent that Mr. E is a 28-year-old inmate currently confined in the DDU and in further answering state that Mr. E returned to the DDU on April 25, 2007 from Bridgewater State Hospital, where Mr. E had been placed on February 28, 2007 pursuant to G.L. c. 123, § 18(a). In further answer, defendants state that on or about April 23, 2007, a clinician from Bridgewater State Hospital opined that Mr. E "does not suffer from a mental illness as defined by relevant DMH regulations. As the previous evaluators opined, there is no current data that suggest his behavioral problems, either post or present have been due to any identifiable mental illness." The defendants are without sufficient information to form a belief as to the allegations of the second and third sentences. The defendants deny the allegations of the fourth sentence, but in further answering state that Mr. E had been housed almost continuously in the DDU for greater than two years, resulting from numerous disciplinary convictions for assaults on staff, inciting other inmates to assault staff, destruction of property, smearing and throwing feces, as well as threats of violence to staff. Defendants deny the allegations of the fifth sentence, but in further answering state that Mr. E is currently serving criminal sentences for assaults on correction officers. Defendants deny the allegations in the sixth sentence as this sentence references a non-referenced clinical conclusion, but in further answer state that, on February 28, 2007, in a petition to commit Mr. E to Bridgewater, an attending psychiatrist reported that Mr. E. was getting more depressed with impulses to cut or hang himself. In further answer, defendants state that on April 23, 2007, a clinician opined that Mr. E does not suffer from a mental illness as defined by DMH regulations. Defendants admit the allegations in the seventh sentence only to the extent

that while in segregation, on July 26, 2006, Mr. E swallowed a razor and battery in view of a correction officer and then said, "how can I be in my right state of mind...I just swallowed a battery and a razor. If you code up I'm fighting because I haven't taken my meds so I'm not responsible for my actions." On another occasion, August 2, 2006, Mr. E attempted to tear his sink off the wall of his cell and was jumping up and down on his bed frame trying to tear the shelf off the wall, when he exclaimed to a correctional officer, "Open my cell door, I got something for you," while he was waving a broken piece of plastic at the officer and while waiting for additional correctional officers to arrive, as another incident was occurring simultaneously involving another inmate, Mr. E tied a ligature around his neck with the other end tied to a vent; correctional officers entered Mr. E's cell, cut the ligature off when Mr. E could not untie it and escorted Mr. E to the HSU; a short time after Mr. E was removed from his cell, he threatened a correctional officer, informing him he was on his list and threatening to "get" him. Defendants admit the allegations in the eighth sentence only to the extent that anger and stress management were not utilized in the DDU and in further answering, defendants state that there is no record of Mr. E asking for therapies such as anger and stress management. In further answer, defendants state that the Department of Correction recently awarded a program contract to Spectrum Health System to provide non-residential treatment services for male offenders. The target population for this program will consist of inmates with a history of assaultive and/or disruptive behavior, inmates with gang affiliations, and inmates who have displayed generally high levels of resistance to treatment interventions. This program includes a High Risk Offender program to be delivered in the DDU. It will offer DDU inmates both group and individual intervention strategies designed to provide

information and rehearsal on a variety of skills which inmates' lack. The program will employ cognitive behavioral treatment as the major treatment methodology, covering a broad range of topics, including, cognitive restructuring, criminal thinking, anger management, choices and consequences, and social skills training. Where appropriate, the characteristics of motivational enhancement therapy will be used to engage this population in treatment. The program will also address treatment needs of inmates with mental health issues including PTSD or PTSD-like symptoms, and where necessary, employ learning techniques to address any learning deficits such as attention deficit disorder (A.D.D.), and/or attention deficit hyperactivity disorder (A.D.H.D.). The program contractor will coordinate services with the Department's mental health services provider. This contract went into effect April, 1, 2007. Spectrum has hired a staff person to facilitate this program. Spectrum is in the process of coordinating a training series about the program for the MCI-Cedar Junction staff and DDU correction officers on all 3 shifts. Defendants deny the allegations in the ninth sentence and in further answer, state that Mr. E's treatment plan of November 13, 2006 specified a *minimum* of once a month contact with a counselor and nurse, but that while at MCI-Cedar Junction Mr. E was seen by his counselor a minimum of two times per month for routine visits and that at least one of these two monthly visits occurred out of Mr. E's cell in the Multipurpose room of the DDU. In further answer, defendants state while Mr. E was in Bridgewater from February 28, 2007 through April 25, 2007, he received weekly psychiatric consultations, as well as weekly case administration (social work) contacts.

47. Defendants admit the factual allegation that Mr. F is a 30-year old inmate and deny that he is currently confined in 10 Block at MCI-Cedar Junction and that he has

been in segregation continuously for more than two years. In further answer, defendants state that Mr. F is a member of the Latin Kings who is serving a governing sentence for second-degree murder for his participation in a gang-related killing. His institutional record at the Department of Correction has been marked by numerous disciplinary reports, including reports for assaultive behavior toward inmates and staff. He was at Bridgewater State Hospital from December 8, 2005 through July 24, 2006 and from August 9, 2006 through October 31, 2006. He was confined in 10 Block from October 31, 2006 to November 18, 2006. He resided in the health services unit from November 18 to November 19, 2006, then returned to 10 Block November 19, 2006. On February 1, 2007, Mr. F. was transferred to general population at the Souza Baranowski Correctional Center and then to the Protective Custody Unit (L3) at Souza on February 7, 2007, where he currently resides. Defendants admit the factual allegation contained in the second sentence only to the extent that Mr. F. has received mental health diagnoses, and in further answer state that these diagnoses have included Antisocial Personality Disorder, Post Traumatic Stress Disorder and Major Depressive Disorder with Psychotic Features in Remission. Defendants admit the factual allegation that he has attempted suicide six times in the last two years, and in further answer, state that Mr. F's record indicates the following instances of self-injurious behavior: He cut his wrists on December 3, 2001. He attempted hanging on September 28, 2002 and January 1, 2003. He attempted hanging on June 16, 2004 and on June 21, 2004 at Bridgewater State Hospital. He cut his wrists in the DDU, requiring steri strips, on November 2, 2004. He attempted hanging on December 5, 2005 in the Special Management Unit at MCI-Norfolk. Defendants have insufficient information to form a belief as to the allegation in the fourth sentence as to

what Mr. F reports, and in further answer state that a Bridgewater State Hospital clinician opined that Mr. F. decompensates when held without stimulation for an indefinite period of time. Defendants deny the factual allegation that Mr. F remains in segregation at MCI-Cedar Junction.

48. Defendants admit the factual allegation in the first sentence that Mr. G is a 30-year-old inmate who is currently confined to the DDU at MCI-Cedar Junction. In further answer, defendants state that Mr. G. is serving sentences for rape of a child by force, indecent assault and battery on a child under 14, assault by means of a dangerous weapon and assault and battery. Mr. G has resided in the DDU since August 29, 2006 because he is serving a disciplinary sentence imposed for an incident that occurred on December 29, 2005. On that date, Mr. G came up behind a female clinician, employed by University of Massachusetts Medical School, while she was sitting in a chair. He grabbed her by the hair and shoulder and attempted to put her on the floor. The female clinician was seen crying, limping and yelling for help as she managed to escape from Mr. G. The female clinician had abrasions to her shin and wrist and had hair ripped from her head by Mr. G. The defendants deny the allegation in the second sentence, in that it suggests continuous confinement in segregation. In further answer, defendants state that from January 29, 2004 through December 29, 2005, Mr. G was in general population at North Central Correctional Institution at Gardner including brief stays in the HSU, then from December 29, 2005 through January 6, 2006, Mr. G was in the HSU at Gardner, then Souza Baranowski Correctional Center. From January 6, 2006 through August 2, 2006, Mr. G was in the SMU at Souza Baranowski. From August 2, 2006 through August 3, 2006, Mr. G was in the HSU and then was sent to Bridgewater State Hospital

for an evaluation pursuant to G.L. c. 123, § 18(a). Mr. G was discharged from Bridgewater to the DDU on August 29, 2006. In further answer, defendants state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. Defendants are without sufficient information to form a belief as to the veracity of the allegations in the third sentence. In further answer, defendants state that Mr. G has self-reported that he had behavior problems related to Attention Deficit Disorder as a child, had been on medications and received counseling. Defendants deny the allegations in the fourth sentence and in further answer, state that on or about April 5, 2007, a psychiatrist opined that Mr. G may be schizophrenic, as opposed to malingering. Defendants are without sufficient information to form a belief as to allegations in the fifth sentence and in further answer state that, on one occasion, on or about November 2, 2006, Mr. G told a clinician that he smashed his television because he was aggravated about news he had heard about a triple homicide involving his family. It appeared that Mr. G had not been compliant with his medications at that time. Defendants admit the allegations in the sixth sentence only to the extent that one occasion Mr. G smashed his television and in further answer, state that Mr. G told a clinician he did this because voices told him his family was murdered. Defendants deny the factual allegation in the seventh sentence that Mr. G has been transferred to Bridgewater State Hospital on several occasions but each time has been returned to the DDU within 30 days. In further answer, defendants state that Mr. G. was admitted to Bridgewater State Hospital on August 4, 2006 from the Souza Baranowski Correctional Center and discharged on August 29, 2006 to the DDU.

Further, defendants state that Mr. G was sent to Bridgewater for purposes of an evaluation, pursuant to G.L. c. 123, § 18(a) and that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. In further answer, defendants state that on or about August 23, 2006, a clinician at Bridgewater opined that although Mr. G may have some emotional issues, Mr. G's "current presentation is most consistent with malingering psychotic symptoms" based on a multitude of factors, including but not limited to the fact that Mr. G's presentation of his hearing voices is not consistent with the usual presentation of psychosis, Mr. G's thought process is well-organized and linear, he has good memory and concentration abilities, and Mr. G has "elaborated his symptoms in ways that he has not otherwise presented." This clinician opined that Mr. G did not present with genuine signs and symptoms of mental illness and Mr. G was discharged from Bridgewater to the DDU.

49. Defendants admit the allegations in the first sentence to the extent that Mr. H is an inmate currently confined in the DDU at MCI-Cedar Junction and, in further answering, defendants state that Mr. H turned 42 on April 20, 2007. Defendants deny the factual allegations in the second sentence, and in further answering, defendants state that Mr. H first entered segregation in April 2002 after receiving a disciplinary report for punching and biting a correction officer and that in addition to being confined in either the SMU or DDU, Mr. H has also spent periods of his confinement at Bridgewater State Hospital and Health Services Units in different institutions. Defendants deny the factual allegations in the third sentence in that this sentence refers to Mr. G, not Mr. H and, in

further answering, defendants deny that the Department of Correction has any record of Mr. H being diagnosed with Bipolar Disorder and in further answering state that in August 2006, Mr. H was diagnosed with "Personality Disorder NOS, Narcissistic, and Antisocial" and Mr. H's March 2007 treatment plan notes an initial diagnosis of Mood Disorder and Antisocial Personality Disorder. Defendants deny the allegations in the fourth sentence. Defendants admit the allegations in the fifth sentence only to the extent that Mr. H has been hospitalized at Bridgewater State Hospital during his present incarceration and, in further answering, defendants state that Mr. H has been sent to Bridgewater State Hospital three times during his present incarceration for purposes of evaluation pursuant to G.L. c. 123, § 18(a) and that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. In further answering, defendants state that in October 2004, a case conference determined that he would neither return to the DDU nor general population, but would be placed in segregation with close monitoring. Defendants admit the allegations in the sixth sentence only to the extent that on two of the three occasions when Mr. H returned from Bridgewater, Mr. H was placed back in the DDU. Defendants deny any characterizations alleged in this sentence and, in further answering, defendants state that when Mr. H was discharged from Bridgewater in March 2003 and September 2003, the discharge notes did not contraindicate segregation placement and that after the third Bridgewater discharge, which occurred after the October 2004 case conference where it was determined Mr. H would not immediately return to the DDU, Mr. H was first sent to the Health Services Unit at MCI-Cedar

Junction before going to the SMU/10-Block at MCI-Cedar Junction. Defendants admit the factual allegations of the seventh sentence only to the extent that Mr. H has received numerous disciplinary reports while in the SMU and DDU, pursuant to 103 CMR 430, and, in further answering, defendants state that Mr. H's behaviors that resulted in disciplinary reports were numerous, including but not limited to, assaulting correctional officers with weapons, assaulting correctional officers with feces and possession of weapons. Defendants deny the allegations in the eighth sentence and, in further answering, state that being found guilty of disciplinary infractions may result in any inmate not receiving a thirty-day credit against his DDU sentence and that any sanctions imposed as the result of disciplinary reports are imposed in accordance with 103 CMR 430.

50. Defendants admit the factual allegations in the first sentence and, in further answering, state that Mr. I, who entered 10 Block on September 19, 2006, was released to general population at MCI-Cedar Junction on February 16, 2007, where Mr. I currently resides, because of contraindications for an indeterminate time in segregation. Defendants deny the allegations in the second sentence. In further answering, defendants state Mr. I was in general population at MCI-Cedar Junction from September 28, 2004 through October 14, 2004, again from April 20, 2006 through July 31, 2006 and from February 16, 2007 through the date of this Answer; Mr. I also spent approximately eighteen days in the Health Services Units at MCI-Cedar Junction and SBCC since October 2004; and Mr. I was at Bridgewater State Hospital from July 14, 2005 through August 11, 2005, from September 9, 2005 through February 28, 2006, from March 3, 2006 through March 27, 2006, from March 31, 2006 through April 20, 2006 and from

August 1, 2006 through August 8, 2006. Defendants admit the allegations in the fourth sentence only to the extent that Mr. I was transferred to Bridgewater State Hospital in the summer of 2005 and, in further answering, defendants state that Mr. I was transferred from SBCC to Bridgewater on July 14, 2005, where he remained until August 11, 2005. Defendants admit the factual allegation contained in the third sentence only to the extent that Mr. I has received mental health diagnoses, and in further answer state that the August 4, 2006 Bridgewater State Hospital G.L. c. 123, § 18(a) evaluator diagnosed him with signs and symptoms of depression. Defendants have insufficient information to form a belief as to the veracity of the factual allegation contained in the fourth sentence that Mr. I lost weight in the summer of 2005 as a result of depression, and in further answer, defendants state that a record dated July 2005 indicates that Mr. I lost about twenty pounds over an eighteen-month period and that Mr. I, along with other inmates, engaged in a hunger strike in June 2005, complaining that food portions were too small. Mr. I had six documented meals missed during the hunger strike. In further answer, defendants state that when Mr. I was discharged from Bridgewater in August 2005, Mr. I had regained his weight and that Mr. I told evaluators he had never lost his appetite, but claimed he was not given enough food at Souza Baranowski to maintain his weight. Defendants admit the allegations in the fifth sentence. Defendants deny the allegations in the sixth sentence as characterization of the admissions to Bridgewater as "cycl[ing] back and forth between Bridgewater and segregation." In further answering, defendants state that on or about July 14, 2005, September 9, 2005, March 3, 2006 and March 31, 2006, Mr. I went to Bridgewater from the Health Services Unit at SBCC and on August 1, 2006, Mr. I went to Bridgewater from the Health Services Unit at MCI-Cedar Junction;

when Mr. I returned from Bridgewater to MCI-Cedar Junction on April 20, 2006. Mr. I was sent to general population, and on Mr. I's return from Bridgewater to MCI-Cedar Junction on August 8, 2006, Mr. I first went to the Health Services Unit before being moved to the SMU. In further answering, defendants state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. Defendants admit the factual allegations in the seventh sentence only to the extent that Mr. I cut his throat in 2005 and that he was subsequently committed to Bridgewater State Hospital. In further answering, the defendants state that on September 8, 2005, which is still the summer, a mental health clinician was speaking to Mr. I from outside his cell in the SMU in an attempt to convince Mr. I to move to the Health Services Unit (HSU) and be on a mental health watch, but Mr. I refused, stating he had things to do, such as calling his son and watching the Patriots game, but when the mental health clinician again suggested Mr. I move to the HSU, Mr. I said "I'll...show you," then cut his throat with a razor; the length of the cut was approximately 4-5 inches. Correctional officers secured Mr. I and carried him to the HSU, where medical staff took over. Mr. I was transported that day to an outside hospital via ambulance; Mr. I returned from the outside hospital that same day. The following day, September 9, 2005, Mr. I was admitted to Bridgewater State Hospital pursuant to G.L. c. 123, § 18(a), where a mental health supervisor noted that Mr. I's neck had minor abrasions and that Mr. I reported being compliant with his medications. The defendants admit the allegations in the eighth sentence to the extent that Mr. I was discharged from Bridgewater State Hospital to the SMU at SBCC on February 28, 2006

and in further answering, state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. Defendants deny the factual allegation contained in the eighth sentence that segregation was contraindicated, and in further answer, state that the August 4, 2006 Bridgewater State Hospital G.L. c. 123, § 18(a) evaluator opined that Mr. I could tolerate a period of segregation that is time-limited and commensurate with his infractions. Defendants deny the allegation in the ninth sentence that Mr. I attempted suicide between February 28, 2006 and March 3, 2006 and in further answering, defendants state that Mr. I was returned to Bridgewater, pursuant to G.L. c. 123, § 18(a), on March 3, 2006 after Mr. I threatened to commit suicide. Defendants admit the allegations in the tenth sentence and, in further answering, defendants state that Mr. I was released from Bridgewater to the SMU at SBCC on March 27, 2006 and was recommitted to Bridgewater on March 31, 2006 after Mr. I, while on mental health watch in the SBCC HSU on March 30, 2006, tied the seam from his mattress around his neck, causing him to choke; correctional officers cut the seam away and Mr. I was then transported to an outside hospital by ambulance. Defendants admit the allegations in the eleventh sentence only to the extent that Mr. I was discharged from Bridgewater State Hospital in April 2006 to MCI-Cedar Junction. In further answer, defendants state that the decision to commit an inmate to Bridgewater State Hospital is solely a clinical decision governed by applicable Massachusetts laws, and that inmates who do not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. In further answering this eleventh sentence, defendants state that when Mr. I was

discharged from Bridgewater State Hospital on April 20, 2006, he went to general population in MCI-Cedar Junction, not 10 Block, and that Mr. I remained in general population until July 31, 2006, when Mr. I was moved to 10 Block after a correctional officer found pills in Mr. I's cell, for which Mr. I had no prescriptions. Defendants admit the allegations in the twelfth sentence only to the extent that Mr. I was transferred to 10 Block on September 19, 2006 to await disciplinary action for various charges, one of which was related to Mr. I lighting a fire in his cell and, in further answering, defendants state that on September 19, 2006, at approximately 7:40 P.M., Mr. I threatened a correctional officer; also on September 19, 2006, at approximately 11:08 P.M., a correctional officer responded to Mr. I's cell, where he had set fire to papers and other debris in his cell; after correctional officers extinguished the fire, Mr. I was seen to be brandishing a razor blade and he refused repeated orders to step to the cell bars to be cuffed; as a result, an extraction team was assembled and chemical agents had to be used in order to subdue Mr. I, who was then taken to the Health Services Unit. Defendants admit the allegations in the thirteenth sentence.

51. Defendants admit the allegations in the first sentence only to the extent that Mr. J is a 29-year-old inmate currently in the SMU at SBCC, where he has been for over one year and, in further answering, defendants state that Mr. J was initially placed in the SMU at SBCC on March 23, 2006 after Mr. J, while in general population in the Special Housing Unit at SBCC, struck another inmate and then placed him in a headlock; Mr. J is not awaiting an out-of-state transfer. In further answering, defendants state that since entering the SMU on March 23, 2006, Mr. J has accumulated approximately twenty-three disciplinary reports for numerous infractions, including but limited to

threatening correctional officers, assaulting other inmates and correctional officers with urine, possession of razors and engaging in a group demonstration and that Mr. J has several disciplinary reports pending. Defendants are without sufficient information to form a belief as to the veracity of the allegations in the second sentence. Defendants deny the allegations of the third sentence, and in further answer state that testing revealed that Mr. J's academic skills are commensurate with his language skills and are generally at third or fourth grade levels. In further answer to third sentence, defendants state that records indicate that Mr. J completed the tenth grade in his schooling, and that, while incarcerated, received the BRIGANCE® Comprehensive Inventory of Basic Skills test on March 4, 1999 and on May 16, 1999 as pre- and post- testing. Defendants deny the allegations in the fourth sentence. In further answer, defendants state that all inmates are tested at intake with the TABE (Test of Adult Basic Education) to ascertain their grade levels in math, reading and language, and that Mr. J was tested at MCI-Concord on March 1, 1997 and at OCCC on December 23, 2003. Defendants deny the allegations in the sixth sentence, and in further answering state that Mr. J has received the following diagnoses from psychiatry staff: Probable bipolar disorder diagnosed on February 9, 2007; Mood and psychotic disorder, Not Otherwise Specified, diagnosed on November 22, 2006; and Mood Disorder was suspected on October 3, 2006. Defendants deny the allegations in the fifth sentence.

52. Defendants admit the allegations in the first sentence only to the extent that Mr. K is currently a 33-year old inmate. In further answer, defendants state that Mr. K was diagnosed with Antisocial Personality Disorder in October 2005; Bipolar Disorder, Borderline Personality Disorder and Post-Traumatic Stress Disorder in May of 2005;

Bipolar Disorder and Post-Traumatic Stress Disorder in July of 2006; and Psychotic and Mood Disorder, Not Otherwise Specified, in October of 2006. In further answering, Mr. K was recently blinded in one of his eyes after he attacked another inmate in the gymnasium, and a third inmate struck him in the eye with a weapon. Defendants deny the allegations contained in the second sentence. Defendants admit that, as of the date of this Answer, Mr. K is not in segregation and admit that Mr. K. previously has been in segregation at Souza Baranowski Correction Center (SBCC) and two other facilities. Defendants deny the characterization that Mr. K has been in segregation at "several" facilities other than SBCC. By way of further answer to this second sentence, defendants state that Mr. K has also been in segregation at MCI-Norfolk and Old Colony Correctional Center. Defendants deny the allegation in the third sentence that Mr. K twice attempted suicide in 2006. By way of further answer, defendants state that on June 8, 2005, at approximately 9:45 A.M., after being cleared for placement in the SMU by medical staff and a mental health clinician, Mr. K was placed in the SMU at MCI-Norfolk; that same date, at approximately 11:00 A.M., Mr. K tied a sheet around his neck, stepped off the toilet in his cell, lowered himself to his knees and leaned forward so that the sheet strained against his neck; correctional officers cut the sheet with safety scissors. By way of further answer, defendants state that on September 13, 2005, at approximately 12:45 P.M, in the SMU at MCI-Norfolk, Mr. K was found standing on his bed with a sheet tied around his neck, with the other end tied to window bars; Mr. K informed a correctional officer that he would jump off his bed and hang himself if he did not see the superintendent; a short time later, Mr. K lifted his legs and placed his full weight against the sheet; correctional officers cut the sheet with a utility tool. Defendants

deny the allegations of the fourth sentence and, in further answering, state that on June 8, 2005, Mr. K had seen a mental health clinician at approximately 9:30 A.M. and was cleared for segregation placement at that time, and that correctional officers contacted correctional mental health staff at approximately 10:55 A.M., based upon the actions of Mr. K. By way of further answer, defendants state that on September 13, 2005, at approximately 12:45 P.M. Mr. K stated he would not talk to mental health staff, but that an individual from mental health was present outside Mr. K's cell when he lifted his legs and placed his weight against the sheet. Defendants deny the allegations in the fifth sentence of this paragraph and, in further answering, state that on June 8, 2005, medical staff, determined that Mr. K had a pulse, with an initial heart rate of 83, and was breathing before Mr. K was transported to an outside hospital (Norwood/Caritas). In further answer, defendants state that Mr. K was transported by the Norfolk Fire Department; and deny the allegation that he was transported out of the institution by helicopter. In further answer, defendants state that a doctor from UMASS intubated Mr. K in his cell. Inasmuch as the sixth sentence of this paragraph contains plaintiff's general characterizations of what occurred, along with a non-referenced medical conclusion, defendants have insufficient information to form a belief as to the veracity of the conclusory allegations set forth. By way of further answer, defendants state that when correctional officers were cutting the sheet from Mr. K's neck, Mr. K defecated in his pants and on the floor and that Mr. K was breathing and had a regular pulse when placed in an ambulance before being transported to an outside hospital. In further answer, defendants state that while in the ambulance, Mr. K spoke with correction officers and EMTs, wherein he indicated he did not want to be reclassified to MCI-Cedar Junction or

SBCC and threatened to continue to hang himself; Mr. K was released from the outside hospital that same day. Defendants admit the allegations of the seventh sentence only to the extent that Mr. K could be placed in segregation pursuant to applicable SMU regulations, 103 CMR 423.

53. Defendants admit the allegation in the first sentence that Mr. L is 24 years old, but deny that Mr. L is currently confined in the DDU at MCI-Cedar Junction and, in further answering, state that Mr. L is currently confined at Bridgewater State Hospital pursuant to G.L. c. 123, § 18(a). Defendants deny the allegations in the second sentence and deny the characterization that Mr. L has spent "most of" his time while incarcerated in the DDU. By way of further answer, defendants state that Mr. L's continuous term of confinement with the Department of Correction began on November 18, 2002, when Mr. L was twenty years old and that he has spent some of that time in the DDU, as well as in Bridgewater State Hospital, MCI-Concord and SBCC. Defendants admit the factual allegations contained in the third sentence only to the extent that Mr. L has had psychiatric diagnoses, and in further answer state that in March of 2007 he was diagnosed with Severe Borderline Personality and Post Traumatic Stress disorder. Defendants admit the allegations in the fourth sentence only to the extent that Mr. L has scars on his face, arms and leg. Defendants have insufficient information to form a belief as to the veracity of the allegation in the fifth sentence as to what Mr. L reports. In further answer, defendants state that Mr. L has swallowed objects, including glass from his television, cable wires and razors. Defendants admit the factual allegations in the sixth sentence only to the extent that Mr. L has been confined in Bridgewater State Hospital thirteen times during his present incarceration, and in further answer, state that inmates who do

not meet the statutory civil commitment criteria are discharged from Bridgewater State Hospital. The defendants admit the factual allegations in the seventh sentence only to the extent that Mr. L has new charges pending for crimes allegedly committed during his present incarceration and deny plaintiff's characterization of Mr. L's sentence. In further answer, defendants state that Mr. L's criminal sentence for assault and battery with a dangerous weapon, attempts to commit crimes and assaulting a correction officer commenced on or about November 18, 2002 and is scheduled to wrap on or about November 12, 2010. Defendants deny the factual allegations in the eighth sentence, and in further answer, state that on April 13, 2007, a Bridgewater State Hospital clinician opined that while Mr. L presents a risk of harm to self or others, this is not related specifically to mental illness. Defendants admit the factual allegations in the ninth sentence to the extent that Mr. L has charges of assault and battery with a dangerous weapon, assault and battery on a correctional officer and threats to commit a crime pending in Norfolk Superior Court and that these crimes were allegedly committed during his present incarceration and, in further answer, defendants state that Mr. L is presently serving consecutive sentences for convictions of assault and battery with a dangerous weapon, attempts to commit crimes and assaulting a correctional officer; the first of these charges stemmed from a period of time where Mr. L was civilly committed at Bridgewater State Hospital while awaiting trial on unarmed robbery charges where Mr. L repeatedly stabbed another patient at Bridgewater and that the remainder of the convictions stem from a later incident, also at Bridgewater where Mr. L stabbed another patient at Bridgewater then assaulted a female correction officer and held a shank to her neck. Defendants are without sufficient information to form a belief as to the veracity of

the allegations in the tenth sentence as to what Mr. L reportedly said to some unnamed person on an unspecified date.

54. Defendants admit the factual allegations in the first sentence. Defendants admit the factual allegations in second sentence only to the extent that Mr. M has been diagnosed with Delusional Disorder (Persecutory and Somatic Type) and Personality Disorder, Not Otherwise Specified (with Narcissistic and Histrionic Features). In further answer, defendants state that his current diagnosis is Severe Personality Disorder with Intermittent Psychosis with Obsessive Quality. Defendants are without sufficient information to form a belief as to the veracity of the factual allegations in the third sentence that Mr. M has "been hospitalized many times" including eight admissions to Bridgewater State Hospital, as these allegations are so broad as to encompass Mr. M's entire life and, in further answering, defendants state that since Mr. M began serving his current sentence for first-degree murder on March 21, 1991, Mr. M has been admitted to Bridgewater State Hospital eight times. Defendants admit the factual allegations in the fourth sentence only to the extent that Mr. M was in the SMU at MCI-Norfolk from November 3, 2005 through November 11, 2005 and reentered the MCI-Norfolk SMU on November 21, 2005. In further answering, state that prior to entering the SMU on November 3, 2005, Mr. M had been in general population at MCI-Norfolk from August 8, 2005 until November 3, 2005; prior to that Mr. M had been at Bridgewater State Hospital from February 24, 2004 through August 8, 2005. Defendants need make no response to the factual allegations contained in the fifth sentence of this paragraph because the mental health records speak for themselves. Defendants deny the factual allegations in the sixth sentence as to the reasons Mr. M received disciplinary reports and

defendants are without sufficient information to form a belief as to the veracity of the allegations as to what Mr. M supposedly believed about mental health staff. In further answer, defendants state that Mr. M. had a Rogers order for medication. By way of further answer, defendants state that, pursuant to 103 CMR 430, Mr. M has received approximately forty-seven disciplinary reports during his incarceration. Defendants admit the factual allegations in the seventh sentence and in further answer, state that such transfer was in accordance with applicable Massachusetts law. Defendants admit the allegations contained in the eighth sentence to the extent that a commitment petition was filed in September 2006, and in further answer state that the clinical opinion is that Mr. M's thinking has become increasingly paranoid and delusional, and his behavior disorganized since he was placed in segregation in MCI-Norfolk.

55. Defendants admit the allegations in the first sentence and, in further answering, state that Mr. N was confined in the SMU and the DDU, starting on September 3, 2002, pursuant to 103 CMR 423 and 103 CMR 430, until January 29, 2007, as a result of an incident where Mr. N, while in general population, was involved in a group confrontation among inmates where two inmates were stabbed. Defendants admit the factual allegations in the second sentence only to the extent that Mr. N has been diagnosed as very mildly mentally retarded with borderline intellectual functioning, is no longer in the DDU and, in further answering, state that Mr. N was released early from the DDU to general population in MCI-Cedar Junction on January 29, 2007 due to mental health contraindications, and that Mr. N since January 29, 2007, has been housed in general population at MCI-Cedar Junction. Defendants admit the allegations of the third sentence insofar as Mr. N has been diagnosed with Mild Mental Retardation (Borderline

Intellectual Functioning), and is unable to read or write, classifying this as a Reading Disorder, Disorder of Written Expression. By further answer, state that DOC records indicate Mr. N completed the eleventh grade, has requested to participate in the GED program, and is working with Literacy Volunteers of America. Defendants are without sufficient information to form a belief as to the veracity of the plaintiff's claim in the fourth sentence that Mr. N. has attempted suicide several times since age 13 and, in further answering, state that during his present incarceration, which began on May 30, 2000, Mr. N has no documented suicide attempts; on one occasion, August 1, 2005, Mr. N threatened to cut his wrists, but when the mental health clinician arrived Mr. N denied being suicidal and said he made false threats in an attempt to get attention from staff; Mr. N did not cut his wrists. Defendants deny the allegations of the fifth sentence, but in further answer state that, on April 9, 2007 while housed in general population, Mr. N complained to mental health staff that he was hearing voices and not sleeping, and Mr. N appeared anxious and irritable. Defendants admit the allegations of sixth sentence. Defendants admit the factual allegations on the seventh sentence only to the extent that Mr. N was in the DDU or an SMU from September 3, 2002 until January 29, 2007, with the exception of a total of approximately eight days where Mr. N was in the HSU in MCI-Cedar Junction and SBCC.

56. Defendants admit the factual allegations in the first sentence of this paragraph only to the extent that Mr. O is a 32-year old inmate currently confined in the DDU and, in further answering state that Mr. O has been in the DDU for approximately two years and seven months as a result of guilty findings on numerous disciplinary charges, including but not limited to, assaulting another inmate, assaulting a correctional

officer, possession of a weapon, destroying property after escaping from his cell as well as breaking through the individual exercise enclosure, resulting in Mr. O being sentenced to a total of four years and three months in the DDU. In further answering, Mr. O's current scheduled release date from the DDU predates Mr. O's scheduled release date from prison. The defendants are without sufficient information to form a belief as to the veracity of the factual allegations in the second sentence that Mr. O has a long history of "mental health issues" starting in the third grade, but, in further answer, states that Mr. O's record reflects that he has had a history of mental health issues since childhood. The defendants deny the allegations of the third sentence, and in further answering, state that Mr. O has been diagnosed with mood disorder, not otherwise specified; general anxiety disorder; and bipolar disorder and segregation placement has not been contraindicated for Mr. O. Defendants deny plaintiff's characterization, contained in the fourth sentence, of Mr. O's actions in the DDU, in every instance, as being suicide attempts and admit the factual allegations that Mr. O has been placed in four-point restraints several times while in the DDU. In further answer, defendants state that on December 30, 2005, while in 10 Block in MCI-Cedar Junction, Mr. O complained of a toothache and threatened to kill himself if he was not brought to the Health Services Unit, at which time, Mr. O held a piece of a plastic fork against his throat but did not injure himself; on March 22, 2006, while Mr. O was in 10 Block in MCI-Cedar Junction, a correctional officer found that Mr. O's ankles were bleeding and that Health Services believed the wounds to be self-inflicted, although Mr. O claimed the wounds were caused by ankle restraints; on May 19, 2006, while in 10 Block in MCI-Cedar Junction, a correctional officer found Mr. O in his cell, squatting by his sink with a ligature around his neck, with the other end tied to a

fire alarm, and that Mr. O stood up various times to relieve pressure from his neck, and when the response team arrived, Mr. O removed the ligature; on May 30, 2006, while in 10 Block in MCI-Cedar Junction, a correctional officer found Mr. O standing on the sink in his cell with a towel wrapped around his neck, but without the other end of the towel attached to anything, and Mr. O threatened to hang himself; on October 5, 2006, Mr. O, while in the DDU, covered his cell window and then cut his right wrist with a paper clip; on December 14, 2006, at approximately 11:05 A.M., Mr. O, while in the DDU was seen by a correctional officer to take a torn piece of sheet and wrap it around his neck; on December 14, 2005, at approximately 3:21 P.M., Mr. O, while in the DDU, was found with a bed sheet around his neck. In further answer, defendants state that Mr. O was placed in four-point restraints in accordance with 103 CMR 505.00. Defendants deny the allegations in the fifth sentence of this paragraph, but, in further answer, state that the medical record does indicate that Mr. O has, at times, had difficulty sleeping, and has presented as angry, agitated, anxious, and aggravated to mental health staff on several occasions. Defendants are without sufficient information to form a belief as to the veracity of the allegation in the sixth sentence as to what Mr. O has reported to unknown individuals about December 2006. In further answering, defendants state that records indicate that Mr. O cut his wrist in December 12, 2006, and, in further answering, was thereafter removed from his cell to an observation room in the DDU. Defendants are without sufficient information to form a belief as to the veracity of the allegations in the seventh sentence because no time frame is provided and in further answer, defendants state that to the extent this sentence appears to refer to December 12, 2006, defendants deny the allegations and further state that on December 12, 2006, at approximately 3:00

P.M, Mr. O smeared feces over his cell window and himself, protesting that fact the mental health had placed him on "eyeball watch" and that Mr. O was placed in the shower, given a new smock and placed in a new cell that same day.

57. Defendants admit the allegations in the first sentence to the extent that Mr. P is a 27-year old inmate, and, in further answer, state that he has been diagnosed with post-traumatic stress disorder; major depression with psychotic features; and anxiety disorder, not otherwise specified. Defendants admit the factual allegations in the second sentence to the extent that Mr. P was transferred out of the SMU at SBCC in December 2006 and defendants deny so much of the second sentence that characterizes Mr. P's placement in the SMU as being a year and a half in duration for the sole purpose of awaiting an out-of-state transfer and, in further answering, defendants state that Mr. P was placed in the SMU at SBCC on October 4, 2005 because of verbal altercations Mr. P had with several inmates in the Special Housing Unit (SHU) at SBCC and that, after one such altercation, another inmate in the SHU threatened to kill Mr. P; Mr. P also had numerous enemy issues and a gang had issued an "order" to kill Mr. P. In further answer defendants state that Mr. P was not finally recommended for out-of-state transfer until March 2, 2006, when Mr. P's appeal from the Classification Board's December 2005 preliminary recommendation of out-of-state transfer, due to Mr. P's protective custody needs and enemy situation, was denied. By way of further answer to the second sentence, defendants state that Mr. P remained in the SMU from October 4, 2005 until December 19, 2006, a period of approximately one year and two months, when it was determined that the out-of-state transfer was no longer necessary as Mr. P did not have any enemy issues in the SHU at SBCC at that time and Mr. P was released to general population in

the SHU on December 19, 2006. Defendants are without sufficient information to form a belief as to the veracity of the allegations in the third sentence of this paragraph.

Defendants admit the allegations of the fourth sentence insofar that Mr. P is currently taking anti-anxiety and anti-depressant medications, and, in further answer, is also taking a medication for insomnia. Defendants deny the allegations in the fifth sentence and, in further answering, state that on December 5, 2005, after being told he was being recommended for an out-of-state placement, Mr. P said "the only way I'm going out of state is in a body bag;" on December 27, 2005, Mr. P held a razor blade against his throat and threatened self-harm; and on September 11, 2006, Mr. P suggested he would commit suicide if he were not transferred to another institution. Defendants deny the allegations contained in the sixth sentence, and, in further answer, state that Mr. P's clinician informed Mr. P, by letter, on September 28, 2006, that there are problems created for him by lengthy segregation, and that this letter was brought to the attention of the Superintendent by an attorney from Massachusetts Correctional Legal Services, Inc. on or about December 7, 2006. Defendants deny the characterizations in the seventh sentence and, in further answering, state that Mr. P was released from the SMU on December 19, 2006. Defendants deny the allegations in the eighth sentence.

58. Defendants admit the factual allegations in the first sentence only to the extent that Mr. Q is a 28-year-old inmate and that, since May 2006, Mr. Q has spent much of that time in segregation units and deny so much of the first sentence that implies Mr. Q was continuously confined in segregation at North Central Correctional Institution at Gardner (NCCI Gardner) from the commencement of his sentence until February 2007. In further answering, defendants state that from June 1, 2005, when Mr. Q began serving

his current sentences for convictions of mayhem and assault and battery with a dangerous weapon, until November 8, 2005, Mr. Q was in general population at MCI-Concord, with the exception of about five days when Mr. Q was in the Health Services Unit; from November 1, 2005 until May 12, 2006, Mr. Q was in general population at MCI-Norfolk, with the exception of two days where he was in the Health Services Unit; from May 12, 2006 until July 24, 2006, Mr. Q was in the SMU at MCI-Norfolk; from July 24, 2006 through July 28, 2006, Mr. Q was in the Health Services Unit at MCI-Norfolk; on July 28, 2006, Mr. Q entered general population at MCI-Shirley (Medium) and then went into the Health Services Unit for three days; from July 31, 2006 until August 13, 2006, Mr. Q was in general population at MCI-Shirley; from August 13, 2006 through November 28, 2006, Mr. Q was in the SMU at MCI-Shirley, with the exception of five days where he was in the Health Services Unit; from November 28, 2006 through November 30, 2006, Mr. Q was in general population at SBCC; from November 30, 2006 through December 4, 2006, Mr. Q was in Health Services Unit at SBCC; from December 4, 2006 through February 27, 2006, Mr. Q was in the SMU at NCCI Gardner, with the exception of three days where he was in the Health Services Unit at NCCI Gardner; and from February 27, 2007 to the present, Mr. Q has been in the Protective Custody Unit at SBCC. Defendants are without sufficient information to form a belief as to the veracity of the allegation in the second sentence that Mr. Q has a "long history" of mental illness, but, in further answer, state that records indicate that Mr. Q has been treated for mental health issues since his childhood, and that he has been diagnosed with bipolar disorder, not otherwise specified, and personality disorder with borderline and antisocial traits. Defendants admit the factual allegations in the third sentence. Defendants admit the factual

allegations in the fourth sentence only to the extent that Mr. Q has been placed on mental health watch several times and that while in the SMU at MCI-Norfolk on July 24, 2006, Mr. Q cut himself on the left forearm and that at MCI-Shirley on November 15, 2006, Mr. Q tied a sheet around his neck, with the other end tied to a vent and, in further answering, defendants state that on July 24, 2006, Mr. Q stated he cut his arm because he was bored, wanted attention and wanted to speak to mental health and that on November 15, 2006, Mr. Q's actions, in placing the sheet around his neck, began after he was told that the Classification Board recommended that he be moved to SBCC and that later that afternoon, while in the Health Services Unit, Mr. Q stated he wanted to stab a correctional officer because of the classification decision. Defendants admit the factual allegations in the fifth sentence only to the extent that Mr. Q banged his head against the wall several times on January 9, 2007 and, in further answering, defendants state that these events occurred while Mr. Q was in the Health Services Unit. Defendants are without sufficient information to form a belief as to the veracity of the allegations in the sixth sentence about what Mr. Q supposedly "reports" to unnamed persons. Defendants admit the factual allegations of the seventh sentence only to the extent that Mr. Q takes Klonopin for agitation and anxiety, Valproic Acid for mood stabilization, Elavil as an anti-depressant, Haldol as an anti-psychotic, and Cogentin as an anticholinergic.

59. Defendants admit the factual allegations of the first sentence. Defendants are without sufficient information to form a belief as to the veracity of the factual allegation contained in the second sentence that Mr. R. is dyslexic, attended special education classes throughout his schooling, and in further answer state that Mr. R. has reported that he is dyslexic and has attended special education classes throughout his

schooling. Defendants are without sufficient information to form a belief as to the veracity of the factual allegation in the third sentence that Mr. R was placed in a mental institution when he was 14 years old. Defendants admit the factual allegations in the fourth sentence only to the extent that Mr. R was at Bridgewater State Hospital for a thirty-day period and that Mr. R's placement in the SMU at SBCC in July 2005 was due to Mr. R having enemies in general population at both MCI-Cedar Junction and SBCC and, in further answering, defendants state that Mr. R has been in protective custody due to enemy issues and that Mr. R also told Department of Correction officials he had enemy issues and refused a prior placement in general population at MCI-Cedar Junction for that reason. In further answer, defendants state that Mr. R entered the SMU at SBCC on July 21, 2005, after having been in general population, where he remained until August 12, 2005. On August 12, 2005, Mr. R was moved back to general population at SBCC, where he remained until September 24, 2005. Mr. R reentered the SMU at SBCC on September 24, 2005, where he remained until November 8, 2005. From November 8, 2005 until November 15, 2005, Mr. R was back in general population at SBCC. From November 15, 2005 until August 21, 2006, Mr. R was in the SMU at SBCC. From August 21, 2006 through August 29, 2006, Mr. R was in the Health Services Unit at SBCC. From August 29, 2006 through November 24, 2006, Mr. R was in the SMU at SBCC; from November 24, 2006 through November 27, 2006, Mr. R was in the Health Services Unit at SBCC; from November 27, 2006 through December 27, 2006, Mr. R was at Bridgewater State Hospital; from December 27, 2006 through February 23, 2007, Mr. R was at the SMU at SBCC; from February 23, 2007 through February 26, 2007, Mr. R was in the Health Services Unit at SBCC; from February 26, 2007 through April 12,

2007, Mr. R was in the SMU at SBCC and from April 12, 2007 through April 24, 2007, Mr. R was in the HSU. In further answer, defendants state that on April 24, 2007, Mr. R. entered general population at MCI-Shirley. Defendants admit the factual allegations contained in the fifth and sixth sentences of this paragraph to the extent that these allegations set forth what Mr. R. reported. Defendants admit the factual allegations contained in the seventh sentence to the extent that Mr. R. refused antipsychotic medication in prison and was medication compliant in Bridgewater State Hospital. Defendants admit the factual allegations contained in the eighth sentence only to the extent that Mr. R's symptoms abated, that he was returned the special management unit at SBCC, and that the discharging clinician had opined that "[i]f either a protracted period in segregation and/or lengthy delay in settling his classification and legal issues should compromise this belief system, Mr. [R] will likely decompensate and quite possibly need a period of inpatient psychiatric hospitalization." In further answer, defendants state that Mr. R has not since returned to Bridgewater State Hospital.

Deliberate Indifference

60. Defendants deny all allegations contained in this paragraph.

61. Defendants need make no response to the allegations contained in this paragraph since the report of the Governor's Special Advisory Panel on Forensic Mental Health speaks for itself.

62. Defendants deny the factual allegation that the name of DOC's mental health vendor in 1990 was "Prison Mental Health Service," and in further answer state that said vendor was Goldberg Medical Associates. Defendants lack sufficient information to respond to the factual allegation that there were extensive discussions.

Defendants need make no response to the allegations concerning the content of the letter referenced in this paragraph because the letter speaks for itself. In further answer, defendants assert that the proposal set forth in the letter was founded upon the expectation of statutory changes that would close the Treatment Center for Sexually Dangerous Persons, and that such statutory changes did not occur. Defendants deny the characterization that inmates “languish” in segregation, and deny the characterization that individuals mentioned by name in the letter “are inappropriately and unnecessarily housed in segregation.” In further answer, defendants state that of the seven inmates identified by name in the letter as spending time in segregation, three are no longer in custody, one is at Bridgewater State Hospital, one cannot be identified because of the commonality of his name, one is in segregation at Old Colony Correctional Center, and one is in the DDU, having murdered another inmate while housed in a protective custody unit. Defendants deny the characterization that said inmates “remain” in segregation, inasmuch as the characterization incorrectly suggests continuous segregation since 1990.

63. Defendants need make no response to the allegations regarding the content of the “Salvi” report because the report speaks for itself.

64. Defendants need make no response to the allegations regarding the content of the Report of the Mental Health Services Subgroup because the report speaks for itself. In further answering, defendants state that the recommendations made by this Subgroup were taken into account in developing the Request for Response for the contract for vendor health services, which is scheduled to be implemented on July 1, 2007.

65. Defendants need make no response to the allegations regarding mortality reviews and the Hayes report because these reports speak for themselves. Defendants

deny the allegations that DOC hired consultants to conduct mortality reviews after the suicides of Mr. A and Mr. B, and, in further answer, state that the DOC had contracted with consulting psychiatrists to review mortality reviews prior to the date of the suicide of Mr. A. The defendants deny the remaining allegations in the paragraph. In further answer, defendants state that the Hayes Report, dated January 31, 2007, made 29 recommendations; the Department's planning process to address the recommendations began on February 6, 2007; the Department issued a comprehensive corrective action plan on February 12, 2007 that prioritized the time frame for the implementation of each recommendation, identified the managers and divisions responsible for ensuring sustained corrective action, identified the intended product and outcome, and identified the appropriate systems and processes to ensure monitoring, oversight and continuity; and the Department continues to implement the Hayes Report recommendations.

66. Defendants deny the allegations in the first sentence of this paragraph and, in further answering, state that in 2002, Dr. Kenneth Appelbaum provided a five-page document to Department of Correctional personnel at a meeting; this five-page document was entitled, "Proposed DDU Exclusionary and Diversionary Criteria," and suggested an alternative unit for DDU inmates who had certain Axis I and Axis II disorders; this "proposal" did not suggest a new "high-security residential treatment facility," but rather a combined mental health/behavioral health unit, consisting of a total of fifteen to twenty beds, as well as the use of RTU segregation cells as an alternative. Defendants admit the allegations in the second sentence only to the extent that this single proposal included brief discussions of staffing, some selection criteria and a general overview of some possible components of programming and defendants deny the remainder of the

allegations in the second sentence, including the characterization of this proposal as "comprehensive." In further answering, defendants state that the proposal included a suggestion of "phase level programming," whereby the inmates would begin at level one in a 23-hour lock-down with no privileges, and whereby privileges would be added upon attainment of behavioral expectations, including self-control of inappropriate behaviors. It was recognized that some inmates may be ineligible for the highest level due to their offenses. Defendants admit the allegations in the third sentence only to the extent that this proposal was not implemented, and defendants deny the allegations that there were several proposals that have been rejected. In further answer to this paragraph, defendants state the following: The outstanding Request for Response for Comprehensive Health Services to the Massachusetts Prison Population, which was issued on December 15, 2006, requires that bidders submit a proposal for a 60-bed maximum security residential treatment unit for inmates with serious and persistent mental illness to open on July 1, 2007, and additionally, a 15-bed male behavioral management unit and the establishment of behavioral management services at MCI-Framingham. The DOC is evaluating the responses of six bidders, and the contract commencement date will be July 1, 2007. In accordance with Recommendation 8 of the Hayes Report, an assessment has been conducted of Block 9 at MCI-Cedar Junction to function as a Behavioral Management Unit for ten inmates and an assessment of a block at the Souza-Baranowski Correctional Center to function as an alternative to segregation, to determine the costs and work needed to establish such unit, called the Behavioral Management Unit.

67. Defendants need not make any response to the allegations contained in this paragraph for the reason that the record of the March 20, 2006 legislative hearing speaks for itself.

68. Defendants admit that the DOC commissioned a suicide prevention assessment, but, by way of further answer, the commission date was in July, not September, of 2006, and further state that the DOC is continuing to use Mr. Hayes as a consultant in DOC's implementation of his recommendations. Defendants need make no response to the content of the Hayes Report in the second and third sentences, as the Hayes Report speaks for itself. By way of further answer, defendants state that the pending Request for Response for a new contract for medical and mental health services, which requires mental health staffing for a residential treatment unit at maximum security, was released to the public on December 16, 2006, and takes effect on July 1, 2007.

69. Defendants deny all allegations contained in this paragraph.

70. This paragraph contains a recitation of case law and legal argument, and therefore, no responsive pleading is required. By way of answering further, defendants state that no reported state or federal case decisions have held that the Massachusetts Department of Correction has engaged in any constitutional violations by its use of segregation, that the Supreme Judicial Court in Torres v. Commissioner, 427 Mass. 611 (1998) specifically held that the use of, and placement of inmates in, the DDU was not unconstitutional, and that the Supreme Judicial Court in Libby v. Commissioner, 385 Mass. 421 (1982) held that placement of inmates in 10 Block was not unconstitutional.

71. Defendants deny the factual allegation that each of the individual defendants is aware of each report and recommendation described in the complaint.

COUNT I

72. Defendants repeat and incorporate by reference their responses to paragraphs 1 through 71 of the complaint.

73. This paragraph contains legal conclusions that do not require a responsive pleading. To the extent a response is required, defendants deny all allegations contained in this paragraph.

74. Defendants deny the allegations contained in this paragraph.

75. Defendants deny the allegations contained in this paragraph.

76. Defendants deny the allegations contained in this paragraph.

COUNT II

77. Defendants repeat and incorporate by reference their responses to paragraphs 1 through 71 of the complaint.

78. This paragraph contains legal conclusions that do not require a responsive pleading. Defendants are also without sufficient knowledge to admit or deny the allegations stated therein. To the extent an answer is required, defendants deny the allegations contained in this paragraph.

79. Defendants admit the factual allegation that the Department of Correction receives some federal funds.

80. Defendants deny the allegations contained in this paragraph.

81. Defendants deny the allegations contained in this paragraph.

82. Defendants deny the allegations contained in this paragraph.

COUNT III

83. Defendants repeat and incorporate by reference their responses to paragraphs 1 through 71 of the complaint.

84. This paragraph contains legal conclusions that do not require a responsive pleading. Defendants are also without sufficient knowledge to admit or deny the allegations stated therein. To the extent an answer is required, defendants deny the allegations contained in this paragraph.

85. Defendants admit that DOC is a public entity.

86. Defendants deny the allegations contained in this paragraph.

87. Defendants deny the allegations contained in this paragraph.

88. Defendants deny the allegations contained in this paragraph.

89. Defendants deny the allegations contained in this paragraph.

PRAYER FOR RELIEF

Defendants deny that the plaintiff is entitled to the relief requested.

DEFENSESFirst Defense

The complaint fails to state a claim upon which relief can be granted, including claims under the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

Second Defense

The plaintiff failed to exhaust available administrative remedies.

Third Defense

The plaintiff lacks associational standing.

Fourth Defense

No request for reasonable accommodations were made under the Americans with Disabilities Act and Rehabilitation Act by inmates.

Fifth Defense

Plaintiff, nor the class of inmates it purports to represent, does not suffer from a “disability” as is defined in the Americans with Disabilities Act and Rehabilitation Act.

Sixth Defense

Any actions taken by the named defendants, the Department of Correction and its employees, agents, and employees and agents of its vendors, were the result of the inmates’ own actions.

Seventh Defense

The defendants reserve the right to add additional defenses.

For the Defendants,

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 7, 2007

Dated: May 7, 2007

/s/ William D. Saltzman
William D. Saltzman