STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. _______________

ROCKY DEWALT, ROBERT PARHAM, ANTHONY MCGEE, and SHAWN BONNETT, individually and on behalf of a class of similarly situated persons, Plaintiffs, v. ERIK HOOKS, in his official capacity as Secretary of the North Carolina Department of Public Safety, and THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendants.	)	**CLASS ACTION COMPLAINT**

1. Almost 130 years ago, the Supreme Court of the United States acknowledged the grave impact of subjecting people to solitary confinement:

> A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.[1]

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[1] *In re Medley*, 134 U.S. 160, 168 (1890).

2. In the time since, scientific research has confirmed what was already plain to see: solitary confinement is a cruel punishment that creates substantial risks of psychological and physiological harm. Healthy people subjected to solitary confinement become sick; unhealthy people become worse. Typical adverse effects include depression, panic, paranoia, anxiety, self-mutilation, suicidal ideation, suicide attempts, cardiovascular disease, hallucinations, extreme social withdrawal, and exacerbation or recurrence of preexisting mental illness. These effects often begin within just a few hours or days of placement in solitary, and do not necessarily end when the placement does. People who leave solitary often continue to suffer from severe social withdrawal, symptoms associated with post-traumatic stress, and increased risks of suicide and drug overdose.

3. A growing chorus of medical professionals, courts, and public officials have acknowledged the potentially devastating effects of solitary confinement, the practice's limited utility in promoting rehabilitation and public safety, and the need for change.

4. Defendants routinely subject thousands of people in their custody to prolonged or indefinite bouts of solitary confinement. These people live for months and years on end in cells no bigger than a typical parking space. They remain there for 22 to 24 hours a day in sensory deprivation conditions, with minimal human interaction and no meaningful access to the outdoors. Out-of-cell "recreation" typically consists of no more than five hours a week in a slightly larger cell. People in solitary confinement must eat all their meals alone, just a few feet away from where they urinate and

defecate. Opportunities for job training, education, group recreation, and communal religious observance are minimal or non-existent.

5. Defendants do not reserve solitary confinement as a punishment for the most severe disciplinary infractions, or as an emergency measure for addressing safety threats. People who commit minor infractions, such as cursing at a guard, may spend months in isolation as a result. Defendants' policies do not even require a conviction of *any* prison rule violation before placing someone in North Carolina's "supermax" unit.

6. While some people in Defendants' custody commit serious infractions, they often do so as a result of severe, untreated mental illness. Prolonged solitary confinement will only exacerbate their illness, stunting rehabilitation and making prison conditions all the more dangerous.

7. Viable alternatives exist. Indeed, the widespread use of prolonged solitary confinement in North Carolina and the rest of the country did not begin until the 1980s. Other states have recently demonstrated that prison administrators can maintain safe facilities without subjecting people to the practice's well-known risks of harm. Instead of a long-term housing solution for thousands of people, these states primarily rely on solitary as a last resort, used for the shortest time possible and only when responding to an imminent safety threat.

8. Rocky Dewalt, Robert Parham, Anthony McGee, and Shawn Bonnett ("Plaintiffs") are adults in state custody who have already spent years in solitary

confinement—or what Defendants call "restrictive housing." Plaintiffs may remain there indefinitely under Defendants' policies.

9. As used in this complaint, the term "solitary confinement" refers to various classifications of restrictive housing conditions that all involve being locked in a restrictive housing cell for an average of 22 to 24 hours a day.

10. Pursuant to North Carolina Rule of Civil Procedure 23(a), Plaintiffs seek to represent a class of all current and future persons in DPS custody who are being or will be subjected to solitary confinement.

11. Defendants' policies and practices described in this complaint, viewed together, constitute cruel or unusual punishment forbidden under Article I, Section 27 of the North Carolina Constitution. Defendants' policies and practices do not afford the basic human necessities of environmental stimulation and meaningful human contact. As a result, people in solitary confinement—both with and without preexisting mental illness—face substantial risks of serious psychological and physiological harm. Defendants have maintained these policies and practices despite knowing about the risks involved for years.

12. Plaintiffs seek declaratory and injunctive relief pursuant to the North Carolina Constitution and N.C.G.S. § 1-253 *et seq*.

NAMED PLAINTIFFS

13. Rocky Dewalt has lived in the custody of the North Carolina Department of Pubic Safety (DPS) since January 2006. He has a projected release date of October 2022.

14. Mr. Dewalt currently lives in restrictive housing at Central Prison. He has also lived in restrictive housing at Lanesboro, Warren, Alexander, Scotland, Maury, Hoke, Piedmont, Polk, and Neuse Correctional Institutions.

15. In 13 years of incarceration, Mr. Dewalt has spent more than 12 years in solitary confinement.

16. Robert Parham has lived in DPS custody since 2008. He has a life sentence.

17. Mr. Parham currently lives in restrictive housing at Tabor Correctional Institution. He has also lived in restrictive housing at Central Prison, Polk, Alexander, Warren, Maury, Scotland, and Lanesboro Correctional Institutions.

18. In 11 years of incarceration, Mr. Parham has spent approximately 10 years in solitary confinement.

19. Anthony McGee has lived in DPS custody since August 2015. He has a projected release date of February 2027.

20. He currently lives in restrictive housing at Alexander Correctional Institution. He has also lived in restrictive housing at the Dan River Prison Work Farm and Lanesboro, Nash, Maury, Mountain View, Caswell, Tabor, and Guilford Correctional Institutions.

21. Mr. McGee has lived in restrictive housing since April 2018.

22. Shawn Bonnett has lived in DPS custody since September 1996. He has a life sentence.

23. Mr. Bonnett currently lives in restrictive housing at Marion Correctional Institution, where he is in Phase I of the Rehabilitative Diversion Unit (RDU). He

has also lived in restrictive housing at Pasquotank Correctional Institution, and for nearly ten years at Central Prison.

24. All Plaintiffs have either exhausted their administrative remedies or are in the process of doing so. To the extent any Plaintiff has not exhausted his administrative remedies, any exhaustion requirement should be waived in the interests of justice.

DEFENDANTS

25. Erik Hooks is the Secretary of the North Carolina Department of Public Safety. He has a non-delegable duty to ensure that the conditions in state prisons comply with state and federal law.

26. Plaintiffs sue Secretary Hooks in his official capacity only.

27. The North Carolina Department of Public Safety is the state agency responsible for the operation of state prisons.

28. This complaint may refer to Defendants collectively as "DPS."

JURISDICTION AND VENUE

29. This Court has jurisdiction under N.C.G.S. § 7A-245.

30. Venue is proper under N.C.G.S. § 1-77(2) and N.C.G.S. § 1-82.

THE EFFECTS OF SOLITARY CONFINEMENT ON HUMAN BEINGS

31. Solitary confinement is sometimes known as restrictive housing, segregation, or isolation. Whatever the label, the practice involves spending 22 to 24 hours a day in a small cell—often no bigger than a typical parking space—with little or no opportunity for meaningful human contact or environmental stimulation.

32. Solitary confinement has harmful psychological and physiological effects on human beings.

33. According to a leading researcher on the subject, "[t]he empirical record compels an unmistakable conclusion: this experience is psychologically painful, can be traumatic and harmful, and puts many of those who have been subjected to it at risk of long-term emotional and even physical damage."[2] Moreover, "[t]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects."[3]

34. The adverse effects associated with solitary confinement may begin almost immediately.

35. As another leading researcher has concluded, "even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium."[4]

36. It is common for people in solitary confinement to experience hyper-sensitivity to external stimuli such as light and sound.

37. It is common for people in solitary confinement to experience severe anxiety and panic.

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[2] Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 500 (1997).

[3] *Id.* at 531.

[4] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 331 (2006).

38. It is common for people in solitary confinement to experience difficulty with thinking, concentrating, and memory.

39. It is common for people in solitary confinement to experience obsessive, involuntary violent fantasies.

40. It is common for people in solitary confinement to experience paranoia.

41. It is common for people in solitary confinement to experience loss of impulse control leading to angry or violent outbursts, including self-mutilation.

42. It is common for people in solitary confinement to experience severe depression and a sense of hopelessness or worthlessness.

43. It is common for people in solitary confinement to experience lethargy, insomnia, and nightmares.

44. It is common for people in solitary confinement to experience suicidal ideation and attempt suicide.

45. Other effects include hallucinations, delusions, and disassociation.

46. The longer someone stays in solitary, the likelihood of experiencing these effects increases, as does their intensity.

47. Some of these symptoms may abate following release from solitary, but long-term effects—which may persist long after release from incarceration entirely—often include depression, anxiety, and symptoms associated with post-traumatic stress, such as flashbacks, hypervigilance, and a chronic sense of hopelessness.

48. Long-term effects also include personality changes, most notably social withdrawal and an inability to tolerate social interaction.

49. Solitary confinement presents serious physiological risks as well. In addition to suicide attempts, common symptoms include severe headaches, muscle and joint pain, problems with digestion, diarrhea, weight loss, loss of appetite, dizziness, and fainting.

50. Recent research also demonstrates that people subjected to solitary face heightened risk of long-term cardiovascular disease.[5]

51. People subjected to solitary confinement also have a higher likelihood of early death after release from prison.

52. A team of researchers—including DPS Behavioral Health Director Dr. Gary Junker—recently published an article analyzing data of DPS prisoners who spent time in solitary and died post-release. The article concludes:

> We found that people who had spent any time in restrictive housing during incarceration in a state prison in North Carolina were significantly more likely to die of all causes in the first year after release than those who did not. In addition, our results demonstrated that death by suicide and homicide in the first year and opioid overdose in the first 2 weeks after release were more common among those who had experienced restrictive housing compared with those who were incarcerated but never in restrictive housing. Further, the risk of death and reincarceration was higher among individuals with more restrictive housing placements and among those who spent more than

[5] B.A. Williams, A. Li, C. Ahalt et al., *The Cardiovascular Health Burdens of Solitary Confinement*, J. Gen. Intern. Med. (2019), *available at* https://doi.org/10.1007/s11606-019-05103-6.

> 14 consecutive days in restrictive housing placements.[6]

53. The article favorably cites research conducted by Grassian, Haney, and others cited above.

54. While anyone placed in solitary confinement faces substantial risks of serious harm, those with preexisting mental illness face the added risk of exacerbation or recurrence of their illness.

GROWING CONSENSUS ON THE DANGERS OF SOLITARY CONFINEMENT

55. Researchers, courts, government agencies, and Defendants themselves have long recognized the dangers of solitary confinement.

56. Before the article co-authored by Dr. Junker, DPS had partnered with the Vera Institute of Justice, a non-profit policy organization, to review North Carolina's use of solitary confinement. This partnership resulted in a 2016 report that DPS published on its own website (the "Vera Report").[7]

57. The Vera Report states:

> In recent years, a diverse range of international and national bodies, advocates, federal and state policymakers,

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[6] Lauren Brinkley-Rubenstein, et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Network Open (Oct. 4, 2019), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350.

[7] Jessa Wilcox, et al., *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the North Carolina Department of Public Safety*, Vera Inst. of Justice (Dec. 2016), https://files.nc.gov/ncdps/documents/files/Vera%20Safe%20Alternatives%20to%20Segregation%20Initiative%20Final%20Report.pdf

> and corrections practitioners have called for prisons and jails to reform their use of segregation, also known as solitary confinement or restrictive housing. Whether citing the potentially devastating psychological and physiological impacts of spending 23 hours per day alone in a cell the size of a parking space, the cost of operating such highly restrictive environments, or the lack of conclusive evidence that segregation makes correctional facilities or communities safer, these voices agree that change and innovation are necessary.[8]

58. In 2016, the National Commission on Correctional Health Care published the following position statement: "Prolonged (greater than 15 consecutive days) solitary confinement is cruel, inhuman and degrading treatment, and harmful to an individual's health." Moreover,

> [s]olitary confinement as an administrative method of maintaining security should be used only as an exceptional measure when other, less restrictive options are not available, and then for the shortest time possible. Solitary confinement should never exceed 15 days. In those rare cases where longer isolation is required to protect the safety of staff and/or other inmates, more humane conditions of confinement need to be utilized. [9]

59. In 2015, the United Nations General Assembly adopted a revised version of the Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules.

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[8] *Id.* at 3.

[9] National Commission on Correctional Healthcare, *Solitary Confinement (Isolation)*, https://www.ncchc.org/solitary-confinement.

60. The Mandela Rules prohibit indefinite and prolonged solitary confinement, with prolonged solitary confinement defined as "confinement of prisoners for 22 hours or more a day without meaningful human contact" exceeding 15 consecutive days.[10]

61. Justices of the Supreme Court of the United States have recently acknowledged the grave effects of solitary confinement and the serious constitutional issues the practice raises. As Justice Kennedy observed,

> research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price. See, e.g., Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U.J.L. & Pol'y 325 (2006) (common side-effects of solitary confinement include anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors). In a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them.[11]

62. In 2018, Justice Sotomayor wrote, "[W]e do know that solitary confinement imprints on those that it clutches a wide range of psychological scars. . . . Courts and corrections officials must accordingly remain alert

[10] U.N. Economic & Social Council, *Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, Res. E/CN.15/2015/L.6/Rev.1 (May 2015), https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf.

[11] *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring); *see also Smith v. Ryan*, 137 S. Ct. 1283, 1284 (2017) (Breyer, J., dissenting from denial of stay of execution).

to the clear constitutional problems raised by keeping prisoners . . . in 'near-total isolation' from the living world in what comes perilously close to a penal tomb."[12]

63. These authorities demonstrate a growing societal consensus that prison administrators should use solitary confinement only as a last resort, and for the shortest duration possible, to address an imminent safety threat.

ALTERNATIVES TO SOLITARY CONFINEMENT

64. The widespread, long-term use of solitary confinement in the United States is a relatively recent phenomenon. Here and around the world, solitary gained some popularity in the mid-19th century. But the practice eventually garnered broad condemnation after public officials realized it was both dangerous and ineffective.[13] In 1890, the Supreme Court recognized solitary as an "infamous punishment" that had garnered "serious objections."[14] In 1959, the American Correctional Association's Manual of Correctional Standards stated that solitary should be used as a last resort and never longer than 15 consecutive days.[15]

65. North Carolina did not always rely so extensively on solitary confinement. Upon information and belief, in the 1970s, solitary provided a short-term safety or

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[12] *Apodaca v. Raemisch*, 139 S. Ct. 5, 9, 10 (2018) (statement of Sotomayor, J., respecting the denial of certiorari) (citation omitted).

[13] *See* Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 741, 747-50 (2015).

[14] *In re Medley*, 134 U.S. 160, 168, 169 (1890).

[15] Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 467 (2006).

punitive measure—not a long-term housing solution for thousands of people. For even the most serious disciplinary infractions, state prisoners faced a maximum of 30 days in solitary, with a 48-hour return to the regular population required after the first 15 days.[16]

66. The widespread use of long-term solitary made a comeback in the 1980s. This occurred in part because of a spike in prison populations, lack of funding to keep pace with these populations, fewer mental health facilities outside of prisons, and a philosophical shift among corrections officials away from rehabilitation and toward punishment.[17]

67. Solitary's widespread resurgence has come at a terrible price. Because the practice is virtually guaranteed to inflict serious pain and create or exacerbate mental illness, people do not emerge from solitary rehabilitated and ready to reenter society. Instead, they come out sick, angry, socially withdrawn, and even more likely to end up back in prison.

68. As at least one DPS official has already concluded, being subjected to solitary confinement correlates with increased risk of early death during community reentry.[18]

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[16] Rules and policies governing the management and conduct of inmates under the control of the division of prisons, North Carolina Department of Correction, 13-14 (1976).

[17] *See* Bennion, *supra* note 13, at 747-50.

[18] *See* Brinkley-Rubenstein, *supra* note 6.

69. Moreover, housing people in solitary units is significantly more expensive than regular population housing.

70. Thus, long-term solitary confinement is not an indispensable tool for rehabilitation or protecting the public. To the contrary, solitary confinement creates or exacerbates mental illness and increases recidivism.

71. Other states and countries have recognized the folly of this practice and pursued aggressive reforms. In fact, prison systems that have moved away from solitary confinement have seen a reduction in violence toward both prisoners and prison staff.

72. In 2017, Colorado banned the use of solitary confinement exceeding 15 consecutive days. Prison officials may still use solitary as a punitive measure, but punishments for multiple offenses cannot be "stacked"—meaning that someone cannot go into solitary for 15 days, leave, and then immediately go back in. When someone with a mental illness commits a disciplinary offense, that person receives mental health treatment—not punishment—if correctional staff determine that the offense resulted from mental illness. Juveniles and pregnant women are never placed in solitary under any circumstances.[19]

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[19] *See* Liman Ctr. for Public Interest, Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell, Yale L. Sch. 67 (Oct. 2018), https://law.yale.edu/sites/default/files/area/center/liman/document/asca_liman_2018_restrictive_housing_released_oct_2018.pdf.

73. Colorado achieved these goals primarily through policy changes and the hiring of additional employees. These reforms have not proven prohibitively expensive, and have dramatically reduced assaults, self-harm, and suicides.[20]

74. In July 2019, New Jersey enacted a law limiting the use of solitary to no more than 20 consecutive days.[21]

75. Other states across the country—including Idaho, California, North Dakota, and Ohio—have also embraced the call for reform, taking aggressive measures to limit the use of solitary.[22]

76. The United States Department of Justice has recommended significant limitation on the use of solitary confinement, noting that lower solitary populations coincided with a reduction in prisoner-on-staff violence.[23]

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[20] *Id.* at 68; *see also* ALISON SHAMES ET AL., SOLITARY CONFINEMENT: COMMON MISCONCEPTIONS AND EMERGING SAFE ALTERNATIVES, VERA INST. OF JUSTICE 18 (May 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf. (noting in 2015 that after Colorado "decreased its use of segregated housing by 85 percent . . . [,] prisoner-on-staff assaults are the lowest they have been since 2006").

[21] Catherine Kim, *Solitary confinement isn't effective. That's why New Jersey passed a law to restrict it*, VOX (July 11, 2019), https://www.vox.com/policy-and-politics/2019/7/10/20681343/solitary-confinement-new-jersey.

[22] Reforming Restrictive Housing, *supra* note 19 at 69-81.

[23] U.S. Dep't of Justice, Report and Recommendations Concerning the Use of Restrictive Housing, Final Report at 9 (Jan. 2016), https://www.justice.gov/archives/dag/file/815551/download.

77. Other countries around the world have managed to largely abolish long-term solitary confinement.[24]

78. North Carolina has also recognized the need for reform. Starting in 2016, DPS has attempted to reduce the number of people placed in solitary. It has implemented a Therapeutic Diversion Unit (TDU) at several prisons. These units provide intense mental health therapy for people who would otherwise be placed in solitary confinement.[25]

79. Unfortunately, only a small fraction of people in DPS custody has access to the TDUs.

DPS POLICY AND PRACTICE

80. Defendants refer to solitary confinement as "restrictive housing."

81. Defendants operate 55 prisons across the state. Upon information and belief, 44 have restrictive housing units.

82. Defendants' policies on restrictive housing cited below apply to all DPS prisons operated by the Department of Adult Corrections (DAC).

83. Defendants use several administrative classifications for restrictive housing units: Restrictive Housing for Disciplinary Purposes (RHDP); Restrictive Housing for

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[24] David Kidd, *Tender Justice*, GOVERNING (Aug. 2018), https://www.governing.com/topics/public-justice-safety/gov-north-dakota-prison-criminal-justice-reform.html (describing how North Dakota prison officials have adapted solitary reforms from Norway's system).

[25] Vera Inst. of Justice, *Therapeutic Diversion Units*, https://www.safealternativestosegregation.org/promising_practice/therapeutic-diversion-unit-tdu-programming/.

Administrative Purposes (RHAP); Restrictive Housing for Control Purposes (RHCP); High Security Maximum Control (HCON); and the Rehabilitative Diversion Unit (RDU).[26]

84. Living conditions may vary slightly between these classifications and from prison to prison. However, as acknowledged by the Vera Report, all DPS restrictive housing units are "characterized by conditions of extreme isolation and sensory deprivation."[27]

85. Restrictive housing cells typically measure no more than 100 square feet.

86. Many restrictive housing cells are smaller. For example, restrictive housing cells at Polk Correctional Institution and Central Prison are typically no bigger than approximately 80 square feet.

87. Some restrictive housing cells are windowless.

88. Other restrictive housing cells have windows consisting of narrow slits that allow little natural light or air flow. The view may consist of a brick wall or fencing. Some windows have clouded glass that does not allow a view of the outside at all.

89. Some restrictive housing units have no heating or air conditioning.

90. Restrictive housing cells are typically furnished with a cot, toilet, sink, and sometimes a small desk and/or cabinet.

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[26] DPS Policy and Procedure, Conditions of Confinement, Ch. C, Sec. 1206, https://files.nc.gov/ncdps/C1200%2009_06_18%20Final_0.pdf.

[27] Vera Report, *supra* note 7, at 4.

91. People in restrictive housing must remain in their cells for 22-24 hours a day, seven days a week.

92. People in restrictive housing must eat all their meals in their cells, only a few feet from where they must urinate and defecate.

93. At most, people in restrictive housing may leave their cells for exercise for one hour a day, five days a week.

94. Prison staff have broad discretion to curtail exercise time.

95. Out-of-cell exercise occurs almost exclusively in a slightly larger cell, sometimes referred to as a "dog run."

96. DPS policy states that outdoor exercise cells should provide the primary exercise areas, but in practice, prisoners must frequently stay inside for their recreation. Prison staff have broad discretion to require them to wear full restraints during this time.

97. Restrictive housing units are often very loud due to people screaming and banging on the walls.

98. In some restrictive housing units, the lights stay on 24 hours a day, making it difficult for prisoners to maintain a sense of time or a natural sleep cycle.

99. The isolation and sensory deprivation imposed in all DPS restrictive housing units—even ones where prisoners have marginally increased privileges or human interaction—create substantial risks of serious psychological and physical harm.

100. DPS staff conduct periodic reviews of prisoner classification status, at which time they may renew the current restrictive housing status or assign a different one.

101. Depending on the amount of time and classification at issue, Facility Classification Committees and the Director's Classification Committee are responsible for conducting these reviews.

102. The reviewing committee may take only a few minutes to decide whether to place someone in restrictive housing or keep them there.

103. Committee members are not required to have any mental health training or expertise.

104. When these committees decide to place someone in restrictive housing or renew a restrictive housing classification—even for periods of up to twelve months—they are not required to make substantive written findings justifying the decision.

105. DPS has reported the average stay in any restrictive housing classification as approximately 26 days. This number, however, refers not to the average number of *consecutive* days, but the average number of days between when one housing action ends and another begins.

106. Thus, because DPS often renews classifications or simply applies a different label, people in solitary confinement typically stay there for much longer than 26 consecutive days.

107. A common scenario involves someone going into RHAP for up to two months pending a disciplinary investigation. They are found guilty, then immediately go into RHDP for up to 30 days. Depending on the infraction, that person may go immediately into RHCP where they receive classification reviews every six to twelve months and may remain indefinitely. At any point, DPS may also place that person

in HCON, which also has reviews at six or twelve month intervals, or the RDU, which has no regularly scheduled reviews at all.

108. Thus, people in Defendants' custody frequently live for months and years on end in solitary confinement.

109. As of 29 July 2019, there were approximately 3,000 people living in housing classifications of HCON, RHCP, RHAP, RHDP, and the first two phases of the RDU.

110. Hundreds of these people have been in restrictive housing for periods of months or years.

111. Under Defendants' policies, *everyone* in restrictive housing faces a real prospect of remaining there indefinitely.

112. And while everyone in solitary confinement faces serious health risks, the risks for people with preexisting mental illness are especially grave.

113. DPS classifies people with mental illness on a scale from M1 to M5, with M5 being the most severe. DPS defines people at M3 and higher as having "[s]ignificant mental disorder" that requires ongoing treatment.[28]

114. As of 29 July 2019, there were approximately 700 people in restrictive housing conditions who had a grade of M3 or higher.

115. DPS provides minimal mental healthcare to patients in solitary. For most, aside from medication, mental healthcare consists of prison staff coming up to a

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[28] DPS Health Services Policy and Procedure Manual, Policy #A-2, at 5, https://files.nc.gov/ncdps/A-2%20Intake%20Physical%20Exam%20and%20PULHEAT%20System_0.pdf.

patient's cell, checking for suicidal ideations and other dangerous behavior, and then leaving. These visits typically last only a few minutes.

116. Patients have no real privacy during these cell visits—anything patients wish to share with their provider they must share with anyone else within earshot.

117. Some patients may participate in weekly group meetings that last approximately 90 minutes. They often consist of a video presentation, lecture, or unstructured chatting about random topics.

Restrictive Housing for Disciplinary Purposes (RHDP)

118. DPS policy authorizes solitary confinement as a punishment for certain infractions.[29]

119. Many of these infractions have vague definitions lending themselves to broad interpretations from prison staff.

120. Infractions warranting solitary include disobeying an order, using "language or specific gestures or acts that are generally considered disrespectful, profane, lewd, or defamatory," and "[i]nterfer[ing] with a staff member in the performance of his or her duties."[30]

121. These offenses—and many others that result in solitary—do not involve violence. People may also face 20 to 30 days in RHDP for possessing a cell phone,

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[29] DPS Policy and Procedure, Offender Disciplinary Procedures, Ch. B, § .0200, https://files.nc.gov/ncdps/B.200%20Offender%20Discip%20Proc%2008_10_18%20Final_1.pdf.

[30] *Id.*, § .0202.

lying to prison staff, masturbating, stealing canteen inventory, or refusing a drug test.

122. People found guilty of assaulting staff and inflicting injury—however slight—will lose all good time, gain time, and merit time, and they cannot earn any such time for their current period of incarceration.

123. DPS officials impose these punishments regardless of whether the behavior at issue was a manifestation of a patient's mental illness.

124. DPS policy permits dismissal of a disciplinary charge if prison staff believe the behavior resulted from mental illness. However, the policy does not require evaluation by a mental health provider, and upon information and belief, such dismissals happen very rarely.

125. This kind of harsh punishment removes critical incentives for good behavior, extinguishes hope, and can effectively prolong incarceration and time in solitary by months or years.

126. People in DPS custody have minimal procedural protections when charged with an infraction. They do not have the right to call witnesses, present evidence, or cross-examine adverse witnesses. Disciplinary hearing officers may find the accused guilty based on only a modicum of evidence.

127. Thus, it is all too easy to wind up in solitary based on minimal evidence of an alleged infraction, violent or not.

128. People in RHDP stay in their cell for 22 to 24 hours a day. At most, they receive one hour of recreation, five days a week, and a ten-minute shower, three times a week.

129. Medical staff may evaluate someone before they enter RHDP, but these screenings almost never result in deferral of restrictive housing placement.

130. Defendants' policy allows prison staff to refuse an exercise or shower period at their discretion.

131. Defendants' policy also allows prison staff broad discretion requiring people in restrictive housing to wear full restraints for any out-of-cell time.

132. People in RHDP may not attend any communal religious, educational, vocational, or recreational activities.

133. They may not order anything from the canteen except for stamps, medication, and essential hygiene items.

134. They may not possess any hardbound publications not identified as legal, religious, or post-secondary educational materials.

135. They may not possess a radio, television, or tablet.

136. They may not have telephone visits with anyone except an attorney of record.

137. They normally have only non-contact visits with family and friends.

138. If found guilty of an assault on prison staff that causes injury, people in RHDP will lose visitation privileges for a minimum of one year.

139. As of 29 July 2019, there were approximately 627 people in RHDP.

140. Approximately 159 of them had a mental health grade of M3 or higher.

141. Defendants' policy both forbids and authorizes keeping someone in RHDP for more than 30 consecutive days. The policy states: "Continuous confinement of an offender to Restrictive Housing for Disciplinary Purposes (RHDP) for more than

thirty (30) days requires review and approval by the Facility Head/Designee." But in the very next sentence, the policy states: "An offender will not serve more than thirty 30 consecutive days in Restrictive Housing for Disciplinary Purposes (RHDP)."[31]

142. Even if the policy actually limits stays in RHDP to 30 days, Defendants may simply change someone's administrative classification—e.g., from RHDP to RHCP—without actually removing them from restrictive housing.

143. Thus, someone's restrictive housing classification may change repeatedly without them ever leaving their cell.

144. People who are in RHDP for certain offenses receive automatic referrals to RHCP, where they may remain indefinitely.

Restrictive Housing for Administrative Purposes (RHAP)

145. Defendants typically place someone in RHAP when there is a pending disciplinary investigation, but DPS policy also allows such placement for generalized safety reasons.[32]

146. Prison staff have discretion to place anyone in RHAP for a period of 72 hours. Facility heads or their designees may increase the time in RHAP to a period of 15 days. A facility classification committee may increase this period to a maximum of 60 days. The Director's Classification Authority may approve even longer stays.

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[31] *Id.* § 0204(d)(11).

[32] NCDPS Policy and Procedures, Restrictive Housing for Administrative Purposes, Ch. C, § .0300
https://files.nc.gov/ncdps/documents/files/C0300%20final%2051016.pdf.

147. People in RHAP have canteen access, regular phone privileges, access to their trust funds, and may possess a radio and batteries purchased from the canteen. Otherwise, RHAP conditions are virtually identical to the RHDP conditions described above.

148. As of 29 July 2019, there were approximately 1,162 people in RHAP.

149. Approximately 321 of them had a mental health grade of M3 or higher.

Restrictive Housing for Control Purposes (RHCP)

150. RHCP is a long-term housing classification. People in RHCP experience nearly identical conditions as people in RHDP, including confinement to a restrictive housing cell for 22 to 24 hours a day.[33]

151. While Defendants often refer people from RHDP to RHCP, their policy does not require an official disciplinary charge, conviction, or "overt act of violence" prior to RHCP placement.

152. People in RHCP may have two non-contact visits every thirty days.

153. Prison staff have discretion to completely withhold telephone privileges other than calls with an attorney of record.

154. Defendants' policy provides for classification status reviews every six months. Those assigned to RHCP due to assault on staff resulting in injury have their classification reviewed every twelve months.

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[33] NCDPS Policy and Procedures, Restrictive Housing for Control Purposes, Ch. C, § .1300, https://files.nc.gov/ncdps/C.1300_08_14_18%20Final%20post%208-14-18.pdf.

155. The review process is cursory—classification committees may take only minutes before deciding that someone in RHCP should remain there.

156. When DPS renews someone's RHCP status, prison staff inform them with a slip of paper with little or no meaningful information as to the basis for the decision.

157. As of 29 July 2019, approximately 799 people lived in RHCP.

158. Approximately 267 of them had mental health grades of M3 or higher.

High Security Maximum Control (HCON)

159. HCON is Defendants' most restrictive form of housing.

160. The only HCON unit is in Polk Correctional Institution.

161. HCON is supposed to house the most dangerous people in DPS custody who pose an imminent safety threat.

162. However, under Defendants' policy, they may assign someone to HCON "[e]ven though there has been no overt act of violence and no disciplinary offense proven[.]"[34]

163. The typical HCON cell is approximately 80 square feet.

164. Some people in HCON may exercise in outdoor recreation cages, but many may not. Instead, their five hours of weekly recreation take place in a roughly 10 by 12 foot indoor area attached to their cell. As a result, people in HCON may go months or years without being outdoors.

[34] DPS Policy and Procedures, High Security Maximum Control, Ch. C, § .1700, https://files.nc.gov/ncdps/C.1700%2008_10_18%20Final.pdf.

165. People in HCON have no canteen privileges except for purchasing radios, batteries, a watch, earplugs, stamps, shower shoes, and a list of approved over-the-counter medication.

166. People in HCON have no telephone privileges except for speaking to an attorney of record. They may have only two non-contact visits every thirty days.

167. They have no access to communal religious, educational, recreational, or vocational activities.

168. Anyone removed from HCON receives an automatic placement in RHCP.

169. As of 29 July 2019, there were approximately 65 people in HCON.

170. Approximately 16 of these people have a grade of M3 or higher.

171. People in HCON have their housing status reviewed every six to twelve months.

172. People in HCON typically stay there for a period of years.

The Rehabilitative Diversion Unit (RDU)

173. The RDU is a housing unit in which people referred from HCON or RHCP may gradually gain privileges and eventually return to the regular population.

174. The RDU is located at Marion Correctional Institution. It consists of three main phases with the first two made up of two sub-phases each. Prison staff have complete discretion as to whether someone in the RDU will graduate to the next phase.

175. DPS publicly lists everyone in the RDU as living in the "regular population."

176. However, Phase I and Phase II are virtually identical to RHCP. People in these phases live in restrictive housing cells where they spend at least 22 hours a day in isolation.

177. For many, the RDU consists of indefinite solitary confinement with no regularly scheduled housing classification reviews.

178. At most, people in the RDU receive one hour of recreation time five days a week in outdoor exercise cells, although prison staff have wide discretion to curtail this time or place prisoners in full arm and leg restraints for the entirety of the exercise period.

179. People in the first two phases of the RDU may only use the phone to contact an attorney of record or to respond to a family emergency verified by prison staff. At the discretion of prison staff, people in Phase I may attempt one call lasting a maximum of 15 minutes every 60 days, and people in Phase II may attempt two calls a month.

180. People in Phase I may receive two non-contact visits every 30 days for a maximum of one hour per visit. People in Phase II may receive three visits every 30 days.

181. People in the first phase of the RDU must strip down to their underwear and wear full restraints while going to and from their cells.

182. People in the RDU may shower three times per week for a maximum of ten minutes per shower.

183. People in the first and second phases of the RDU may not access their trust accounts and have no canteen privileges except for radios, batteries, hygiene kits, a watch, and stamps.

184. Programming in the first two phases of the RDU consists primarily of in-cell activities such as journaling exercises, and a weekly 90-minute group session involving a video presentation, reading, or worksheets.

185. Anyone who refuses to participate in program activities will lose radio, phone, canteen, and other privileges and cannot progress through the RDU.

186. These "non-participants" remain in indefinite solitary confinement without the classification reviews provided to people in HCON and RHCP.

187. As of 29 July 2019, approximately 178 people lived in Phase I of the RDU and 175 people lived in Phase II. Approximately nine of these people had a mental health grade of M3 or higher.

188. On average, people spend approximately 163 days in Phase I and 140 days in Phase II, but some have stayed in each phase for a year or more.

NAMED PLAINTIFFS' ALLEGATIONS

Rocky Dewalt

189. Rocky Dewalt has lived in DPS custody since 2006. He has spent more than 12 years of this time in solitary confinement.

190. Mr. Dewalt currently lives in RHCP. During his incarceration, Defendants have repeatedly transferred him between classifications of RHCP, RHDP, RHAP, HCON, and discontinued classifications of ICON and MCON.

191. Mr. Dewalt has diagnoses of post-traumatic stress disorder, antisocial personality disorder, attention-deficit/hyperactivity disorder, and chronic hypertension. He frequently experiences anxiety, depression, paranoia, and suicidal ideation.

192. DPS medical staff recently noted that Mr. Dewalt has experienced "anxiety and symptoms of PTSD associated with being on Unit 1," which is a restrictive housing unit at Central Prison.

193. Mr. Dewalt has limited literacy skills. Thus, although Central Prison has a library, he can obtain little mental stimulation from reading.

194. Although people in RHCP may purchase a radio and batteries from the canteen, Mr. Dewalt cannot afford a radio or batteries, and because of his housing classification he cannot work a job to earn money.

195. Mr. Dewalt does not have family or friends who can visit him regularly, and he has very few opportunities to interact with other prisoners.

196. Thus, his human contact consists almost entirely of medical visits, legal visits, and guards escorting him to and from his cell.

197. These conditions make Mr. Dewalt particularly vulnerable to the extreme monotony and isolation of solitary confinement. He is in nearly constant psychological pain.

198. Mental health staff occasionally check on Mr. Dewalt at his cell, and he has sometimes been permitted to participate in a weekly group therapy session lasting

approximately 90 minutes. These sessions often consist of nothing but a video presentation.

199. These measures provide little therapeutic benefit and do nothing to mitigate against the adverse effects of indefinite solitary confinement.

200. Mr. Dewalt is the quintessential victim of prolonged solitary confinement. He lives with mental illness that makes concentration and impulse control especially difficult. This has often resulted in Mr. Dewalt committing prison rule infractions, which perpetuates his time in solitary confinement, which exacerbates his illness, which leads to more infractions and even more time in isolation.

201. Mr. Dewalt is caught in a vicious cycle that is destroying his mental health and degrading his human dignity. He needs proper treatment—not endless punishment.

202. Although Mr. Dewalt is projected to leave prison in 2022, he will likely experience adverse effects from solitary confinement for the rest of his life.

203. Defendants are taking no measures to prepare Mr. Dewalt for life in the outside world. To the contrary, by subjecting him to conditions that inflict psychological harm and prevent rehabilitation, Defendants are all but foreclosing his chances for future success.

204. Defendants' policies and practices have already caused Mr. Dewalt injury, and he will continue to face the risk of future injury while in Defendants' custody.

Robert Parham

205. Mr. Parham has lived in Defendants' custody since 2008. He has spent all but approximately one year of this time in restrictive housing.

206. Mr. Parham was recently transferred from HCON to RHCP.

207. Mr. Parham is a wheelchair-bound 58-year-old. He has diagnoses of depressive disorder, impulse control disorder, and antisocial personality disorder.

208. Mr. Parham also has diagnoses of epilepsy, esophageal reflux, obstructive pulmonary disease, and severe hearing loss.

209. In March of 2018, Mr. Parham lived in RHCP. Prison staff referred him to HCON, Defendants' most restrictive form of housing. A staff psychologist interviewed Mr. Parham and reviewed his medical history.

210. Despite acknowledging Mr. Parham's long history of severe mental illness, the psychologist did not find any contraindications for HCON.

211. Living in perpetual solitary confinement has caused Mr. Parham immense psychological pain. While he does not want to spend the rest of his life in solitary confinement, he worries that after a decade of isolation, he will never be able to adjust to life in the regular population.

212. Defendants' policies and practices have already caused Mr. Parham injury, and he will continue to face the risk of future injury while in Defendants' custody.

Anthony McGee

213. Anthony McGee has lived in restrictive housing since April 2018.

214. Mr. McGee had requested protective custody because he feared that gang members were trying to kill him.

215. Prison staff ordered Mr. McGee to return to the general prison population where he would be an easy target for roving gang members. Fearing for his life, he refused to go.

216. As a result, prison staff charged Mr. McGee with disobeying an order and placed him in RHDP. In May 2018, he was reclassified as RHCP.

217. In February 2019, prison staff charged Mr. McGee with engaging in gang-related activity due to a swastika drawn on his cell wall. Mr. McGee denied the charge, but prison staff found him guilty. He received another 20 days in RHDP and 180 days in RHCP.

218. Mr. McGee has diagnoses of major depressive disorder, anxiety, and specific learning disorder.

219. He has poor literacy skills, and therefore can derive little mental stimulation from reading and writing.

220. Mr. McGee is married. Because prison staff refuse to let him use the phone for personal calls, he has not been able to speak with his wife for over a year.

221. Life in solitary has taken a heavy toll on Mr. McGee. He feels jittery and on-edge almost all the time. He has often reported to medical staff that he feels like he is losing his mind.

222. In February 2019, desperate to escape his nearly constant psychological pain, Mr. McGee cut his wrists and attempted to overdose on his medication. In May 2019, he swallowed a battery. Mr. McGee still has frequent suicidal ideations.

223. Other than medication, Mr. McGee's mental healthcare consists of a monthly session with a provider. These sessions generally last only a few minutes.

224. The provider's main task is not to treat Mr. McGee's illness, but simply to check whether he is likely to engage in self-injurious behavior.

225. Defendants' policies and practices have already caused Mr. McGee injury, and he will continue to face the risk of future injury while in Defendants' custody.

Shawn Bonnett

226. Shawn Bonnett has lived in restrictive housing most recently since the beginning of 2019.

227. When Mr. Bonnett began serving his life sentence in 1996, Defendants placed him in solitary confinement and kept him there for nearly a decade.

228. During that time Mr. Bonnett, experienced physical effects of living in solitary confinement, including chronic hives, anxiety, high blood pressure, headaches, sensitivity to loud noises, ringing of the ears, a depressed immune system, muscle atrophy, and weight loss.

229. He also suffered extreme mental and emotional distress as a result of his time in solitary confinement.

230. Mr. Bonnett has not had an infraction involving violence since August 2010.

231. In February 2016, he received an infraction for possessing information regarding the Black Panther organization.

232. In December 2018, Mr. Bonnett received an infraction for possessing a cell phone. He received another such infraction a month later at Pasquotank Correctional Institution, and his punishment included six months in solitary confinement.

233. Towards the end of Mr. Bonnett's time at Pasquotank, prison staff told him that he would return to the regular population.

234. However, in May 2019, Mr. Bonnett was sent to the RDU, where he completed seven weeks of Phase I programming.

235. Because he needed physical therapy for a fractured ankle, Mr. Bonnett was sent to Alexander Correctional Institution, where he spent the next eight weeks.

236. When he learned that he would have to go back to the RDU, Mr. Bonnett considered suicide, but decided against it.

237. Mr. Bonnett returned to the RDU in August 2019 and, despite the seven weeks he had already completed, had to start Phase I all over again.

238. Mr. Bonnett does not understand why he was sent to the RDU and despairs that his time in solitary continues with no end in sight.

239. Mr. Bonnett is afraid that the ill effects from his previous time in solitary will return, especially since he has received no mental health treatment beyond the initial cursory evaluation when he arrived at the RDU. He has already begun experiencing anxiety and despair as a result of his placement.

240. Defendants' policies and practices have already caused Mr. Bonnett injury, and he will continue to face the risk of future injury while in Defendants' custody.

CLASS ALLEGATIONS

241. Plaintiffs seek to represent a class of all current and future persons in DPS custody who are or will be subjected to restrictive housing conditions, which involve being locked in a cell for an average of 22-24 hours per day (the "Plaintiff Class").

242. The named Plaintiffs are members of the Plaintiff Class.

243. Defendants have the ability to identify all members of the Plaintiff Class.

244. The Plaintiff Class is so numerous that bringing all members before the Court would be impracticable. There are approximately 3,000 people currently living in restrictive housing conditions—including RHDP, RHAP RHCP, HCON, and the first two phases of RDU—all of whom face the prospect of prolonged or indefinite isolation. In HCON and RHCP alone, there are approximately 800 people who receive a classification review only every six to twelve months. Approximately 353 people live in the first two phases of the RDU with no regularly scheduled reviews at all. Defendants frequently transfer people in RHDP and RHAP to HCON, RHCP, and the RDU.

245. All Plaintiff Class members are subject to Defendants' statewide policies on restrictive housing.

246. All Plaintiff Class members live in or will live in conditions that are identical or nearly identical.

247. The named Plaintiffs and members of the Plaintiff Class have an interest in common issues of law and fact. Such issues predominate over issues affecting only individual class members. Common issues include:

a. Defendants' policies and practices concerning the use of solitary confinement in DPS facilities.
b. The mental healthcare provided to people in solitary confinement.
c. The conditions of solitary confinement cells.
d. To what extent Plaintiff Class members are permitted to have meaningful human contact.
e. Plaintiff Class members' access to environmental stimulation including exercise and being outdoors.
f. Whether Defendants' policies and practices create substantial risks of serious psychological and physiological harm.
g. Whether Defendants have known about those risks of harm.

248. Named Plaintiffs will fairly and adequately represent all class members. Named Plaintiffs live in solitary confinement. They have been and will continue to live there subject to Defendants' policies and practice. Moreover, named Plaintiffs have secured counsel with extensive civil rights litigation experience, including prison and class action cases.

249. Named Plaintiffs have a genuine personal interest, not a mere technical interest, in the outcome of this case, as they will remain subject to Defendants' policies and practices for years.

250. The named Plaintiffs are not aware of any conflicts or potential conflicts with other Plaintiff Class members.

251. Proceeding as a class is preferable to other forms of adjudication and is a fair use of judicial resources because the harms to the Plaintiff Class are significant and ongoing.

252. Because Plaintiffs seek only declaratory and injunctive relief, the Court should certify a non-opt-out class to avoid unnecessary inconsistencies and compromises in future litigation.

CAUSE OF ACTION – ARTICLE I, SECTION 27 OF THE STATE CONSTITUTION (Cruel or Unusual Punishments Clause)

253. Plaintiffs incorporate all preceding paragraphs.

254. Defendants' policies and practices concerning solitary confinement, taken as a whole, subject Plaintiffs and members of their proposed class to objectively dangerous conditions that present substantial risks of serious harm.

255. Exposing anyone unwillingly to such risks violates contemporary standards of decency that mark the progress of a maturing society.

256. For years, Defendants have known of the dangers presented by solitary confinement, but have continued placing thousands of people there.

257. The policies and practices described above constitute cruel or unusual punishment prohibited under the state Constitution.

PRAYER FOR RELIEF

258. WHEREFORE, Plaintiffs pray that this Court grant the following relief:

  a. Certify a class of all current and future persons in DPS custody who are or will be subjected to restrictive housing conditions, which involve being locked in a cell for an average of 22-24 hours per day

b. Appoint Rocky Dewalt, Robert Parham, Anthony McGee, and Shawn Bonnett as class representatives, and appoint undersigned counsel as class counsel.

c. Declare Defendants' restrictive housing policies and practices described above unconstitutional.

d. Order Defendants to formulate and implement new policies and practices that comply with the state Constitution.

e. Retain jurisdiction over this matter until the Court is satisfied that the unconstitutional practices described above have ceased and will not recur.

f. Award Plaintiffs' costs and reasonable attorneys' fees as allowed by law.

g. Award any other relief the Court finds proper.

Respectfully submitted, this the 16th day of October, 2019.

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