IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA ADVOCACY OFFICE;

M.J.;

K.H., on behalf of themselves and others similarly situated,

Plaintiffs,

v.

THEODORE JACKSON, in his official capacity as Sheriff of Fulton County;

MARK ADGER, in his official capacity as Chief Jailer;

MEREDIETH LIGHTBOURNE, in her official capacity as Medical Director;

TYNA TAYLOR, in her official capacity as Detention Captain;

PEARLIE YOUNG, in her official capacity as Detention Lieutenant,

Defendants.

CIVIL ACTION

NO. 1:19-CV-_____

CLASS ACTION

COMPLAINT

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INTRODUCTION

Plaintiffs respectfully file this complaint for declaratory and injunctive relief on behalf of themselves and a class of similarly situated women in the Fulton County Jail system. In support thereof, Plaintiffs allege the following:

1. This is an action to protect some of the most vulnerable women in the Fulton County Jail system from serious psychological harm, cruel and unusual conditions of confinement, and invidious discrimination.

2. Defendants incarcerate over 200 women at the South Fulton Municipal Regional Jail, a facility in Union City, Georgia, used to hold women prosecuted in Fulton County courts. Many of those women—at least half, by most estimates—experience psychiatric disabilities.

3. Neither staffed nor trained to manage the large number of detainees experiencing psychiatric disabilities, Fulton County jailers respond to symptoms of mental illness by confining women with psychiatric disabilities in isolation cells for months on end. Plaintiffs M.J. and K.H. are two women currently being held in isolation solely because of their psychiatric disabilities. Like many other women, M.J. and K.H. are charged with minor, nonviolent offenses, but they remain in solitary confinement indefinitely due to Defendants' policies and practices.

4. Prolonged isolation consistently intensifies symptoms of mental

illness. Recent tours of the South Fulton Municipal Regional Jail have revealed example after example of the serious psychological harm that isolation inflicts on people subjected to it. Women can be found lying on the floor and with feces or food smeared on their bodies and cells. Many are unresponsive. Some of those that do speak mutter incoherently. Others communicate by writing messages in feces or food on cell walls. Trash is strewn across cells. Urine pools on the floor. Broken toilets fill to the brim and overflow. An overpowering odor of feces, urine, and vomit makes it difficult to breathe. People whose symptoms could be safely and effectively managed in a therapeutic setting deteriorate dramatically in these conditions and experience predictable and preventable mental health crises. Alarming numbers of women attempt suicide in their isolation cells.

5. Responsibility for caring for women who experience psychiatric disabilities falls primarily on a handful of overworked and undertrained detention officers. Mental health care staff purportedly monitor these women by touring the "mental health pods" to which most of them are assigned. These interactions often amount to nothing more than distributing word puzzles through a tray slot and asking a few cursory questions through a locked door.

6. For more than a century, solitary confinement has been known to cause serious psychological harm. *See, e.g., In re Medley*, 134 U.S. 160, 168

(1890) (noting prisoners held in solitary confinement often fell into "a semi-fatuous condition," "became violently insane," "committed suicide," or lost "sufficient mental activity to be of any subsequent service to the community"). Society has long deemed solitary confinement "too severe" to impose routinely on incarcerated people. *Id.*

7. No group suffers the psychological harm of isolation more acutely than individuals who experience psychiatric disabilities. It is now widely understood that "prolonged segregation of inmates with serious mental illness violates basic tenets of mental health treatment" and "can be as clinically distressing as physical torture." Jeffrey L. Metzner et al., *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psych. Law 104, 106 (2010). "All too frequently, mentally ill prisoners decompensate in isolation, requiring crisis care or psychiatric hospitalization. Many simply will not get better as long as they are isolated." *Id.* at 105. It is thus "not ethically defensible" for mental health professionals to acquiesce in this practice. *Id.* at 107. As a federal court in Alabama recently observed, correctional officials know that "placing seriously mentally ill prisoners in segregation amounts to denial of minimal care." *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1246 (M.D. Ala. 2017). Therefore, under the Eighth and Fourteenth Amendments, "it is

categorically inappropriate to place prisoners with serious mental illness in segregation absent extenuating circumstances." *Id.* at 1247.

8. Despite a contemporary scientific, medical, and correctional consensus against isolating people who experience psychiatric disabilities, certain jurisdictions have resisted change. As Congress recognized when it enacted the Americans with Disabilities Act in 1990, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). Defying three decades of attempts to eradicate that problem, some public entities continue to disregard their "obligation to avoid unjustified isolation of individuals with disabilities," particularly people with psychiatric disabilities. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 596-97 (1999). Discrimination against people with disabilities is especially problematic in prisons and jails. *See, e.g., United States v. Georgia*, 546 U.S. 151, 153-54 (2006).

9. The pernicious tendency to isolate and segregate people with psychiatric disabilities is a longstanding and ongoing reality for women accused of crimes in Fulton County, Georgia. Defendants have been asked to end their practice of isolating women with psychiatric disabilities. They have failed to do

so, to the detriment of those women and the interests of the communities to which they will eventually return.

10. Defendants' excessive use of solitary confinement deprives Plaintiffs of basic human needs, deprives Plaintiffs of necessary psychiatric treatment, creates a substantial risk of serious psychological and physical harm, and violates contemporary standards of decency. Defendants are deliberately indifferent to the serious mental health needs of the women in their custody.

11. Defendants further violate the rights of women who experience psychiatric disabilities by unlawfully discriminating against them in the provision of competency restoration programs. People deemed incompetent to stand trial in Fulton County are unable to resolve their criminal cases until their competency is restored. Many people found incompetent are charged with minor offenses but are nonetheless jailed by Defendants for months, a year, or longer, solely because they are unable to make the basic decisions needed to resolve their cases. In many cases, these pretrial detentions last considerably longer than would the typical sentence for the underlying offense.

12. For male detainees only, Defendants offer a competency restoration program at the main jail facility, allowing men promptly to enter a therapeutic environment with full days of structured programming, counseling, and group

activities supervised by on-site psychiatrists and other clinicians skilled in competency restoration. By contrast, women deemed incompetent to stand trial are not provided jail-based competency restoration programs. Instead, they are forced to languish in isolation cells for 23 to 24 hours per day while they wait for beds to open at one of the few state-run hospitals. This process can take many months due to a lengthy waiting list for the limited number of state hospital beds.

13. Plaintiffs expect to show that Defendants' disparate treatment of women in providing competency restoration services results in women experiencing significantly longer delays in resolving their cases and thus longer periods of pretrial incarceration than similarly situated men. The disparate treatment is made all the more untenable by the unacceptable conditions under which these women are held.

14. The named Plaintiffs bring this action on behalf of themselves and similarly situated detainees to end Defendants' unlawful practices and vindicate their rights under the Eighth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, and the Rehabilitation Act. Plaintiff Georgia Advocacy Office brings this action on behalf of itself and its constituents who experience psychiatric disabilities who are or are at risk of being confined at the South Fulton Municipal Regional Jail.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action under 28 U.S.C. § 1331, because it raises claims arising under the United States Constitution; 42 U.S.C. § 1983; the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq.; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12133.

16. The Court has authority to grant declaratory relief under 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

17. The Court has authority to grant injunctive relief under 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

18. The Atlanta Division of the Northern District of Georgia is the proper venue under 28 U.S.C. § 1391(b)(1) and Local Rule 3.1B(1) because all defendants are Georgia residents and at least one defendant resides in the Atlanta Division of the Northern District of Georgia; and under 28 U.S.C. § 1391(b)(2) and Local Rule 3.1B(3) because a substantial part of the acts and omissions giving rise to this action occurred in the Atlanta Division of the Northern District of Georgia.

PARTIES

A. Plaintiffs

1. Georgia Advocacy Office

19. The Georgia Advocacy Office (GAO) is a private nonprofit organization serving Georgians with disabilities. Its office is located in Decatur, Georgia.

20. In 1977, the State of Georgia designated GAO to serve as Georgia's statewide protection and advocacy system, often referred to as a "P & A." As Georgia's protection and advocacy system, GAO is mandated to protect the rights of Georgians with disabilities by the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15001 et seq. ("PADD"); the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801 et seq. ("PAIMI"); and the Protection and Advocacy for Individual Rights Act, 28 U.S.C. § 794e ("PAIR").

21. Under federal law, GAO has the authority and the obligation to investigate suspected abuse or neglect occurring at facilities providing mental health care or treatment and to pursue such legal remedies as may be necessary to protect the rights of individuals with disabilities, including people who experience psychiatric disabilities held in Georgia jails. *See*, *e.g.*, 42 U.S.C. §§ 10801 et seq.;

42 U.S.C. §§ 15001 et seq; 29 U.S.C. § 794e. Congress granted expansive investigatory powers to protection and advocacy systems like GAO because people who experience psychiatric disabilities are "vulnerable to abuse and serious injury" and are "subject to neglect." 42 U.S.C. § 10801(a)(1)-(3).

22. GAO brings this action to protect the rights and interests of Georgians with disabilities being held in Defendants' jails. GAO has devoted substantial resources and time to investigating the treatment of individuals with disabilities in Defendants' custody. Bringing this lawsuit is necessary for GAO to remedy the abuses uncovered by its investigation and fulfill its duties as Georgia's designated protection and advocacy system.

23. GAO has associational standing to bring claims on behalf of people who experience psychiatric disabilities confined in the Fulton County Jail system. *See Doe v. Stincer*, 175 F.3d 879, 884 (11th Cir. 1999) ("[T]he standing of protection and advocacy systems as representatives of the segment of our society afflicted with mental illness is well-established in the law."); *Dunn v. Dunn,* 219 F. Supp. 3d 1163, 1167-68 (M.D. Ala. 2016) (holding Alabama P & A agency had associational standing to sue on behalf of disabled prisoners). Congress has granted protection and advocacy systems like GAO the authority to, among other things, "pursue administrative, legal, and other appropriate remedies to ensure the

protection of individuals with mental illness who are receiving care or treatment in the State." 42 U.S.C. § 10805(a)(1)(B).

24. GAO meets the requirements for associational standing under Article III of the United States Constitution. "An organizational plaintiff has standing to enforce the rights of its members 'when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1342 (11th Cir. 2014) (quoting *Friends of the Earth, Inc. v. Laidlaw Envt'l Serv. Inc.*, 528 U.S. 167, 181 (2000)). In this case, GAO's constituents include women who experience psychiatric disabilities held in Defendants' jails who have suffered and continue to suffer injuries in fact and thus would have standing to sue in their own right to remedy Defendants' violations of federal law. The interests at stake in this action are central to GAO's purpose and function as Georgia's protection and advocacy system, and neither the claims asserted nor the relief requested in this action requires the individual participation of GAO's constituents.

25. As discussed in detail below, the purpose of this action is to prevent or eliminate imminent serious harm to individuals who experience psychiatric

disabilities. The Fulton County Sheriff's Office provides no administrative procedures by which GAO could prevent harm to its constituents.

2. Individual Plaintiffs

26. M.J. is a 20-year-old woman presently held in B Pod at the South Fulton Municipal Regional Jail in Union City, Georgia. She has been diagnosed with serious psychiatric disabilities and has been prescribed psychotropic medication. M.J. is on a waiting list to enter Georgia Regional Hospital–Atlanta or a similar state hospital for competency restoration services. M.J. has exhausted all administrative remedies available to her.

27. K.H. is a 26-year-old woman presently held in C Pod at the South Fulton Municipal Regional Jail. She has been diagnosed with serious psychiatric disabilities and has been prescribed psychotropic medication. K.H. is on a waiting list to enter Georgia Regional Hospital–Atlanta or a similar state hospital for competency restoration services. K.H. has exhausted all administrative remedies available to her.

28. Plaintiffs M.J. and K.H. seek relief on behalf of themselves and two putative classes of similarly situated persons.

29. The principal class, designated the Psychiatric Disability Class, includes all women with psychiatric disabilities who are now or will in the future

be confined in the Fulton County Jail system.

30. A subclass, designated the Competency Restoration Subclass, includes all women with psychiatric disabilities who are now or will in the future be deemed incompetent to stand trial while confined in the Fulton County Jail system.

B. Defendants

31. Defendant Theodore Jackson is sued in his official capacity as the Sheriff of Fulton County, Georgia, a position he has held since January 1, 2009. Defendant Jackson is the chief executive of the Fulton County Sheriff's Office. In that role, he oversees and controls each of the Fulton County Sheriff's Office's four divisions: the Jail Division, the Courthouse Security Division, the Law Enforcement Division, and the Administrative Division. As Sheriff, he is required by Georgia law to operate the Fulton County Jail system, to maintain the custody of people held in his jails, and to ensure safe and sanitary conditions of confinement. *See* O.C.G.A. §§ 42-4-4, 42-4-5. Defendant Jackson is a resident of Fulton County, Georgia. At all times relevant to this complaint, Defendant Jackson has acted under color of state law. The Fulton County Sheriff's Office is a program or entity receiving federal financial assistance. *See* 29 U.S.C. § 794(b).

32. Defendant Mark Adger is sued in his official capacity as Chief Jailer for the Fulton County Sheriff's Office. Defendant Adger was appointed as Chief Jailer by Defendant Jackson in April 2013. As Chief Jailer, Defendant Adger has been delegated and exercises the Sheriff's authorities to operate the Fulton County Jail system and to ensure safe and sanitary conditions of confinement. Defendant Adger reports to and is supervised by Defendant Jackson. Defendant Adger is a resident of Fulton County, Georgia. At all times relevant to this complaint, Defendant Adger has acted under color of state law.

33. Defendant Meredieth Lightbourne is sued in her official capacity as Medical Director for the Fulton County Sheriff's Office. Defendant Lightbourne was appointed as Medical Director by Defendants Jackson and Adger. As Medical Director, Defendant Lightbourne has been delegated and exercises the Sheriff's authorities to provide medical and mental health services to all detainees in the Fulton County Jail system. Defendant Lightbourne also is responsible for supervising medical services provider NaphCare, Inc., to ensure that its personnel provide necessary mental health care and medically appropriate living conditions to people with psychiatric disabilities. Defendant Lightbourne is a resident of Fulton County, Georgia. At all times relevant to this complaint, Defendant Lightbourne has acted under color of state law.

34. Defendant Tyna Taylor is sued in her official capacity as Detention Captain in charge of the South Fulton Municipal Regional Jail, also known as the South Fulton Annex. Defendant Taylor was appointed as Detention Captain by Defendants Jackson and Adger. As Detention Captain, Defendant Taylor has been delegated and exercises the Sheriff's authorities to operate the South Fulton Municipal Regional Jail and to ensure safe and sanitary conditions of confinement. Defendant Taylor reports to and is supervised by Defendants Jackson and Adger. Defendant Taylor is a resident of Fulton County, Georgia. At all times relevant to this complaint, Defendant Taylor has acted under color of state law.

35. Defendant Pearlie Young is sued in her official capacity as Detention Lieutenant in charge of the South Fulton Municipal Regional Jail, also known as the South Fulton Annex. Defendant Young was appointed as Detention Lieutenant by Defendants Jackson and Adger. As Detention Lieutenant, Defendant Young has been delegated and exercises the Sheriff's authorities to operate the South Fulton Municipal Regional Jail and to ensure safe and sanitary conditions of confinement. Defendant Young reports to and is supervised by Defendants Jackson, Adger, and Taylor. Defendant Young is a resident of Fulton County, Georgia. At all times relevant to this complaint, Defendant Young has acted under color of state law.

ALLEGATIONS OF FACT

A. Defendants Jail Many Women Who Experience Psychiatric Disabilities in the South Fulton Jail.

36. Plaintiffs and the putative class members are women with psychiatric disabilities held by Defendants in the Fulton County Jail system. This section provides background on relevant aspects of that system.

37. The main facility for holding Fulton County detainees is the Fulton County Jail, located at 901 Rice Street, N.W., in Atlanta. The Rice Street facility has an operational capacity of around 1,900 people and has for many years operated at or above that capacity.

38. With over one million residents, Fulton County is Georgia's most populous county. Accordingly, Fulton County courts handle far more criminal cases than other Georgia counties' courts, and the Fulton County Sheriff's Office is responsible for detaining more people than other sheriffs' offices in Georgia. An average of approximately 32,000 people were booked into the Fulton County Jail system each year between 2012 and 2016. Between 2005 and 2014, the jail system's average daily population was around 2,800 people.

39. To ease overcrowding at the Rice Street jail, Fulton County uses other facilities to hold Fulton County detainees. The two main annexes for the Fulton County Jail system are located in Alpharetta and in Union City.

40. Many people arrested for crimes in Fulton County are individuals with psychiatric disabilities. One recent report estimates that between 40 and 70 percent of people incarcerated in the Fulton County Jail system suffer from psychiatric disabilities,[1] a figure about two to three times the prevalence rate for adults in the United States. The jail's former medical administrator, George Herron, puts the jail's prevalence rate even higher—60 to 80 percent—leading him to characterize the Fulton County Jail as "the new mental health hospital."[2] At any given time, around half of all Fulton County detainees are identified as needing mental health services, making the Fulton County Jail "the largest de facto mental health facility in Georgia."[3]

41. Defendants have a policy of segregating detainees deemed "mentally disordered" from the general jail population.[4] Defendants house "[i]nmates

[1] Fulton Cty. Justice & Mental Health Task Force, *Final Report* 29 (2017).

[2] Anna Simonton, *How Atlanta, Fulton, DeKalb Could Stop Criminalizing Mentally Ill People*, Atlanta Progressive News, July 23, 2015, *available at* http://atlantaprogressivenews.com/2015/07/23/how-atlanta-fulton-and-dekalb-could-stop-criminalizing-the-mentally-ill/ (last visited Mar. 12, 2019).

[3] Super. Ct. of Fulton Cty., *Accountability Courts—Behavioral Health Treatment Court*, *available at* https://www.fultoncourt.org/accountability/acc-bhtc.php (last visited Mar. 10, 2019).

[4] Fulton Cty. Sheriff's Office, Jail Bureau Policy No. 2100-01, *Classification of Inmates* 13 (Jan. 1, 2002).

suffering from serious mental illness" in single occupancy cells.[5]

42. Defendants outsource mental health care to a private contractor. As of January 2018, that contractor is NaphCare, Inc. One of Defendant Lightbourne's chief responsibilities is ensuring NaphCare's compliance with its contract.

43. The contract with NaphCare provides that its overarching objective is "[t]o provide health services to inmates in compliance with all applicable federal and state standards, statutes and regulations, including, but not limited to, the U.S. Constitution and correctional health standards of care."[6] To achieve this objective, the contract requires NaphCare to "establish and implement written protocols, policies and procedures," which "must receive written approval by the Sheriff or his designee prior to implementation."[7] The contract further states that the mental health services NaphCare must provide "include the use of psychosocial and medication therapies, [and] individual or group therapy as indicated, to relieve symptoms, achieve a level of appropriate functioning and prevent a relapse."[8]

44. In 2018, NaphCare established, and Defendants approved, Policy No.

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[5] Fulton Cty. Sheriff's Office, Jail Bureau Policy No. 1000-01, *Single Occupancy Cells/Rooms* 1 (July 15, 2013).

[6] Fulton Cty. Gov't, Contract No. 17RFP07012016B-BR, *Inmate Medical Services for Sheriff's Dep't* 46 (Jan. 1, 2018).

[7] *Id.*

[8] *Id.* at 63.

J-F-03, *Mental Health Services—Mental Health Programs and Residential Units*. The policy states that its purpose is "[t]o ensure patients receive appropriate mental health services," and that its goal "is to help those patients with mental health problems maintain[] their best level of functioning." To that end, the policy requires NaphCare and Defendants to maintain "non-acute mental health residential units," which must meet the following criteria: "a) A defined scope of care; b) Programming or therapies as needed; c) A sufficient number of mental health staff assigned to the unit; d) Individual treatment plans; e) Orientation and training for correctional officers assigned to the unit; and f) Housing in a clean and safe environment, including facilities necessary for maintaining personal hygiene and guidance for [activities of daily living], if necessary."

45. Many detainees who experience psychiatric disabilities endure mental health crises requiring emergency care. The Rice Street jail facility maintains a Medical Observation Unit (MOU), which includes 14-cells where people having mental health crises may be placed for up to 30 days at a time. Between 2013 and 2017, psychiatric admissions averaged 1,300 each year, or around four new admissions per day.

46. Defendants maintain a policy of housing all female pretrial detainees in the South Fulton Municipal Regional Jail ("the South Fulton Jail"), located at

6500 Watson Street in Union City.

47. The South Fulton Jail is staffed and operated by the Fulton County Sheriff's Office. Day-to-day operation of the South Fulton Jail is left primarily to a "jail commander" holding the rank of lieutenant. Detention officers work three rotating shifts per day, with around six to eight officers assigned to each shift and each shift supervised by a sergeant.

48. The jail holds over 200 Fulton County inmates at any given time, virtually all of whom are women accused of crimes. Approximately half or more of those women experience psychiatric disabilities, and one quarter are prescribed medication for psychiatric disabilities.

49. The layout of the jail includes nine housing units or "pods," eight of which are used to house women. Pods A, D, and E serve as female general population units, with seven eight-bunk cells per pod. Pod F has ten double-bunk cells and is used for the "New Beginnings" self-improvement program. Pod I is an intake and disciplinary segregation unit with five eight-bunk cells.

50. The South Fulton Jail's B, C, and G Pods are designated as "mental health pods" with ten cells per unit. These pods are considered "non-acute mental health residential units" under the contract with NaphCare and under NaphCare Policy No. J-F-03. Women in these pods are almost always housed under

conditions of solitary confinement. Contrary to Policy No. J-F-03, they are not provided meaningful programming or therapies, sufficient mental health staff, appropriately trained detention officers, or a clean and safe environment.

51. Women in B, C, and G Pods are usually housed alone or, when space is limited, with one other detainee. Thus, the number of women in the three pods at any given time is around 30 to 40. All women who experience psychiatric disabilities—around 100 or more, by most estimates—are at risk of being placed in B, C, and G Pods when they decompensate, as frequently occurs due to the South Fulton Jail's poor living conditions and limited mental health care services.

52. Women who experience psychiatric disabilities and are placed in the mental health pods are not provided with a fixed term in segregation. Their segregation terms are indefinite, limited only by the length of their detention in the jail.[9]

53. Many women have psychiatric disabilities so severe that they are unable to resolve their cases and thus remain stranded in the jail system. Under the Fourteenth Amendment Due Process Clause, "[a] defendant may not be put to trial

[9] B, C, and G Pods are sometimes used to segregate women for disciplinary reasons, which entails a fixed segregation term that is ordinarily followed by a return to one of the general population pods. The vast majority of women in B, C, and G Pods are placed there long-term solely due to their psychiatric disabilities.

unless [she or] he has sufficient present ability to consult with [her or] his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against [her or] him."[10] When an accused person is found incompetent to stand trial, a state may attempt to restore the person's competency so long as it does not hold the person "more than the reasonable period of time necessary to determine whether there is a substantial probability that [she or] he will attain that capacity in the foreseeable future."[11]

54. To implement the Constitution's proscriptions against trying people deemed incompetent and detaining those not restorable for longer than is reasonable, Georgia has established a procedure for trial courts to order competency evaluations and, where appropriate, require people accused of crimes to undergo treatment with the aim of restoring their competency. *See* O.C.G.A. § 17-7-130. The Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD) is tasked with overseeing competency restoration. *See id.*

55. For people accused of crimes in Fulton County, DBHDD's competency restoration services generally occur at Georgia Regional Hospital–

[10] *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)) (internal quotation marks and alterations omitted).

[11] *Jackson v. Indiana*, 406 U.S. 715, 738-39 (1972).

Atlanta, located in DeKalb County, or at other state hospitals.

56. There is a lengthy waiting list to enter state hospitals for competency restoration services. Wait times vary, but delays of three to six months are typical, and some people wait over a year to enter a state hospital.

57. Delays in providing competency restoration services keep detainees who experience psychiatric disabilities in jail longer than they otherwise would be.

58. Recognizing that long delays in admitting people to Georgia Regional Hospital–Atlanta and similar state hospitals were causing people in need of competency restoration to spend longer periods in jail than they otherwise would, Defendants in 2011 established a competency restoration unit at the Rice Street facility. To be admitted to the unit, a detainee must be male.

59. Because women are ineligible to participate in the jail's competency restoration program, and because no equivalent program is offered to them, Plaintiffs and the putative class members must wait for beds to open at state hospitals before they may begin the competency restoration process. During the months of waiting, they are held under conditions of extreme isolation and deprivation that cause their mental health to deteriorate further, whereas similarly situated men are permitted to enter a therapeutic environment with a dedicated treatment team.

B. Defendants Inflict Psychological Harm on Women Who Experience Psychiatric Disabilities by Placing Them in Prolonged Solitary Confinement.

60. Defendants confine Plaintiffs and other women who experience psychiatric disabilities to isolation cells for months on end, with few opportunities to leave their cells or engage in meaningful social interaction. This practice causes serious psychological harm to Plaintiffs and all other women subjected to it.

1. Defendants confine women who experience psychiatric disabilities in isolation cells for extended periods of time.

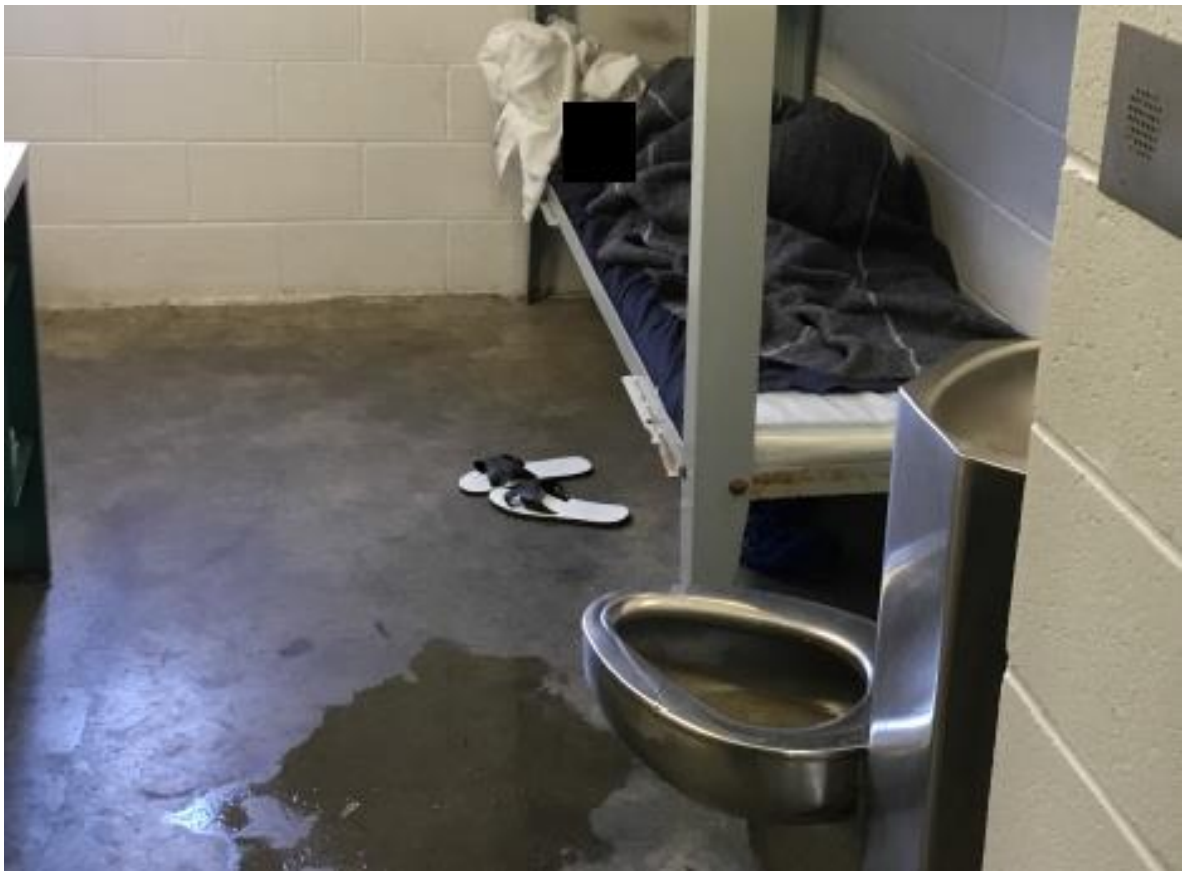
61. Defendants place the South Fulton Jail's women who experience psychiatric disabilities in isolation cells, usually in B, C, and G Pods. Each of these pods has a similar physical layout and is governed by the same policies.

62. Each pod has ten cells, all on the same side, with five cells on an upper level and five cells on a lower level. The following image depicts the standard pod layout:

63. Across from the cells is a small common area with metal benches.

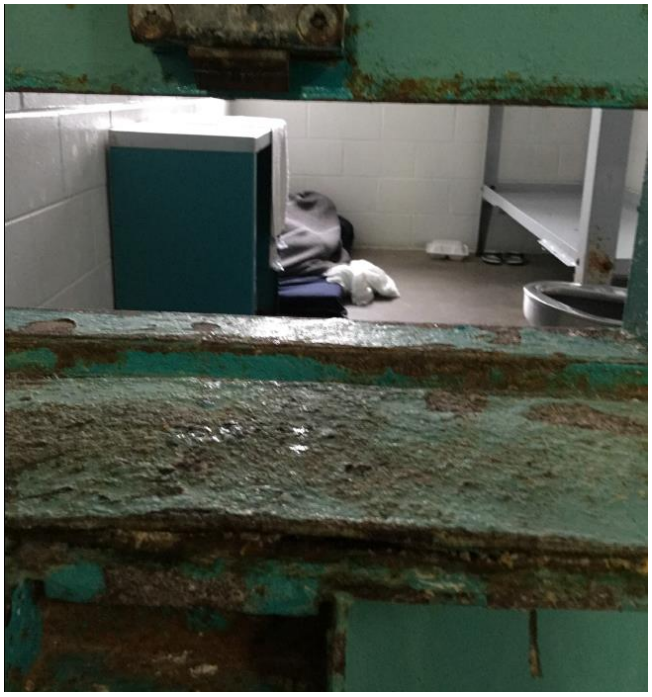
64. Women in B, C, and G Pods spend little time in the common areas. Instead, they spend all or nearly all of each day confined to their cells. Most women sleep or lay in bed or on the floor all day and night.

65. The cells in which the women are confined measure approximately six feet by twelve feet. Each cell contains a steel toilet and sink, a steel desk, a steel bedframe, and a thin mattress. The following images depict standard cell interiors observed during recent (2019) midday visits to the jail:



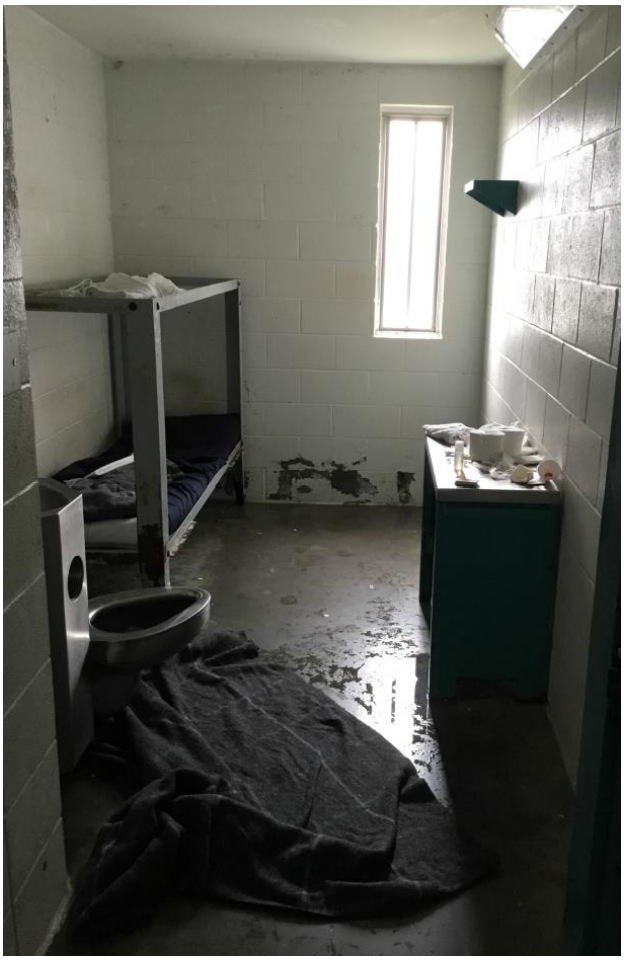
66. Each cell is secured with a heavy steel door equipped with a thick, shatterproof window. It is difficult to communicate through the door. At the back of each cell is a window that permits some natural light to enter but is too opaque to permit a view of the outside environment. The following images depict a standard cell door and standard cell window:

67. While housed in B, C, and G Pods, the limited interaction that women have with officers and staff usually occurs through a hinged metal flap on the cell door. The flap is opened to deliver food or medication. The following images depict standard door flaps:



68. Defective plumbing causes cells frequently to lose all water access. When this occurs, women in the cells lack drinking water except for what little they can store in a cup or cereal bowl from the 3:00 a.m. distribution of breakfast trays. Many women feel dehydrated, tired, and ill from long periods without access to drinking water.

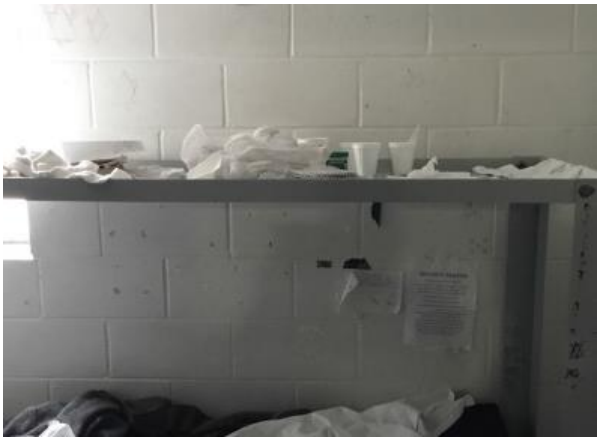
69. Some cells flood with large pools of water. Women in these cells sometimes resort to using their issued bedding to clean up the standing water. They are then left without bedding and are forced to sleep on cold metal bunks without sheets or blankets. The following images depict examples observed during a recent (2019) visit to the jail:

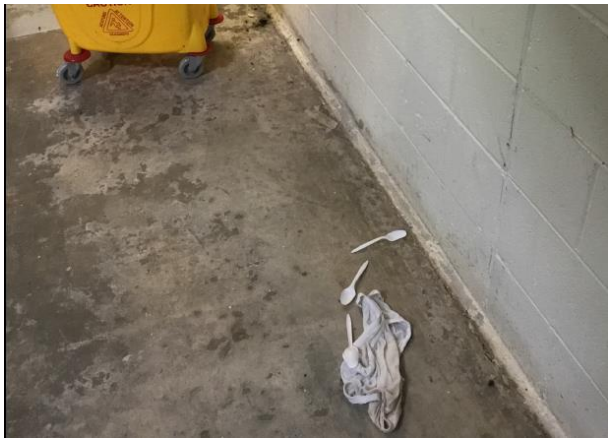


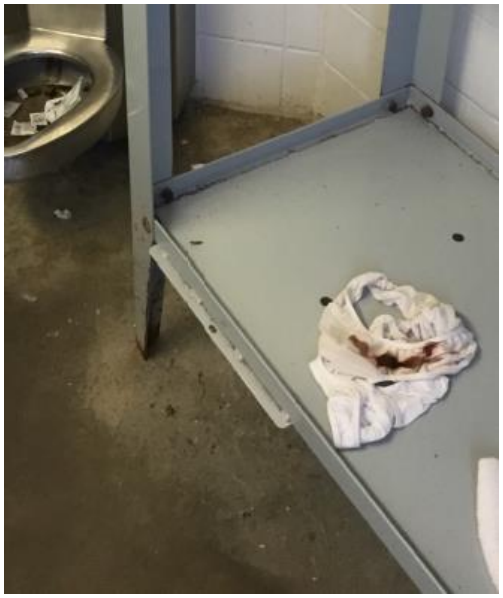
70. Throughout the jail, poor maintenance and sanitation are evident. Rusting metal fixtures and surface mold can be found in many cells. The showers are particularly unsanitary, with feces- and scum-covered shower mats. The following images depict examples observed during a recent (2019) visit to the jail:

71. Due to a combination of their psychiatric disabilities and psychological deterioration induced by the conditions in which they live, many of the women in B, C, and G Pods face challenges in self-care. Some women lose the will or the ability to conduct personal hygiene. They sleep most of the day and stop showering or cleaning their living areas. On a visit to the jail in 2018, Plaintiffs' counsel observed a woman lying on the floor with feces-matted hair. On another visit in 2018, Plaintiffs' counsel observed a woman whose cell, including the floor and bunk, was covered with smeared pieces of sandwich and other food.

72. Garbage and old food are commonly scattered about the cells. Soiled clothing can be found lying discarded around the showers and cells. The following images depict examples observed during recent (2019) visits to the jail:



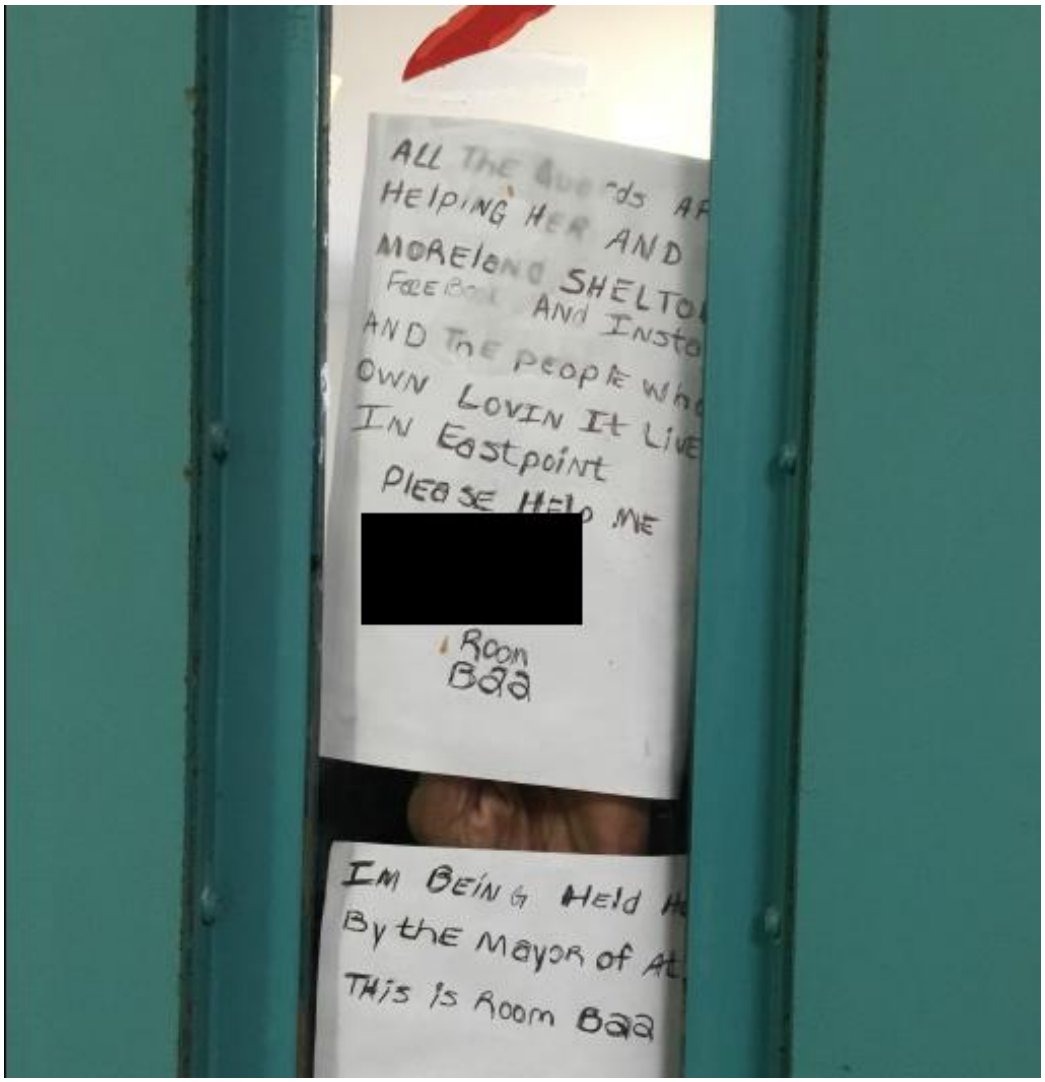




73. The following image depicts a trail of urine running from a woman's cell door, as observed during a recent (2019) visit to the jail:

74. The following images depict messages written on cell walls, apparently with feces or food, as observed during a recent (2019) visit to the jail:

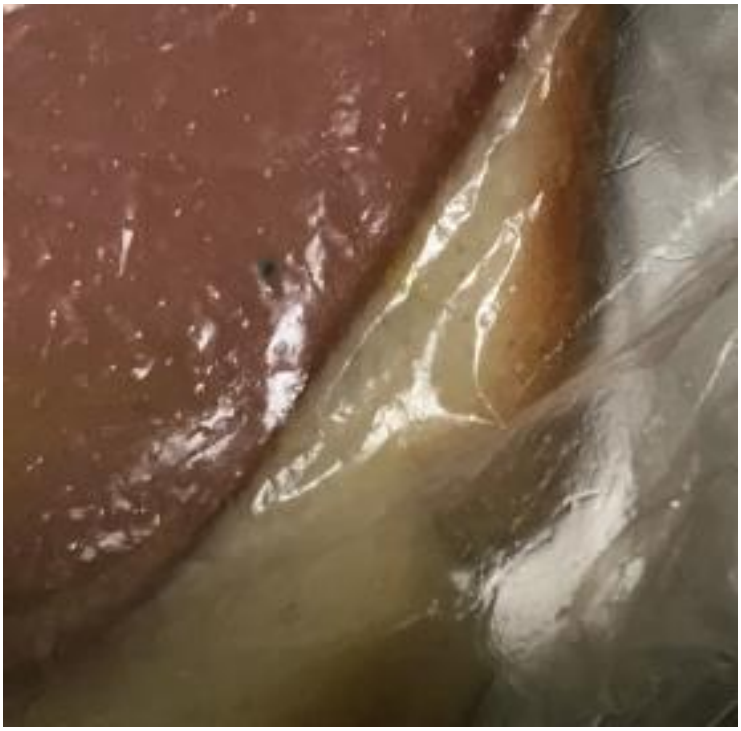
75. The following image depicts a plea for help that one woman held in her window during a recent (2019) visit to the jail:



76. There is often an overpowering, foul odor inside B, C, and G Pods due to women experiencing psychiatric disabilities failing to engage in personal hygiene and smearing feces or food on cell surfaces and themselves. The unsanitary conditions in these housing units are so obvious, concerning, and

longstanding that detention officers at the facility have a custom of donning examination gloves before entering the housing units, and of offering gloves to visitors entering with them.

77. Women in the jail are fed twice per day. During the breakfast meal distribution, which usually occurs around 3:00 a.m., the women are given, as a bagged lunch, four slices of bread and some meat believed to be bologna. The meat frequently is contaminated with blue-colored, mold-like spots. Women often experience symptoms of food poisoning, such as vomiting or diarrhea. The following image depicts a piece of meat with a visible blue spot on it observed during a recent (2019) visit to the jail:



78. Compounding the intolerable living conditions in B, C, and G Pods is the long duration that women in these pods spend isolated inside of their cells.

79. Women housed in B, C, and G Pods spend, on average, over 23 hours per day locked inside their cells. Some go days without being let out.

80. Decisions about whether and for how long to offer out-of-cell time to detainees are left to the discretion of overworked detention officers. With limited staff, officers prioritize other tasks—distributing food, performing population counts, escorting detainees to appointments, making rounds, and so forth—over providing the security presence needed to allow women in B, C, and G Pods out of their cells.

81. The jail is equipped with an outdoor recreation area, but women in B, C, and G Pods rarely are offered the opportunity to use it.

82. Many detainees held in the general population pods have access to televisions, reading material, and opportunities to socialize with others. They may attend classes and engage in recreational activities in the gym and the outdoor yard area.

83. By contrast, Defendants require detainees who experience psychiatric disabilities to spend their days in segregation. Unlike those housed in general population, women who experience psychiatric disabilities have little or no access

to recreation, socialization, programs, classes, gym activities, or outdoor recreation. In addition, the B, C, and G Pods do not have working televisions.

84. There is no fixed routine for out-of-cell time in B, C, and G Pods. Some women are permitted to access their pods' small common areas for an average of less than one hour per day, which includes time to shower. On days when out-of-cell time is offered, women often come out of their cells alone, one at a time, preventing meaningful social interaction during the hour or so that they are out. Women exhibiting disruptive symptoms of their psychiatric disability generally are not allowed to participate in out-of-cell time at all. In other words, the individuals most impacted by their psychiatric disability are also the ones with the fewest opportunities to leave the isolating and degrading conditions inside their cells.

85. In short, women who experience psychiatric disabilities generally spend upwards of 23 hours per day confined alone in their cells with little to do apart from sleeping or staring at the cinderblock walls.

86. Plaintiffs expect to show that women who experience psychiatric disabilities are held under these isolating conditions for periods of months and sometimes more than a year at a time. The duration of their isolated confinement

is limited only by the length of time it takes to resolve their criminal cases or complete their sentences.

87. Plaintiff M.J. is a 20-year-old homeless woman. She was arrested on October 24, 2018, on a charge of criminal trespassing for proselytizing at the West End Mall and allegedly refusing to leave when asked. She has a $500 bond but is unable to afford it, so she remains incarcerated in the South Fulton Jail. Because she has been identified by Defendants as a person experiencing psychiatric disabilities, M.J. is housed in B Pod, where she is locked inside her cell for over 23 hours per day on average. When it is offered, her out-of-cell time usually is limited to one hour per day, alone, in the B Pod dayroom.

88. Plaintiff K.H. is a 26-year-old homeless woman who was arrested on November 3, 2018, on charges of criminal trespassing and prowling. She has a $500 bond for both charges but is unable to afford it, so she remains incarcerated in the South Fulton Jail. Because she has been identified by Defendants as a person experiencing psychiatric disabilities, K.H. is housed in C Pod, where she is locked inside a cell for over 23 hours per day on average. When it is offered, her out-of-cell time usually is limited to one hour per day in the C Pod dayroom.

2. Isolation of people who experience psychiatric disabilities causes serious psychological harm.

89. Involuntary confinement in a cell for an average of 22 hours or more per day without meaningful human contact is deemed solitary confinement by correctional and medical experts in the United States and internationally.[12] The conditions under which Plaintiffs and other women who experience psychiatric disabilities are held in the South Fulton Jail meet the criteria for solitary confinement.

90. There is a strong scientific consensus—supported by countless empirical studies carried out over the course of more than a century—that solitary confinement causes significant psychological harm. "Nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies."[13]

[12] *See, e.g.*, U.N. Office on Drugs & Crime, United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 44 (2015); Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement Is Psychologically Harmful*, 181 Prison Serv. J. 12, 12 n.1 (2009).

[13] David H. Cloud, *et al.*, *Public Health and Solitary Confinement in the United States*, 105 Am. J. of Pub. Health 18, 21 (2015).

91. The psychological harm caused by prolonged solitary confinement is serious and can compromise detainees' mental health regardless of whether they have psychiatric disabilities.[14]

92. Though solitary confinement typically involves holding a detainee alone, the effects of solitary confinement are in certain respects worsened—not ameliorated—when detainees are double-celled in isolation cells. In fact, "studies have demonstrated that isolated groups comprising two individuals may be the most pathogenic of all."[15] For example, double-celling people in isolation cells is "associated with especially high rates of mutual paranoia."[16] The way to reduce the psychological harm caused by solitary confinement is to provide meaningful, purposive activity and social interaction outside of cells, including, for individuals who experience psychiatric disabilities, "group therapy and other therapeutic interventions."[17]

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[14] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325, 357 (2006); Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49 Crime & Delinquency 124, 130-31 (2003).

[15] Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y at 356.

[16] *Id.*

[17] Jeffrey L. Metzner et al., *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psych. Law 104, 107 (2010).

93. Many scientific and professional organizations disapprove of solitary confinement. In 2013, for example, the American Public Health Association recommended eliminating solitary confinement except when necessary "to manage a current, serious, and ongoing threat to the safety of others."[18] In 2016, the National Commission on Correctional Health Care (NCCHC) issued a position statement recommending that "[p]rolonged (greater than 15 consecutive days) solitary confinement is cruel, inhumane, and degrading treatment, and harmful to an individual's health."[19] The NCCHC stated that solitary confinement should be an "exceptional measure," should be used "for the shortest time possible," and "should never exceed 15 days."[20]

94. The legal profession has likewise condemned solitary confinement. For example, the American Bar Association (ABA) recommends that "[c]onditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population."[21]

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[18] Am. Pub. Health Ass'n, Policy No. 201310, *Solitary Confinement as a Public Health Issue* (2013).

[19] Nat'l Comm'n on Corr. Health Care, Position Statement, *Solitary Confinement (Isolation)* 4 (Apr. 2016).

[20] *Id.*

[21] Am. Bar Ass'n, Standards for Criminal Justice: Treatment of Prisoners § 23-3.8(b) (3d ed. 2011).

95. Recognizing that solitary confinement causes psychological injury to those exposed to it, many jailers and correctional leaders have begun limiting the practice. In 2015, the Association of State Correctional Administrators acknowledged that "[p]rolonged isolation of individuals in jails and prisons is a grave problem in the United States." As a result, "[c]orrectional leaders across the country are committed to reducing the number of people in restrictive housing and altering what it means to be there."[22]

96. The serious psychological harm caused by solitary confinement is especially detrimental to people who experience psychiatric disabilities. Because they are already vulnerable, they endure greater psychological pain and more pronounced mental deterioration over a shorter span of time than others subjected to isolation. As a federal court explained in enjoining solitary confinement of seriously mentally ill prisoners 24 years ago, isolating seriously mentally ill people "is the mental equivalent of putting an asthmatic in a place with little air to

[22] Press Release, Ass'n of State Corr. Adm'rs, *New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School* (Sept. 2, 2015).

breathe." *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995). The decisions of numerous federal courts accord with this view.[23]

97. Solitary confinement intensifies symptoms of a psychiatric disability. For example, solitary confinement has been shown to exacerbate the depressed states of people suffering from depression, increase the number of psychotic episodes for prisoners with psychotic disorders, amplify the emotional instability of people suffering from bipolar disorder, and drive people with impulse control disorders to experience greater frustration and distress.

98. Acts of self-harm and suicide are more common among prisoners in solitary confinement. Researchers in one recent study found that people in solitary confinement were seven times more likely to commit acts of self-harm than those housed in the general population.[24]

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[23] *See, e.g.*, *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1246 (M.D. Ala. 2017); *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335-36 (D. Ariz. 2014); *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1099 (E.D. Cal. 2014); *Indiana Protection and Advocacy Serv. Comm'n v. Comm'r, Indiana Dep't of Corr.*, No. 1:08-CV-1317, 2012 WL 6738517, at *15-17 (S.D. Ind. Dec. 31, 2012); *Jones El v. Berge*, 164 F. Supp. 2d 1096, 1119-23 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 199), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988).

[24] Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442, 445-46 (2014).

3. Plaintiffs and the putative class members are suffering serious psychological harm.

99. The experiences of Plaintiffs and other women held in the South Fulton Jail illustrate the psychological harm caused by extended solitary confinement. Representative examples are discussed below.

a. M.J. is suffering serious psychological harm.

100. Plaintiff M.J. has been held in solitary or segregated confinement in B Pod since October 29, 2018. She is typically allowed out of her cell for about one hour per day, four or five days per week. However, she sometimes goes three, four, five, or six days without being offered the opportunity to leave her cell.

101. On the occasions when M.J. is allowed to leave her cell, she usually is alone in the B Pod dayroom. M.J. has nothing productive to do with her time and few opportunities for meaningful social interaction. She has no access to television, newspapers, magazines, or general reading material.

102. The smell in M.J.'s cell is exceedingly foul. She has a large puddle of water on the floor of her cell due to water leaking from the base of the toilet.

103. M.J. has been allowed to visit the jail's outdoor "yard"—a small, enclosed space with concrete walls—only a handful of times during more than five months in the jail, averaging about once per month or less.

104. M.J. has suffered severe depression during her months confined in an isolation cell. She has experienced hallucinations and seen "dark images," and has considered suicide or self-harm on multiple occasions.

105. M.J. has minimal day-to-day interaction with mental health care providers. Ordinarily, her contact with mental health care staff consists of a counselor making weekly rounds, usually on Wednesdays. At M.J.'s cell front, the counselor asks five questions in quick succession: (1) Are you feeling homicidal?; (2) Are you feeling suicidal?; (3) Are you starving yourself?; (4) Are you seeing things?; and (5) Are you taking your medication? The counselor sometimes slides a piece of paper with a word puzzle printed on it through the cell door. Then the counselor moves on to the next cell to ask the same five questions. There is no confidentiality during these cell-front contacts, which can be overheard by officers and detainees in the vicinity of M.J.'s isolation cell.

106. On February 14, 2019, after about four months of continuous solitary confinement, a nurse observed that M.J. was "unkempt" and "w[ea]ring soiled garments." M.J. reported that she was feeling suicidal. A mental health counselor placed M.J. on suicide watch, then removed her from suicide watch the following morning. Within hours of M.J. being removed from suicide watch, officers found her "with [a] make shift 'noose' from [a] bed sheet around [her] neck and 'pulling

down' on [the] sheet." She was transferred to the Rice Street MOU and placed naked inside a padded cell. She remained in the MOU for four days before being returned to her B Pod isolation cell at the South Fulton Jail.

107. On or around March 7, 2019, detention officers, once again, found M.J. with a sheet tied around her neck because she was attempting to hang herself, and M.J. was, once again, transferred to the Rice Street MOU and placed in a cell with only a paper gown. She remained in the MOU for four days before being returned, once again, to her B Pod isolation cell at the South Fulton Jail.

108. M.J. was arrested for criminal trespass, a minor offense that ordinarily would carry little or no jail time upon conviction. She has been held in solitary confinement for over five months only because she cannot afford her $500 bond and has been found incompetent to stand trial, preventing her from disposing of her case. M.J. remains in B Pod under the conditions described above and has no way of knowing when she might be released.

b. K.H. is suffering serious psychological harm.

109. Plaintiff K.H. has been held in solitary confinement in C Pod since approximately November 3, 2018. She sometimes goes three, four, five, or six days without being offered the opportunity to leave her cell. She frequently begs detention officers to be let out of her cell so that she can use the dayroom and take

a shower, but officers often deny these requests as a result of the polices and practices established by Defendants.

110. K.H. spends all day, nearly every day, with nothing to do. At best, a nurse or counselor might pass a word puzzle through her locked door.

111. Between November 3, 2018, and February 28, 2019, K.H. was allowed to go to the outdoor yard on one occasion.

112. Due to a perpetually malfunctioning toilet, the floor of K.H.'s cell is, on most days, partially covered with standing toilet water.[25] The toilet leak is persistent and jail staff members often do not provide the means to mop up the water, so K.H. must live with toilet water all around her. K.H. has at times been driven to use her jail-issued bedding to soak up the toilet water on the floor. When she does this, she is left without bedding to sleep with. On multiple occasions, she has had to sleep for days at a time in her cold, concrete room without a blanket or sheets because she had used the issued bedding to clean up toilet water.

113. Several months ago, K.H. slipped on the water in her cell and injured her toe, which subsequently turned black and, at one point, had white, fungus-like material in it.

[25] Plaintiffs' counsel recently observed and photographed the large amount of water on the floor of K.H.'s cell.

114. K.H. is suffering severe, continuous psychological and emotional distress. She experiences frequent and distressing delusions and hallucinations. She appears ungroomed and unkempt. She spends much of the day crying or on the verge of tears.

115. K.H. has minimal day-to-day interaction with mental health providers. A counselor comes to her cell once per week and asks a few questions before moving on to the next person. There is no confidentiality during these cell-front contacts, which can be overheard by officers and detainees in the vicinity of K.H.'s isolation cell.

116. The stress that K.H. is under at times becomes so great that she responds by harming herself. K.H. has been found by officers banging her head and face against the wall of her cell with sufficient force to require medical attention.

117. On February 22, 2019, K.H. appeared anguished and had a large amount of blood soaked into her pants. She believed that she had suffered a miscarriage. When a nurse at the jail was informed of this, the nurse speculated that K.H. has delusions of being pregnant and that the considerable amount of blood covering K.H.'s clothes was the result of K.H. using objects to gouge her

vagina. A different nurse predicted that K.H. was eventually "going to have a nervous breakdown."

118. On March 22, 2019, a detention officer at the jail stated that K.H. frequently destroys her clothing and that, from the officer's lay perspective, K.H. belongs in a hospital.

119. On or around March 28, 2019, K.H. was placed on suicide watch in the Rice Street MOU.

120. K.H. was arrested for "criminal trespass" and "prowling," minor offenses that ordinarily would carry little or no jail time upon conviction. She has been in solitary confinement for five months only because she cannot afford her $500 bond and has been found incompetent to stand trial, preventing her from disposing of her case. K.H. remains in C Pod under the conditions described above and has no way of knowing when she might be released.

c. Numerous other women have suffered and are suffering serious psychological harm.

121. Plaintiffs' experiences are not unusual. Many other women experiencing psychiatric disabilities have suffered psychological deterioration while held in prolonged solitary confinement under Defendants' established policies and practices. Just a few of many examples are discussed below.

122. S.P. is a 22-year-old woman who has been diagnosed with schizophrenia since age 10. She was arrested in December 2018 on charges of criminal trespass and simple battery and is in jail because she cannot pay the $1,500 bond for her release. For approximately her first month in the jail, she was in A Pod, a general population unit. On or around February 4, 2019, she was placed on suicide watch after punching the glass in her cell and expressing suicidal ideation. She went to the Rice Street MOU for three days, after which she was returned to the South Fulton Jail and placed first in B Pod and later in G Pod, where she remains to this day. In the roughly two months to date that she has been held in solitary confinement, S.P. has been on suicide watch in the MOU at least seven times. On February 7, she was placed on suicide watch for four days after stating she planned to hang herself because she felt that detention officers at the South Fulton Jail were "forgetting about me"; during her time in the MOU, medical case notes reflect S.P. living in a room with "feces smeared on cell walls and windows." On February 20, S.P. was placed on suicide watch for four days; during her time in the MOU, medical case notes reflect that she was "malodorous," had feces smeared on her cell walls and windows on one occasion, and had water flooding her cell on another. On February 28, S.P. was placed on suicide watch for five days after presenting as "Disheveled," "Poorly groomed," and "Unkempt,"

and voicing suicidal ideation; case notes during this time describe S.P. as variously living in a cell with "feces and blood all over floor, door and walls," "lying on [the] floor covered up with a blanket," "sitting on the floor yelling at times," and in a flooded cell "standing at cell door rubbing soap all over her body." On March 10, she was placed on suicide watch for one day after reportedly voicing suicidal ideation. On March 12, she was placed on suicide watch for three days after attempting to hang herself with a torn pair of panties; case notes during this time reflect S.P. repeatedly lying on the floor of her cell and smearing feces on her cell. Plaintiffs' counsel observed S.P in the MOU on March 13, 2019. She was stark naked and pacing, and an overpowering smell of feces emanated from the cell. The cell's observation port was smeared with feces. On March 16, S.P. was placed on suicide watch for three days after again attempting to hang herself. On or around March 26, she was placed on suicide watch for two weeks, after which she was returned to her G Pod isolation cell.

123. T.A. is a 55-year-old homeless woman who has been diagnosed with schizophrenia and bipolar disorder for most of her adult life. She was arrested in October 2018 on a charge of criminal trespass and is in jail because she cannot pay the $1,000 bond for her release. T.A. has difficulty walking and wears an adult diaper. Officers rarely allow her to leave her cell and, on the rare occasions when

they do, sometimes return T.A. to her cell by dragging her body across the dayroom floor. On March 28, 2019, T.A. was observed through her cell window systematically wetting tissue paper in her cell sink, forming the tissue into small mounds, and placing the mounds in evenly spaced piles on her cell's steel desk. The top bunk of her cell was already covered in similar, evenly spaced mounds of wetted tissue across the entire surface.

124. M.B. is a homeless woman experiencing a psychiatric disability who was arrested in February 2019 on a charge of criminal trespass. She is being held in the jail because she cannot afford a $3,000 bond. She is held in solitary confinement in G Pod. On February 24, 2019, M.B. was found lying on the floor of her cell, with a long puddle of urine trailing out of the door. A foul odor emanated from her cell. Plaintiffs expect to show that M.B. was taken to the Rice Street MOU in mid-March 2019 for acute psychiatric care, after which she was returned to her G Pod isolation cell.

125. A.A. is a woman in her late-30s diagnosed with a psychotic disorder who was arrested in February 2019. She has spent nearly all of her time in the jail in C Pod. During her first three weeks in the jail, A.A. lost 16 pounds of body weight in 19 days. On February 20, A.A. was identified by a South Fulton Jail counselor as "delusional, disorganized, responding to internal stimuli, and very

[h]ostile," and A.A. consequently was transferred to the Rice Street MOU for acute psychiatric care. She remained in the MOU for eight days. Medical case notes during A.A.'s stay in the MOU reflect that she was variously "in [her] cell crying at times" and "talking to herself," and her "cell was unkempt where she had strayed her clothing and toiletries about [the] cell." She was repeatedly found standing naked in her cell and had to be asked by nurses to don clothing. On February 25, she presented as "acutely psychotic and delusional seeing images that were not there. [She] was so moved by her auditory hallucinations that she was crying and appeared scared and upset. [She] was naked in her cell." The following day, she was found "laying on the floor wrapped in a sheet," and told a nurse "she is waiting on her full meal to feed her baby." After being returned to the South Fulton Jail and placed in solitary confinement in C Pod, A.A. "continue[d] to display evidence suggesting psychosis." Her appearance was "mildly unkempt" and her "room was disheveled." During her weekly cell-front contact with a counselor on March 28, A.A. was "delusional" and "paranoid," her demeanor alternating between "euthymic" and "crying." Later that afternoon, A.A. was found crying, trying to stick her head out of a tray flap, and asking, "Is this a game? Can I eat? Is this the hunger games? Am I dead?"

126. B.W. is a 24-year-old woman with a psychiatric disability who was arrested in May 2018 for theft, simple assault, and simple battery. She has been held in G Pod and B Pod since December 2018. On January 1, 2019, B.W. presented as "hyperverbal and upset," complaining to a nurse that she was "suicidal because someone put menstrual blood and feces underneath her door." On February 4, B.W. was placed on suicide watch for one day at the Rice Street MOU after voicing suicidal ideation. During a weekly round on February 20, a counselor noted that B.W.'s room was "messy" and B.W. was "hostile and uncooperative." On March 11, B.W. was in distress due to the conditions in G Pod. She asked to speak with a mental health counselor, but the request was denied by officers. Later that day, detention officers found B.W. attempting to hang herself with a bed sheet. One of the officers, after pulling B.W. down and handcuffing her behind the back, called B.W. a "whore" and sprayed a large amount of chemical agent in B.W.'s face and hair, after which B.W. was placed in a hot shower for around 15 minutes without materials with which to decontaminate. She was then placed in solitary confinement in B Pod, where she remains.

127. A.M. is 49-year-old woman with a psychiatric disability who was arrested in May 2018 for sleeping on mosque property and refusing to leave when

asked. She was held in the South Fulton Jail for the next seven months while awaiting a hospital bed at Georgia Regional Hospital. On August 3, 2018, A.M. was found in a cell with a large puddle of water on the floor and an inoperable toilet and sink. Insects were crawling all over old food on the desk and across A.M. herself.

128. L.T. is a 27-year-old woman who was diagnosed with schizophrenia at age 18. She was arrested in July 2018 on charges of simple battery, simple assault, aggravated battery, aggravated assault, and probation violations. She is presently housed in B Pod. L.T. was generally coherent when she entered the jail. Within three weeks of being placed in solitary confinement, L.T. decompensated to the point that she was, in one detention officer's words, "near demonic" and out of control. To clothe L.T. for court appearances, officers had two detainees pin L.T. down and forcibly dress her. During a visit to the Rice Street MOU on July 31, 2018, Plaintiffs' counsel observed L.T. in a filthy, barren concrete room with a drain in the middle of the floor. An observation port by the cell door was smeared with feces. L.T. was stark naked, intermittently crying and humming, and mouthing words that were unintelligible. In response to questions, L.T. pressed her head against the window, unable to communicate with the person on the other side of the door. No paper gown—or anything else to afford some minimal degree

of comfort or privacy—was visible in room. Though L.T. clearly was distress, there was no indication that she was receiving any attention apart from periodic observation by officers.

129. J.T. is a 40-year-old woman with schizophrenia who has been held in solitary confinement in the South Fulton Jail since August 2018 on charges of disorderly conduct and criminal damage to property because she cannot afford a $700 bond. J.T. was previously held in solitary confinement in the South Fulton Jail from May to August 2018 on a charge of public indecency (being partially clothed at a bus stop). On July 27, 2018, J.T. was visibly agitated, incoherent, and filthy. Numerous fellow detainees expressed concern that J.T. rarely left her cell and had not bathed in months.

130. J.O. is a 27-year-old woman experiencing a psychiatric disability who was arrested in October 2017 on charges of public indecency, giving false information to an officer, obstruction, criminal trespassing, and simple battery—all stemming from an alleged incident in which she was sitting on the curb outside of a gas station while partially unclothed. J.O. was held in solitary confinement in the South Fulton Jail for the next seven months, and was found incompetent to stand trial. In December 2017, J.O. was found in a cell with the floor and bed smeared with food and a toilet filled with waste, with a large piece of plastic sticking out of

the toilet bowl. The stench of vomit, urine, and feces in the cell was overwhelming.

131. J.D. is a woman experiencing a psychiatric disability who was arrested in December 2017 on a charge of criminal trespassing stemming from her alleged refusal to leave a Grady Hospital waiting room. She was held in solitary confinement in the South Fulton Jail for around two months because she could not afford a $500 bond. During a visit to the jail in December 2017, J.D. was found lying on the floor of her filthy cell with matted hair. Officers noted that J.D. would not bathe, and the entire pod smelled strongly of feces.

132. K.B. was a 44-year-old woman with a history of schizophrenia who was transferred to the South Fulton Jail on February 17, 2017, and placed in solitary confinement in G Pod for over two months. A mental health care provider's note dated April 14, 2017, states that K.B.'s "cell was nasty with food, trash and clothes everywhere on the floor," and that K.B. "was laying in the bed naked and came to the door yelling" and "displayed paranoid behavior." A psychiatrist assessing K.B. the next day found her "quite disorganized." One week later, K.B. was rushed to the emergency room, where she was pronounced dead four minutes after arrival. An autopsy revealed that she died from a perforated larynx caused by ingesting a plastic spoon and part of a toothbrush. A jail detainee

who cleaned K.B.'s cell later that day wrote in a statement that "there was food, trash, & linens all over the place" in the cell, as well as a "puddle of blood with hair" in it.

4. Defendants are aware of but have failed to address the risk of serious harm caused by their policies and practices.

133. Defendants have ample notice of the substantial risk of serious harm their practices present to Plaintiffs and the class members. Defendants have failed to respond reasonably to that risk.

134. Plaintiffs and similarly situated women have obvious and well-documented psychiatric disabilities. Plaintiffs expect to show that Defendants Jackson, Adger, Lightbourne, Taylor, and Young are personally aware of the high prevalence rate for psychiatric disabilities in the Fulton County Jail system through their personal observations, periodic reports from their subordinates, and reviews of records documenting detainees' psychiatric histories and symptoms.

135. Plaintiffs expect to show that Defendants Jackson, Adger, Lightbourne, Taylor, and Young are personally aware that Plaintiffs and other women who experience psychiatric disabilities are held in prolonged solitary confinement at the South Fulton Jail. It is obvious to any jail administrator with Defendants' experience and knowledge that the number of detention officers assigned to the South Fulton Jail is inadequate to permit regular, supervised out-of-

cell time for a jail with a population of over 200 detainees, many or most of whom experience psychiatric disabilities. In addition, Plaintiffs expect to show that each Defendant is personally aware that the practice of officers assigned to the South Fulton Jail is to deny regular out-of-cell time to women who experience psychiatric disabilities and instead to leave them in their cells on a constant or nearly constant basis. Plaintiffs expect to show that Defendants also are actually aware through their experience and observations that the solitary confinement of Plaintiffs and similarly situated women causes serious psychological harm.

136. On August 17, 2018, Plaintiffs' counsel delivered a lengthy letter to Defendants Jackson and Adger describing the material allegations discussed above.

137. Defendants' response to the known risk of serious psychological harm to Plaintiffs has been unreasonable. Defendants' policies and practices continue to deny women at the South Fulton Jail constitutionally required out-of-cell time, living conditions, and psychiatric treatment. In particular, these harms are caused by Defendants' decision to staff the South Fulton Jail with too few officers and mental health care personnel. As a result of Defendants' policies and practices, Plaintiffs and similarly situated women continue to face a substantial risk of serious psychological harm and indeed to suffer such harm on a regular basis.

C. Defendants Discriminate Against People Who Experience Psychiatric Disabilities by Failing to Provide Out-of-Cell Time and Other Opportunities That Are Made Available to Those Without Psychiatric Disabilities.

138. Defendants' treatment of Plaintiffs and similarly situated women at the South Fulton Jail constitutes discrimination against them by reason of their psychiatric disabilities.

139. Plaintiffs and the putative class members all have and are recorded as having psychiatric disabilities that substantially limit one or more of each Plaintiff's or class member's major life activities. *See* 42 U.S.C. § 12102(1). In addition, Defendants regard Plaintiffs and class members as having such impairments, as reflected by Defendants' housing of Plaintiffs and many class members in units designated for people who experience psychiatric disabilities. *See id.*; *D'Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1228 & n.5 (11th Cir. 2005).

140. Defendants offer numerous services, programs, and activities to women at the South Fulton Jail who either do not have or are not presently manifesting symptoms of psychiatric disabilities. The services, programs, and activities include regular out-of-cell time, outdoor recreation, and group activities. As noted above, social interaction is a basic human need and the denial of this need causes serious psychological harm.

141. Defendants deny these important services, programs, and activities to Plaintiffs and similarly situated women. Defendants have failed to make reasonable accommodations to provide out-of-cell time, outdoor recreation, and social interaction to Plaintiffs and the putative class members. Prisons and jails around the country have found ways of providing these constitutionally required social activities to people in their custody.

142. The Fulton County Sheriff's Office receives federal financial assistance to operate the Fulton County Jail system. Plaintiffs and the putative class members are excluded from participation in out-of-cell time, social opportunities, and similar programs and activities solely by reason of their disabilities. *See* 29 U.S.C. § 794.

D. Defendants Discriminate Against Women by Providing Jail-Based Competency Restoration Programs Only to Men.

143. Solely because they are women, Plaintiffs are barred by Defendants from receiving valuable, jail-based competency restoration services. Defendants' decision to bar Plaintiffs from participating in the jail-based competency restoration program, and Defendants' failure to provide an equivalent program for women, constitutes invidious discrimination against Plaintiffs on the basis of sex. Because there is no sound reason for Defendants' discriminatory policy—much less the kind of "exceedingly persuasive justification" needed to satisfy

constitutional scrutiny—Defendants' disparate treatment of the women in their custody violates the Equal Protection Clause of the Fourteenth Amendment. *See United States v. Virginia*, 518 U.S. 515, 533-34 (1996).

144. When women in the Fulton County Jail system are deemed incompetent to stand trial but capable of being restored to competency, their only treatment option is to be placed on a waiting list for admission to one of the "forensic beds" at Georgia Regional Hospital–Atlanta or other state hospitals. Only after forensic beds open do women begin receiving competency restoration services.

145. The backlog of people waiting for forensic beds statewide is significant. Though wait times vary, it is not unusual for people to be on the list for many months, and some people wait for more than a year for beds to open. Once a forensic bed is available and a person on the waiting list has been moved to a state hospital, completing the inpatient competency restoration program requires between 90 days and a year.

146. While women are on the forensic-bed waiting list, they remain housed at the South Fulton Jail in one of the "mental health pods," where they are held in isolation under the harmful conditions described above. These women—who lack even the minimal level of cognitive functioning needed to understand and make

basic decisions in their criminal cases—are some of the most vulnerable people in society and are those most likely to suffer acute psychiatric emergencies from the harsh conditions at the South Fulton Jail.

147. Though some of the women found incompetent have been accused of serious crimes, many are held for minor offenses that would result in little or no jail time for the average defendant. These women remain in jail for months only because they are too impacted by their psychiatric disability to resolve their cases and lack access to competency restoration services.

148. Defendants have alternatives to requiring women to wait months for forensic beds to open. In 2011, Defendants established a jail-based, 16-bed competency restoration unit at the Rice Street facility. The unit is designed for people who are not more than moderately intellectually impaired, have no history of violent or aggressive behavior, and are free of serious medical conditions. Plaintiffs and many other women on the forensic-bed waiting list would easily meet these criteria. The one requirement that they cannot meet is that, under Defendants' policies, candidates for the competency restoration program "must be male."[26]

[26] Amanda Wik, NASMHPD Research Inst., *Alternatives to Inpatient Competency Restoration Programs: Jail-Based Competency Restoration Programs* 6 (Oct. 31,

149. The competency restoration program provides clear and substantial benefits to the men assigned to it. The unit is separated from the rest of the jail and has two officers specifically assigned to it. The assigned officers receive additional training to assist them in working with a population that experiences psychiatric disabilities. Upon assignment to the men-only competency restoration pod, each male patient is provided an orientation, undergoes testing of his cognitive functioning, and is assigned a psychiatrist. During his time in the pod, he is supported by a treatment team that includes forensic psychiatry and forensic postdoctoral fellows, a master's level clinician, a forensic social worker, a program administrator, and a medical director. Group counseling and therapy activities are held weekly. Men's days are fully structured in the restoration pod, with classes and group meetings throughout the day. The male patients participate in constructive activities such as art therapy and popcorn-and-movie nights. Other activities and classes include "expressive arts, conflict resolution, substance abuse treatment, health awareness, reading, medication education, character building, and techniques to improve the offender's cognitive skills."[27] The walls of the

2018) (emphasis added), *available at* https://www.nri-inc.org/media/1500/jbcr_website-format_oct2018.pdf (last visited Mar. 11, 2019).

[27] Fulton Cty. Justice & Mental Health Task Force, *Final Report* 36 (2017).

restoration pod are filled with cheerful posters, inmates' artwork, and laminated, educational posters meant to educate them about the criminal legal system.

150. Men in the competency restoration pod are provided with opportunities for socialization, recreation, and exercise.

151. Like the program at Georgia Regional, the competency restoration pod is designed as a 90-day program, though people in the program may be reevaluated and declared competent sooner. "When the [person in the program] is considered competent by the treatment team, he meets with the original forensic evaluator, the court is notified, and the case proceeds."[28]

152. Men receiving services in Fulton County's intensive, therapeutic, and male-only competency restoration pod are more likely to be found "restored" to competency than those receiving less comprehensive services. Furthermore, whether or not the process of competency restoration is successful, men in the restoration pod will complete it and proceed to adjudication or diversion more quickly than will women denied access to the restoration pod.

153. For these reasons, all detainees who have been declared incompetent have a strong interest in participating in the jail-based competency restoration

[28] Fulton Cty. Justice & Mental Health Task Force, *Final Report* 36-37 (2017).

program. Defendants have no valid justification for offering this program to male detainees while denying it to Plaintiffs and other women. To the extent Defendants blame the discrimination on cost concerns, such concerns are not an "exceedingly persuasive" reason for sex discrimination, particularly when the probable consequence of the discrimination is to prolong the loss of liberty and psychological harm caused by confinement in the South Fulton Jail.

154. Plaintiffs M.J. and K.H. have been found incompetent to stand trial and presently are waiting for beds to open at Georgia Regional Hospital–Atlanta or another state hospital so that they can begin receiving competency restoration services.

155. Plaintiffs M.J. and K.H. meet the principal criteria established by Defendants for the jail-based competency restoration program because they are not more than moderately intellectually impaired, if at all; they have no history of violent or aggressive behavior; and they are free of serious medical conditions. The only reason why Plaintiffs are barred from the jail-based program is that they are women.

156. As a result of Defendants' invidious discrimination against women, Plaintiffs M.J. and K.H. remain in the unconstitutional conditions described above, where they suffer serious psychological harm and deteriorate further.

CLASS ACTION ALLEGATIONS

157. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated prisoners.

158. The principal class is designated the Psychiatric Disability Class. Plaintiffs also seek to certify a subclass designated the Competency Restoration Subclass. In accordance with Local Rule 23.1(A)(2), Plaintiffs make the following class action allegations concerning the class and subclass:

A. Psychiatric Disability Class

159. Plaintiffs seek to certify a class defined as follows: All women who experience psychiatric disabilities who are now or will in the future be confined in the Fulton County Jail system.

160. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

(a) The class is so numerous that joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of between 80 and 120 women presently jailed by Defendants and an unknown number of women who will be jailed by Defendants in the future. The class

membership is ascertainable by consulting mental health records for the South Fulton Jail's detainees.

(b) There are questions of law and fact common to the class. Common questions of fact include whether the class members' living conditions constitute a denial of necessary mental health care; whether the class members are subjected to solitary confinement; whether solitary confinement causes psychological harm; and whether Defendants have provided the class members accommodations for their psychiatric disabilities. Common questions of law include whether Defendants' failures to provide sufficient out-of-cell time, adequate living conditions, and meaningful social interaction to the class members present a substantial risk of serious psychological harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the South Fulton Jail; and whether Defendants have failed to provide reasonable accommodations to women with psychiatric disabilities.

(c) The policies and practices challenged in this action apply with equal force to Plaintiffs and all members of the class so that Plaintiffs' claims are typical of those of the class. Plaintiffs are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.

(d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the Georgia Advocacy Office and the Southern Center for Human Rights. The Georgia Advocacy Office is the designated protection and advocacy system for this state, and its attorneys have experience in advocating on behalf of people with disabilities. The Southern Center for Human Rights focuses on protecting the rights of people in the criminal legal system, and its attorneys have experience in prison litigation and class action litigation. The Georgia Advocacy Office and the Southern Center for Human

Rights have devoted substantial resources and time to investigating this case over the past year, including multiple visits to Fulton County Jail system facilities, extensive document collection and review, and numerous interviews of class members.

161. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs seek to represent the class in challenging Defendants' failures to provide humane and medically appropriate conditions of confinement to women who experience psychiatric disabilities and are confined in the South Fulton Jail. Any prospective relief granted to Plaintiffs with respect to those matters will necessarily benefit each member of the class.

B. Competency Restoration Subclass

162. Plaintiffs seek to certify a subclass defined as follows: All women who experience psychiatric disabilities who are now or will in the future be deemed incompetent to stand trial while confined in the Fulton County Jail system.

163. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

(a) The class meets the numerosity requirement because joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of around 15 women presently in need of competency restoration services and an unknown number of women who will be in need of those services in the future. The class is ascertainable because competency restoration is ordered by Fulton County courts and the names of women in need of competency restoration are tracked by Defendants.

(b) There are questions of law and fact common to the class. Common questions of fact include whether the class members face greater delays in receiving competency restoration services than similarly situated men; and the reasons why Defendants deny jail-based competency restoration services to the class members. Common questions of law include whether Defendants have an exceedingly persuasive justification for denying jail-based competency services to the class members.

(c) The policies challenged in this action apply with equal force to Plaintiffs and all members of the class so that Plaintiffs' claims are typical of those of the class. Plaintiffs are subject to the same sex-based discrimination as the other class members and suffer the same injury as the other class members.

(d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the Georgia Advocacy Office and the Southern Center for Human Rights. The Georgia Advocacy Office is the designated protection and advocacy system for this state, and its attorneys have experience in advocating on behalf of people with disabilities. The Southern Center for Human Rights focuses on protecting the rights of people in the criminal legal system, and its attorneys have experience in prison litigation and class action litigation. The Georgia Advocacy Office and the Southern Center for Human

> Rights have devoted substantial resources and time to investigating this case over the past year, including multiple visits to Fulton County Jail system facilities, extensive document collection and review, and numerous interviews of class members.

164. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs seek to represent the subclass in challenging Defendants' categorical discrimination against women in the provision of jail-based competency restoration services on the basis of their sex. Any prospective relief granted to Plaintiffs with respect to that matter will necessarily benefit each member of the subclass.

CLAIMS FOR RELIEF

COUNT I:

VIOLATIONS OF THE EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENTS CLAUSE AND FOURTEENTH AMENDMENT DUE PROCESS CLAUSE

(Solitary Confinement)

(By all Plaintiffs against all Defendants)

165. Plaintiffs hereby incorporate paragraphs 1 through 14 and 19 through 164 as if fully set out herein.

166. Prolonged solitary confinement of people who experience psychiatric disabilities creates a substantial risk of serious psychological harm. That harm can result in dramatic worsening of symptoms, decompensation, psychosis, self-injury, and suicide.

167. Prolonged solitary confinement of people who experience psychiatric disabilities constitutes a denial of necessary mental health care. Many patients cannot respond positively to mental health treatment and control their symptoms effectively in an environment that deprives them of meaningful social interaction and therapeutic activities.

168. Prolonged solitary confinement of people who experience psychiatric disabilities constitutes a denial of basic human needs, including needs for social interaction, physical exercise, and sensory stimulation.

169. Prolonged solitary confinement of people who experience psychiatric disabilities is considered torture and violates contemporary standards of decency.

170. Defendants Jackson, Adger, Lightbourne, Taylor, and Young have authority to prescribe conditions of confinement in the South Fulton Jail, including the duration and degree of isolation imposed on detainees. Defendants have the further authority to allocate a sufficient number of staff members to provide opportunities for meaningful social interaction and therapeutic activities to people held in the South Fulton Jail.

171. Each Defendant is actually aware that solitary confinement presents a substantial risk of serious psychological harm to Plaintiffs and other women who experience psychiatric disabilities, and each Defendant has failed to take steps to reduce the risk of harm, violating the Eighth and Fourteenth Amendment prohibition against cruel and unusual punishment.

172. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a class of similarly situated persons to prevent further violations of their rights by Defendants.

COUNT II:

VIOLATIONS OF THE EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENTS CLAUSE AND FOURTEENTH AMENDMENT DUE PROCESS CLAUSE

(Totality of Conditions of Confinement)

(By all Plaintiffs against all Defendants)

173. Plaintiffs hereby incorporate paragraphs 1 through 14 and 19 through 164 as if fully set out herein.

174. The conditions of confinement in the South Fulton Jail deprive Plaintiffs and other women who experience psychiatric disabilities of basic human needs, including sanitation, exercise, social interaction, and mental health care.

175. Defendants Jackson, Adger, Lightbourne, Taylor, and Young have authority to remedy conditions in the South Fulton Jail.

176. Each Defendant is actually aware that conditions in the South Fulton Jail deprive Plaintiffs and other women who experience psychiatric disabilities of basic human needs, violating the Eighth and Fourteenth Amendment prohibition against cruel and unusual punishment.

177. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a class of similarly situated persons to prevent further violations of their rights by Defendants.

COUNT III:

VIOLATIONS OF THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

(Sex Discrimination in Competency Restoration)

(By all Plaintiffs against Defendants Jackson, Adger, and Lightbourne)

178. Plaintiffs hereby incorporate paragraphs 1 through 14 and 19 through 164 as if fully set out herein.

179. Exclusion of Plaintiffs and other women deemed incompetent from the Fulton County Jail's competency restoration program constitutes discrimination on the basis of sex.

180. Defendants Jackson, Lightbourne, and Adger have authority to admit women to their jail-based competency restoration program, or to establish a substantially similar competency restoration program for women.

181. Defendants' exclusion of women from the jail-based competency restoration program disadvantages women, results in delayed adjudication and prolonged incarceration in harmful conditions, and lacks an exceedingly persuasive justification.

182. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a class of similarly situated persons to prevent further violations of their rights by Defendants.

COUNT IV:

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AND THE REHABILITATION ACT OF 1973

(Disability Discrimination in Programs and Activities)

(By all Plaintiffs against all Defendants)

183. Plaintiffs hereby incorporate paragraphs 1 through 14 and 19 through 164 as if fully set out herein.

184. Congress enacted the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq., to provide a clear and comprehensive mandate for the elimination of discrimination against people experiencing disabilities and to provide strong and consistent standards for identifying and addressing such discrimination. 42 U.S.C. § 12101(b)(1) – (2).

185. The ADA is based on Congress's finding that, among other things, "[h]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

186. Congress also found that "[i]ndividuals with disabilities continually encounter various forms of discrimination, including . . . relegation to lesser

services, programs, activities, benefits, jobs or other opportunities." 42 U.S.C. § 12101(a)(5).

187. Title II of the ADA mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130.

188. The ADA defines a "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A).

189. Each of the individual Plaintiffs and putative class members has a disability, as that term is defined in the ADA, and is entitled to the protections of the ADA.

190. Title II of the ADA applies to all services, programs and activities of the public entities, including jails and prisons. 42 U.S.C. § 12132. The Fulton County Sheriff's Office and each of its departments and subparts must comply with Title II of the ADA.

191. The ADA directed the Attorney General of the United States to promulgate regulations enforcing Title II of the ADA and provide guidance on

their content. 42 U.S.C. § 12134. The regulations that the Attorney General promulgated require public entities to "make reasonable modifications" to their programs and activities "when the modifications are necessary to avoid discrimination." 28 C.F.R. 35.130(b)(7).

192. The regulations also specify that it is unlawful for a public entity to: (a) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others; or (b) provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. *See* 28 C.F.R. 35.130(b)(1)(ii) – (iii).

193. Section 504 of the Rehabilitation Act provides: "No otherwise qualified individual with a disability in the United States . . . shall solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance." *See* 29 U.S.C. § 794(a).

194. Plaintiffs and the class members experience, are recorded as experiencing, and are regarded by Defendants as experiencing psychiatric disabilities that substantially limit one or more major life activities.

195. Defendants Jackson, Adger, Lightbourne, Taylor, and Young deny important services, programs, and activities to Plaintiffs and other women who experience psychiatric disabilities solely by reason of their disabilities. Defendant Jackson and the Fulton County Sheriff's Office receive federal funds in connection with those services, programs, and activities.

196. Defendants Jackson, Adger, Lightbourne, Taylor, and Young have not permitted reasonable accommodations for Plaintiffs' disabilities and have discriminated against the individual Plaintiffs and class members in the provision of programs and services based upon their experiencing psychiatric disabilities.

197. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a class of similarly situated persons to prevent further violations of their rights by Defendants.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully ask that this Court:

(1) Assume jurisdiction over this action;

(2) Certify this case as a class action under Rule 23 of the Federal Rules of Civil Procedure;

(3) Declare that Defendants are violating the federal rights of Plaintiffs and other class members;

(4) Enter preliminary and permanent injunctive relief against Defendants requiring Defendants to:

(a) Provide at least four hours per day of out-of-cell time, and adequate therapeutic activities, to Plaintiffs and other class members;

(b) Provide safe and sanitary conditions of confinement to Plaintiffs and other class members; and

(c) Provide competency restoration services to Plaintiffs and other class members on the same basis as those services are provided to male detainees;

(5) Award Plaintiffs reasonable attorney's fees, expenses, and costs of litigation under 42 U.S.C. § 1988 and other applicable law; and

(6) Award such other and further relief as this Court deems just and proper.

Respectfully submitted,

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April 10, 2019

CERTIFICATE OF COMPLIANCE

I certify that this document has been prepared in compliance with Local Rule 5.1C using 14-point Times New Roman font.

/s/ Sarah Geraghty

April 10, 2019