IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUSAMUEL RODRIGUEZ MCCREARY, *et al*.,	:	**CIVIL NO: 1:17-CV-01011**
Plaintiffs,	:	(Judge Kane)
v.	:	(Chief Magistrate Judge Schwab)
THE FEDERAL BUREAU OF PRISONS, *et al*.,	:	
Defendants.	:	

REPORT AND RECOMMENDATION

I. Introduction.

This matter involves the treatment of prisoners who are housed within the Special Management Unit at the United States Penitentiary in Lewisburg, Pennsylvania ("USP Lewisburg"). The Plaintiffs, who are proceeding with counsel, contend that prisoners in this Special Management Unit are not receiving constitutionally adequate mental health treatment. As a result, they have filed the instant complaint, not only on behalf of themselves, but on behalf of all other persons who are similarly situated. They seek declaratory and injunctive relief, which would require the Defendants to end the allegedly unconstitutional treatment, and which would further require the Defendants to ensure that the

prisoners housed within this Special Management Unit receive constitutionally adequate mental health treatment.

Although several motions are currently pending before this Court, the focus of our Report and Recommendation is on the following two motions: the Defendants' motion to dismiss or, in the alternative, motion for summary judgment; and the Defendants' motion to stay discovery until 30 days after the Court has issued a final ruling on their dispositive motion. We have comprehensively reviewed these motions, as well as the parties' arguments and the relevant case law. For the reasons set forth below, we recommend that the Defendants' dispositive motion be denied and that the Defendants' motion to stay also be denied.

II. Background.

Following "an almost two-year investigation by more than a dozen *pro bono* lawyers, based on interviews with more than 30 inmates and the review of publicly available information regarding the treatment of mentally ill prisoners within the Special Management Unit [at USP Lewisburg,]" (*doc. 38* at 9), the Plaintiffs, Jusamuel Rodriguez McCreary ("McCreary"), Richard C. Anamanya ("Anamanya"), and Joseph R. Coppola ("Coppola"), filed their complaint, through counsel, on June 9, 2017. *See doc. 1*. The Plaintiffs have filed the complaint not only on behalf of themselves, but on behalf of all others similarly situated. *See id.*

They have named, as the Defendants: the BOP; its Director, Thomas R. Kane ("Director Kane"); and the Warden of USP Lewisburg, David J. Ebbert ("Warden Ebbert"). *See id.*

In the complaint, the Plaintiffs have raised allegations regarding the allegedly inadequate and unconstitutional treatment of prisoners housed within the Special Management Unit at USP Lewisburg who are suffering from mental illness and serious mental illness.[1] *See id.* In connection with these allegations, the Plaintiffs assert one claim for relief: a violation of the Eighth Amendment to the United States Constitution on the basis that Defendants have acted, or failed to act, with deliberate indifference to the health and safety of such prisoners. *See id.* at 54 (titling the claim as "Violation of the Eighth Amendment to the United States Constitution – Failure to Treat"). The Plaintiffs seek declaratory and injunctive relief, which would require the BOP to end this unconstitutional treatment and which would further require the BOP to ensure that these prisoners receive constitutionally adequate mental healthcare. *See id.* at 55-56 (seeking reasonable attorneys' fees, litigation expenses, and costs as well). Along with the complaint, the Plaintiffs have also filed a motion for class certification and a brief in support thereof. *See docs. 14, 19.*

[1] As articulated in the complaint, BOP Program Statement 5310.16 (May 1, 2014) "defines certain diagnoses as Serious Mental Illness, and others as Mental Illness." *Doc. 1* at ¶ 164(a)-(b) (discussing the difference between the two).

On October 2, 2017, the Defendants responded to the complaint by filing a motion to dismiss or, in the alternative, a motion for summary judgment, along with a brief in support and a statement of the material facts. *Docs. 23, 28, 29.* The Defendants have also submitted exhibits in support of their statement of the material facts, and attached to those exhibits are the Plaintiffs' medical records. *See docs. 31-1, 31-2, 31-3.*

In response to the Defendants' motion, the Plaintiffs filed a brief in opposition, along with a response to the Defendants' statement of the material facts. *See docs. 38, 39.* The Plaintiffs also filed a motion, seeking an order from the Court that their medical records, and any filings that describe information derived directly from those records, be sealed. *See doc. 52.* We have since denied the Plaintiffs' motion to seal those documents, but without prejudice. *See doc. 57* (opining that Plaintiffs had failed to overcome the strong presumption that weighs in favor of public access to judicial records).

Following the filing of their dispositive motion, the Defendants also requested the Court to stay a ruling on the Plaintiffs' motion for class certification until a final decision is issued on their motion to dismiss or, in the alternative, their motion for summary judgment. *Doc. 24.* The Plaintiffs opposed that motion (*doc. 33*), and the Defendants filed a response thereto (*doc. 35*). In accordance with the telephonic status conference that was held with the parties on December 7, 2017,

we granted the Defendants' request and stayed the Plaintiffs' motion for class certification pending a final decision on the Defendants' dispositive motion. *Doc. 44*.

Then, on December 21, 2017, the Defendants filed another motion, this time seeking a protective order to stay discovery until 30 days after the Court has issued its final decision on their pending dispositive motion. *See docs. 45*, *46*. The Plaintiffs have also opposed this motion (*see doc. 49*), and the Defendants have filed yet another response thereto (*doc. 50*).

Thus, presently before this Court are the following two motions: Defendants' motion to dismiss or, in the alternative, their motion for summary judgment; and Defendants' motion seeking a stay on discovery until 30 days after the Court issues its final decision on that dispositive motion. *See docs. 23*, *45*. Both of these motions have been fully briefed by the parties and are ripe for our disposition. For the reasons set forth below, we recommend that the Defendants' dispositive motion be denied and that the Defendants' motion to stay also be denied.

III. The Defendants' Motion to Dismiss Should be Denied.

In accordance with the standard of review for a Rule 12(b)(6) motion, we will not only "accept all factual allegations in the complaint as true," but we will also "construe the complaint in the light favorable to the plaintiff[s.]" *Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010).

A. Allegations in the Complaint.

At the time the complaint was filed, named Plaintiffs McCreary, Anamanya, and Coppola, were housed in the Special Management Unit at USP Lewisburg. *Doc. 1* at ¶ 18.[2] Each named Plaintiff has been diagnosed with a serious mental illness, including bipolar disorder, major depression, and schizophrenia. *Id.* Collectively, they contend that the care they are receiving at USP Lewisburg for these illnesses is constitutionally infirm and that the Defendants are failing to satisfy their legal obligations to them.[3] *Id.* The Plaintiffs further contend that the Defendants' failure to implement adequate programs of mental health screening and treatment has subjected them to cruel and unusual punishment, exacerbated their mental illnesses, and subjected them to harm and injury, as well as to a

[2] Since then, they have each been transferred to "another BOP institution." *Doc. 38* at 14.

[3] The individual defendants, Director Kane and Warden Ebbert, have only been sued in their official capacities. *Doc. 1* at ¶¶ 20, 21.

serious risk of future harm. *Id.* at ¶ 100. In support of these contentions, the Plaintiffs have set forth the following factual allegations.

1. Operation of the Special Management Unit at USP Lewisburg.

The Special Management Unit at USP Lewisburg, also commonly referred to as the SMU, was created by the BOP in order to house prisoners who had been determined to have "unique security and management concerns." *Id.* at ¶ 22. According to the BOP's policies, the "SMU is a multi-level program whose mission is to teach self-discipline, pro-social values, and the ability to coexist with members of other cultural, geographical, and religious backgrounds." *Id.* at ¶ 24. Currently, the SMU is comprised of the following three levels: Level 1, which is expected to last 6-8 months, is based upon the prisoner's compliance with behavioral expectations; Level 2, which is expected to last 2-3 months, is based upon the prisoner demonstrating potential for positive community interaction; and Level 3, which is expected to last 1-2 months, is based upon the prisoner's ability to demonstrate positive community interaction skills. *Id.* at ¶¶ 27-28, 32. Ideally, the prisoners are intended to progress through all three of these levels until they graduate from the SMU and are moved to general population or are placed in another appropriate facility. *Id.* at ¶ 26.

As explained by Plaintiffs, however, prisoners suffering from serious mental illness, who are not properly treated, find it very challenging if not impossible to

complete these levels and thus find themselves being cycled through the SMU program multiple times, ultimately ending as an "SMU FAIL." *Id.* at ¶ 32 As further explained by the Plaintiffs, prisoners can remain at any given level for a significantly longer period of time if the BOP finds that they are not ready to progress to the next level. *Id.* at ¶ 28. And, along those same lines, prisoners who receive disciplinary violations can be sent back to Level 1, where they must begin the SMU program all over again. *Id.* at ¶ 29.

All three levels afford the prisoners different privileges. *Id.* at ¶ 31 (also explaining, however, that for the vast majority of the prisoners in the SMU, their conditions of confinement are extremely restrictive). Prisoners at Levels 1 and 2 remain in their cells for 23 hours a day, and even though they are supposed to receive some access to telephones, each of the named Plaintiffs, for instance, assert having had their telephone privileges rescinded for years due to alleged disciplinary violations. *Id.* Moreover, regardless of the levels, all of the prisoners in the SMU are only allowed to have a maximum of 5 hours of recreation per week. *Id.* at ¶ 33. That recreation time is spent in a cage, which is only eight feet by twenty feet wide. *Id.* Sometimes a prisoner is alone in the cage, and other times a prisoner can be in there with as many as five other individuals. *See id.*

The Plaintiffs allege that, pursuant to BOP policies, prisoners are supposed to receive mental health evaluations every 30 days in the SMU, and prisoners, who

require routine or follow-up mental health services, are to receive such services in accordance with other relevant BOP statements on mental health treatment. *See id.* at ¶¶ 34-36. Although the Plaintiffs acknowledge that these policies exist on paper, they allege that, in practice, most prisoners in the SMU never receive any mental health evaluations, let alone the necessary follow-up mental health services. *Id.* at ¶ 37.

2. Solitary Confinement.

"Solitary confinement, known by many names, refers to the practice of holding an incarcerated person in a cell, alone or with a cellmate, between 22 and 24 hours per day, isolated from normal social interaction with others and subjected to severe restrictions impacting every aspect of their lives." *Id.* at ¶ 38. The Plaintiffs allege that the serious, detrimental effects of long-term solitary confinement, especially for people who suffer from mental illness, has been known by the BOP and mental health experts for decades. *See id.* at ¶¶ 39-55 (setting forth data discussing the devastating effects of solitary confinement); *id.* at ¶ 42 (asserting that because of the increased risk of serious harm to which individuals in solitary confinement are exposed, various expert, legal, and human rights organizations have recommended that individuals suffering from mental illness should not be subjected to any form of prolonged placement in segregation). The Plaintiffs contend, however, that despite this data, including a BOP study which

detailed the mismanagement of mental illness in restrictive housing facilities, including the restrictive housing facility at USP Lewisburg, the BOP still assigns prisoners, who suffer from mental illness, to USP Lewisburg and denies such prisoners even minimally appropriate mental health care. *See id.* at ¶¶ 39-56.

In addition, the Plaintiffs allege that up until recently, most prisoners in the SMU at USP Lewisburg were held in double-cell solitary conditions, due to overcrowding. *Id.* at ¶ 51. This means that two prisoners would share an eight by eleven foot cell. *See id.* As explained by Plaintiffs, however, evidence suggests that double-cell solitary confinement, as is utilized at USP Lewisburg, can be even worse than traditional single-cell solitary for individuals suffering from mental illness. *Id.* at ¶ 52. In support, Plaintiffs assert that the frustration and anger, which the prisoners experience from being placed in solitary confinement conditions, is intensified by having to deal with another prisoner's idiosyncrasies, especially if one or both individuals are mentally ill. *See id.* (stating that the "cells are more cramped, each man's movements are more restricted, and there is an acute fear of the stranger in the cell."). Thus, the Plaintiffs claim, prisoners "held in double-cell solitary conditions are stuck with the worst of both worlds[,]" as most of the prisoners in the SMU "are locked in isolation for at least 23 hours per day, denying them human interaction and programming offered to others housed in a general population environment in a high security penitentiary[,] while at the

same time forcing them to share a space never intended to house two people." *Id.* at ¶ 53; *see also id.* at ¶ 55 (discussing the dangers of double-cell solitary confinement, and stating that "[s]ince 2010, at least four men at USP Lewisburg have been killed by their cell mate.").

3. The BOP's Alleged Violation of the United States Constitution and the BOP's Alleged Failure to Adhere to Its Own Policies Regarding the Evaluation and Treatment of the Mentally Ill.

a. Inadequate Screening of Prisoners' Mental Illnesses.

The Plaintiffs claim that there is inadequate screening of the prisoners' mental illnesses in order to determine their suitability for confinement in an SMU facility. *See id.* at ¶¶ 57-61. In support, the Plaintiffs explain that the BOP's written policies require that prisoners, who are being referred to an SMU for extended placement, must be reviewed by Psychology Services staff in order to determine if they have any mental health issues, which would preclude them from placement in the SMU. *Id.* at ¶ 57. And then, once men are assigned to restrictive housing (i.e., the SMU), BOP Policy mandates "an initial psychological review . . . on or before the 30th calendar day of consecutive confinement in restrictive housing." *Id.* at ¶ 59.

In addition, the BOP's policies also require an intake screening for all prisoners who are entering a BOP institution. *Id.* at ¶ 58. Per BOP Policy, this requires a Health Services screening within 24 hours of arriving at the institution

and instructs Health Services staff to interview prisoners and observe them for any indicators of mental illness. *Id.* If staff members observe any such indicators, then they must refer the prisoner to Psychology Services for prompt evaluation by a psychologist. *Id.*

The Plaintiffs allege, however, that despite these policies, the BOP routinely places prisoners, who are suffering from serious mental illness, in the SMU at USP Lewisburg, thereby ignoring the previous diagnoses and failing to conduct the mandated psychological screenings. *Id.* at ¶ 60. Plaintiffs similarly allege that incoming prisoners do not receive the psychological evaluations required by BOP Policies and, instead, upon arrival, they only receive perfunctory interviews, which do not adequately serve as a diagnosis of mental illness or a screening of suitability for confinement in an SMU facility. *See id.* at ¶ 61 (explaining that the interviews last approximately ten minutes, and are conducted by a "member of USP Lewisburg's general medical staff[,] who does not specialize in psychology or psychiatry and who does not administer an evaluation that conforms with contemporary community standards used by mental health professionals to evaluate and diagnose patients with mental illnesses").

b. Insufficient Mental Health Staffing.

Plaintiffs also claim that there is insufficient mental health staffing at USP Lewisburg. *See id.* at ¶¶ 62-66. In support, Plaintiffs assert that, per BOP Policies,

all BOP institutions are expected to provide services to prisoners suffering from mental illness, and the Psychology Services and Health Services departments are expected to ensure that every prisoner with a clinically identified need for psychological treatment has access to mental healthcare. *Id.* at ¶ 62. As alleged by the Plaintiffs however, the mental health staffing at USP Lewisburg is not adequate to meet the expectations that are set forth in the BOP's own policies. *Id.* at ¶ 63. For instance, the Plaintiffs contend that, at the time they filed this action, there were only five (or fewer) psychologists on staff at USP Lewisburg and that those five psychologists were responsible for the mental health of approximately all 1,089 prisoners at USP Lewisburg. *Id.* Along those same lines, the Plaintiffs assert that when prisoners are experiencing mental health emergencies, they are to notify any USP Lewisburg staff member that they need to speak with psychology staff. *Id.* But those prisoners rarely report, if ever, having had the opportunity to actually speak in private with such psychology staff. *Id.*

In addition, there is no psychiatrist on staff at USP Lewisburg. *Id*. at ¶ 65. "In the event of complex mental health and psychiatric medication needs, USP Lewisburg is supposed to rely on the 'Tele-health program' (also commonly called 'tele-psych')—which utilizes an audiovisual interface to connect men at USP Lewisburg with a consulting psychiatrist located at the United States Medical Center for Federal Prisoners . . . in Springfield, Missouri." *Id.* The Plaintiffs

claim, however, never being offered the opportunity to speak with a psychiatrist *via* tele-psych. *Id.*

c. Lack of Adequate Mental Health Treatment.

In addition, Plaintiffs claim that, despite the BOP's seemingly expansive policies regarding its commitment to adequate mental health treatment, the BOP has failed, in practice, to develop meaningful treatment plans for, and deliver adequate mental health services to, prisoners at USP Lewisburg who are suffering from mental illness. *See id.* at ¶¶ 67-75; *see also id.* at ¶ 75 (stating that the BOP has failed to provide, among other things, access to psychiatry services, crisis counseling, and mental health medication).

In a similar vein, the Plaintiffs claim that, although the BOP's Mental Illness Program Statement details the mental health care levels recognized by the BOP, the staff at USP Lewisburg routinely ignore this policy when classifying the mental health care levels of prisoners in the SMU, which in turn, has a significant impact on the mental health services they receive. *See id.* at ¶ 77-79; *see also id.* at ¶ 69 (outlining those levels as CARE1-MH, CARE2-MH, CARE3-MH, CARE4-MH).

The Plaintiffs also claim that the psychology staff at USP Lewisburg deny prisoners their previously prescribed mental health medication. *Id.* at ¶ 82. In support, they state that prisoners, who were previously diagnosed with mental illness by the BOP and prescribed medication at other BOP facilities, are routinely

taken of that medication when arriving at USP Lewisburg. *Id.* And, although the prisoners attempt to gain access to more meaningful mental health treatment by submitting "cop-outs, medical requests, and grievances[,]" their requests are denied. *Id.* at ¶ 83; *see also id.* at ¶ 84 (stating that these prisoners are instead provided with "games and puzzles" as a means of treatment).

In addition to claiming that there is a lack of adequate mental health treatment at USP Lewisburg, the Plaintiffs also assert that they are simultaneously subjected to harsh disciplinary practices, such as four pointing, for having incidents resulting from their untreated mental health issues. *Id.* at ¶ 85. As explained by the Plaintiffs, "[f]our-pointing involves chaining men by the wrists and ankles in either a prone or supine position on top of a concrete platform for several hours and often for many days." *Id.* While chained, the prisoners are, at times, denied basic nutrition and may be left to urinate and defecate on themselves. *Id.*

d. Continued Housing of Mentally Ill Individuals in the SMU at USP Lewisburg.

The Plaintiffs allege that despite the BOP's August 9, 2016 Program Statement on Special Management Units, which states that a prisoner may be removed from the SMU program if it becomes evident that his mental health does not reasonably allow him to complete the program, prisoners (including the named Plaintiffs) who have mental illness and serious mental illness have been confined in the SMU at USP Lewisburg for months or years without adequate mental health

treatment. *Id.* at ¶¶ 88-89. Moreover, many of the prisoners who are suffering from serious mental illness are unable to complete the SMU program. *Id.* at ¶ 90. But, even when those prisoners are given a classification of "SMU-FAIL," it does not guarantee that they will be removed from the SMU. *Id.*

4. The Defendants' Alleged Deliberate Indifference to the Plight and Needs of Prisoners with Mental Illness at USP Lewisburg.

The Plaintiffs claim that the Defendants have actual knowledge of the unmet mental health needs of the named Plaintiffs, as well as the other class members, but have and continue to demonstrate deliberate indifference to those needs. *See id.* at ¶ 91. In support, the Plaintiffs allege that the Defendants' knowledge derives from a variety of sources, including: the medical records of the named Plaintiffs and other class members; direct observation of the obvious mental illness of the named Plaintiffs and other class members; the suicides, as well as the attempted suicides, by prisoners suffering from mental illnesses; and the evidence provided by other prisoners at USP Lewisburg during prior litigation, which challenged the mental health system at USP Lewisburg. *Id.* ¶ 92; *see also id.* at ¶¶ 95-97 (stating that, since 2013, there have been at least six lawsuits filed against various officials at USP Lewisburg, alleging, either in whole or in part, constitutionally inadequate treatment for mental illness, and providing details in support thereof). But, despite the Defendants having actual knowledge of the concerns surrounding the

prisoners' mental illnesses, the BOP has allegedly failed to address these concerns, thereby showing deliberate indifference to the prisoners' needs. *Id.* at ¶ 98.

5. Allegations Concerning Named Plaintiff McCreary.

McCreary, who is scheduled for release in October of 2027, has been diagnosed with bipolar disorder and schizophrenia both prior to and during his incarceration. *Id.* at ¶¶ 101-02. And, more specifically, the BOP itself has diagnosed McCreary with depression, mood disorder, psycho-social and environmental problems, ADHD, and antisocial personality disorder. *Id.* at ¶ 102.

Between 2008 and 2010, McCreary was incarcerated at three different BOP facilities, and at all of these facilities, he received regular, psychological treatment, including out-of-cell counseling, tele-psych access, and prescription medication. *Id.* at ¶ 108. In or around October of 2010, the BOP transferred McCreary to USP Lewisburg. *Id.* at ¶ 109. While there, the BOP initially treated McCreary's mental health issues with Depakote and Remeron. *Id.* But, in late 2011 or early 2012, the BOP changed McCreary's medication to the injectable form of Risperdal, a drug used to treat schizophrenia and bipolar disorder. *Id.* As alleged by the Plaintiffs, however, McCreary was afraid of the injection and refused to take the medication. *Id.* The BOP did not offer him the oral form of Risperdal or any other alternative medication for his mental health issues. *Id.*

In or around May of 2013, the BOP transferred McCreary to USP Florence, where they provided him with regular access to tele-psych, as well as prescription medication. *Id.* at ¶ 110. Then, in or around March of 2014, they transferred him back to USP Lewisburg. *Id.* at ¶ 111. At the time he was transferred back, McCreary was taking Celexa, which the BOP had prescribed him. *Id.* Moreover, during his intake interview, McCreary informed "Dr. Edinger" that he had attempted suicide at USP Florence and that he was experiencing suicidal thoughts and hearing voices. *Id.* In July of 2014, however, Dr. Edinger stopped McCreary's Celexa prescription and denied him all other mental health medication. *Id.* at ¶ 112.

Plaintiffs allege that despite prior diagnoses of and prescription medication to treat his serious mental illness, McCreary "has received no mental health medication since returning to USP Lewisburg in 2014." *Id.*; *see also id.* at ¶ 115 (alleging that since his return to USP Lewisburg, he has not had access to tele-psych, despite his numerous requests). The Plaintiffs allege that what McCreary has instead received is inadequate cell-side conversations through the cell door, in full view of other prisoners. *Id.* at ¶ 113; *see also id.* (explaining that such public conversations not only fail to treat McCreary's mental illness, but they also pose as a serious physical threat to his health because, if other prisoners learn of his mental health issues, then they are likely to assault and/or harass him since such issues are

socially unacceptable or they are likely to fear him due to him having such issues); *id.* at ¶ 114 (alleging that an SMU psychologist at USP Lewisburg only provided McCreary with a five minute conversation in prison showers, and asked if he wanted a packet, containing the puzzles and cartoons). In addition, the Plaintiffs allege that despite the fact that the BOP Central Office has determined that McCreary's mental illness is too severe to transfer him to the Administrative Maximum Facility at USP Florence, and has thus designated him to the STAGES program at USP Florence, the BOP still houses him at USP Lewisburg and still refuses to prescribe him any medication. *Id.* at ¶ 116.

More recently in May of 2017, McCreary attempted to hang himself and was placed on suicide watch for five days. *Id.* at ¶ 118. He is now in an "ADX cell," which has two doors at its entrance—one is a solid steel door and the other is a grated door. *Id.* This cell is removed from all other prisoners, leaving McCreary in complete isolation, where he cannot be heard by anyone. *Id.* And, although on May 8, 2017, McCreary's mental health classification "was upgraded to CARE3-MH," the Plaintiffs contend that Dr. Edinger still informed McCreary that he does not need medication. *Id.* at ¶ 120. The Plaintiffs also contend that even though McCreary is receiving weekly therapy, this "therapy" only consists of a brief conversation behind the cell door during which McCreary must yell in order to be

heard. *Id.* at ¶ 119. Finally, while McCreary has made numerous requests for proper mental health treatment, his requests have been rejected. *See id.* at ¶ 121.

6. Allegations Concerning Named Plaintiff Anamanya.

Anamanya, who is scheduled for release in November of 2037, has received several diagnoses of mental illness and other mental health concerns, both inside and outside of the correctional system, including major depressive disorder, clinical depression, chronic depression, mood disorder, antisocial personality disorder, psycho-social and environmental stressors, seizure disorder, and substance abuse. *Id.* at ¶¶ 122-24, 127; *see also id.* at ¶ 128 (stating that after his criminal defense attorney requested a second competency-to-stand-trial evaluation, the psychologist who conducted the evaluation concluded that the diagnosis for Anamanya is "most likely" Shizoaffective Disorder).

From approximately July of 2006 to January of 2007, Anamanya was incarcerated at USP Atlanta, where he was diagnosed with mood disorder and antisocial personality disorder. *Id.* at ¶ 129. And, although he did not receive therapy, he was prescribed medication. *Id.* From approximately May of 2009 to 2011, Anamanya was incarcerated at USP Lewisburg for the first time. *Id.* at ¶ 130. During a portion of this time period, he received individual counseling twice a week and was prescribed Depakene and Risperdal. *Id.* at ¶ 130. And, between the end of 2011 and 2015, Anamanya "was housed at four different BOP

facilities." *Id.* at ¶ 131. Throughout his incarceration at these different facilities, Anamanya was diagnosed with antisocial personality disorder, adjustment disorder, depressive disorder, and anxiety disorder. *Id.* And, at all of these facilities, he was prescribed mental health medication, including Haldol, Prozac, Zoloft, and Buspar. *Id.*; *see also id*. at ¶ 132 (stating that while he was incarcerated at USP Big Sandy, Anamanya also received a suicide risk assessment, a behavioral management plan, and individual therapy and counseling).

Then, on or around August 10, 2015, Anamanya was transferred back to USP Lewisburg. *Id.* ¶ 133. He did not receive a "mental health evaluation" upon arrival. *Id.*; *but see id.* at ¶ 134 (stating that, upon arrival, Anamanya received an "evaluation" from Dr. Edinger, who, Plaintiffs contend, is not a psychologist). Roughly a month later, on September 11, 2015, Dr. Edinger discontinued Anamanya's mental health medication with no explanation other than he no longer needed it. *Id.* at ¶ 135. Following Anamanya's filing of a grievance, however, Dr. Edinger ultimately re-prescribed Anamanya mental health medication. *Id.* at ¶ 136. At various points, Anamaya was prescribed Zoloft and Citalopram. *Id.* But, on or around December 9, 2015, Anamaya's medication was discontinued, and he has not received any medication since then. *Id.* at ¶ 137.

In addition, since being incarcerated at USP Lewisburg, Anamanya has not received adequate therapy or counseling for his mental health issues. *Id.* at ¶ 138.

The only treatment he has received is the inadequate, cell-side conversations in full view of other men, and the packets, which contain the crossword puzzles and the colorable cartoons. *Id.* at ¶ 139. Anamanya has also "never seen the tele-psych despite numerous requests to do so." *Id.* at ¶ 140.

Moreover, Anamanya has attempted to take his own life three times since arriving at USP Lewisburg, and he has had several suicide risk assessments, but has never been placed on suicide watch. *Id.* Anamanya has also repeatedly been placed into four-point restraints for expressing suicidal thoughts and for exhibiting behavioral issues, which are attributable to his untreated mental health illness. *Id.* In fact, as recently as March of 2017, Anamanya had asked for treatment, since he was still having suicidal thoughts and starting to hear voices, but he has yet to receive such treatment. *Id.* at ¶ 142. And, even though Anamanya has sought administrative relief regarding his mental health issues, his requests have been rejected. *Id.* at ¶¶ 143-44.

7. Allegations Concerning Named Plaintiff Coppola.

Coppola, who, at the time the complaint was filed, was scheduled for release on January 26, 2018,[4] has been diagnosed with bipolar disorder. *Id.* at ¶¶ 145-46; *see also id.* at ¶¶ 149-50 (alleging that prior records suggest a history of schizophrenia and anxiety, as well as depression and bipolar disorder); *id.* at ¶ 153

[4] It is unclear whether Coppola has, in fact, been released.

(stating that during his incarceration at USP Hazelton, Coppola received a "Medication Review[,]" and the psychologist who conducted that review noted that Coppola had an "[o]ld dx of bi-polar that may be incorrect, but he is similar to BiPolar II.").

From the time period of 2005 to 2013, Coppola was incarcerated at 10 different BOP institutions. *Id.* at ¶ 153. The Plaintiffs allege that he was transferred several times due to episodes relating to his mental health disorder. *Id.* Throughout his incarceration, Coppola has made over 80 requests (including 25 at USP Lewisburg), wherein he sought treatment for his bipolar disorder. *Id.* at ¶ 155. Per Coppola, this lack of treatment has triggered extreme mood swings, worsened his bipolar disorder, and resulted in his loss of over two years of good time. *Id.*

Coppola arrived at USP Lewisburg on August 17, 2015, to begin Level 1 of the SMU program. *Id.* at ¶ 156. He did not, however, meet with a psychologist when he arrived at USP Lewisburg. *Id.* And, since arriving there, he has not received a single mental health evaluation, and his treatment request forms have been denied or ignored. *Id.* at ¶ 157. Instead, he has only received cell-side conversations that last a matter of seconds. *Id.* The Plaintiffs allege however, that Coppola's "fears of tortures and beatings" prevent him from announcing his mental health issues to a Psychology Staff member walking by the other side of his cell

door, since prison staff and other prisoners can easily overhear the conversation. *Id.*

When Coppola arrived at USP Lewisburg, he was receiving Gabapentin for his sciatica, but was taken off of this medication on or around March 3, 2016, by Dr. Kevin Pigos, and did not receive a replacement until roughly December 15, 2016, when Dr. Edinger prescribed him Duloxetine. *Id.* at ¶ 158. In July of 2016, Coppola submitted a request for treatment of his bipolar disorder. *Id.* at ¶ 159. This request was rejected. *Id.* The rejection stated that Coppola's only current diagnosis is antisocial personality disorder and that there was no evidence of a diagnosis of bipolar disorder during his incarceration. *Id.* The rejection also stated that if Coppola he was experiencing any specific symptoms, he could discuss those symptoms with a psychologist during unit rounds. *Id.* But, per Coppola's own experience, such discussions were unproductive. *Id.*

On August 17, 2016, Coppola signed a form, which indicated that he had completed the SMU program. *Id.* at ¶ 160. Shortly thereafter, however, on August 28, 2016, Coppola was involved in a disciplinary incident that resulted in his placement in restraints for 22 hours. *Id.* Coppola still has marks on his wrists from this incident. *Id.* Although Coppola filed a misconduct charge over this incident, that charge was rejected at every level. *Id.* As a form of punishment for this incident and for filing the misconduct charge, Coppola lost good time and was

notified that his completion of the SMU program had been "canceled." *Id.* After this incident, Coppola withdrew a lawsuit that he had filed against the BOP because he did not want to be subjected to any further retaliation. *Id.*

On or around February 15, 2017, Coppola received an 18-month SMU evaluation from "Dr. Enigk." *Id.* at ¶ 161. This review took place in the shower and, per Coppola, Dr. Enigk was relying on a checklist to conduct this evaluation and did not provide Coppola with any substantive treatment. *Id.* This review also stated that Coppola's only diagnosis was antisocial personality disorder. *Id.*

Thus, the Plaintiffs allege, Coppola, despite having received a clear diagnosis of bipolar disorder in 1990, has never received this diagnosis from the prison system and has likewise never received treatment or medication for this disorder. *Id.* at ¶ 162. The Plaintiffs further allege that Coppola has also never received treatment for his diagnosis of antisocial personality disorder. *Id.*

8. Class Action Allegations.

Finally, Plaintiffs assert that they bring this lawsuit on behalf of themselves and on behalf of all other persons similarly situated. *Id.* at ¶ 163. In support, they assert the following class of individuals:

> All persons who were, as of the filing of the complaint in this case, or are now, or will be in the future, confined to the custody of [USP Lewisburg] and suffer from a Serious Mental Illness or a Mental Illness, requiring treatment under one or more of the BOP's CARE levels as set forth in Program Statement 5310.16 (May 1, 2014).

Id. at ¶ 164.

9. Claim for Relief.

In connection with all of these allegations, the Plaintiffs allege a violation of the Eighth Amendment to the United States Constitution. In support, they contend that the "Defendants' policies, practices, and procedures systemically violate the Eighth Amendment rights of individuals with mental illness." *Id.* at ¶ 169. They also contend that the "Defendants know or are deliberately indifferent to the fact that the numerous individuals who have been diagnosed as having serious mental illness are placed in the SMU for extensive time periods and that confinement in the SMU creates a substantial risk that those individuals' mental illnesses will be exacerbated and that their mental health will deteriorate. Defendants also know or are deliberately indifferent to the fact that the mental health treatment provided to individuals with mental illness in SMU is inadequate and results in the exacerbation or unnecessary prolongation of individuals' mental illnesses." *Id.* at ¶ 170. Finally, they contend that the negative consequences of long-term isolation in the SMU has been brought to the Defendants' attention, but that they have refused to correct "this systemic violation" of the prisoners' rights. *Id.* at ¶ 171.

As for relief, the Plaintiffs seek declaratory and injunctive relief to stop the constitutional violations described in their complaint and to ensure that the prisoners housed in the SMU at USP Lewisburg receive constitutionally adequate

mental health care. *Id.* at ¶ 174. They also seek an award of reasonable attorneys' fees, litigation expenses, and costs. *Id.* at ¶ 175.

B. Legal Standard.

In accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court may dismiss a complaint for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). When reviewing a motion to dismiss, "[w]e must accept all factual allegations in the complaint as true, construe the complaint in the light favorable to the plaintiff, and ultimately determine whether plaintiff may be entitled to relief under any reasonable reading of the complaint." *Mayer*, 605 F.3d at 229. In making that determination, we "consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the [plaintiff's] claims are based upon these documents." *Id.* at 230.

"A Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirements of Rule 8(a)." *I.H. ex rel. D.S. v. Cumberland Valley Sch. Dist.*, 842 F. Supp. 2d 762, 769–70 (M.D. Pa. 2012). "Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). The statement required by Rule 8(a)(2) must give the defendant fair notice of what the plaintiff's claim is and of the grounds upon which

it rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Detailed factual allegations are not required, but more is required than labels, conclusions, and a formulaic recitation of the elements of a cause of action. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "In other words, a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). "A complaint has to "show" such an entitlement with its facts." *Id.*

In considering whether a complaint fails to state a claim upon which relief can be granted, the court must accept as true all well-pleaded factual allegations in the complaint, and the court must draw all reasonable inferences from the facts alleged in the light most favorable to the plaintiff. *Jordan v. Fox Rothschild, O'Brien & Frankel, Inc.*, 20 F.3d 1250, 1261 (3d Cir. 1994). But a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). A court also need not "assume that a . . . plaintiff can prove facts that the . . . plaintiff has not alleged." *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

Following *Twombly* and *Iqbal*, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, it must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere

speculation. In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."

Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010) (footnote and citations omitted) (quoting *Iqbal*, 556 U.S. at 675, 679).

C. Discussion.

In support of their motion to dismiss, the Defendants raise the following arguments: (1) that the Court dismiss Director Kane and Warden Ebbert from the complaint because the Plaintiffs have failed to allege the personal involvement of these individual Defendants in the alleged constitutional deprivations; (2) that the Court should dismiss the Plaintiffs' claims regarding the prison disciplinary system pursuant to the favorable termination rule; (3) that the Court should dismiss the Plaintiffs' conditions of confinement claims for failure to state claims upon which relief can be granted; and finally (4) that the Court should dismiss the Plaintiffs medical care claims for failure to state claims upon which relief can be granted. *See doc. 29* at 10. We address each of these arguments in turn.

1. Personal Involvement of Director Kane and Warden Ebbert.

Initially, the Defendants contend that Director Kane and Warden Ebbert should be dismissed from the complaint because the Plaintiffs have failed to set forth facts, which would show that these defendants were personally involved in the alleged constitutional deprivations. *Doc. 29* at 13. More specifically, the Defendants argue that the doctrine of *respondeat superior* cannot form the basis of a plaintiff's constitutional claim and, for that reason, each named defendant in a civil rights action must be shown, *via* the allegations in the complaint, to have been personally involved in the events or occurrences that underlie the plaintiff's claims. *Id.* Thus, the Defendants contend that because Director Kane and Warden Ebbert, apart from being identified in the section of the complaint titled "Parties," are not meaningfully mentioned or discussed thereafter, they should be dismissed from the complaint due to their lack of personal involvement in the alleged constitutional violations. *Id.* at 14-15.

The Plaintiffs contend, however, that the Court should deny the Defendants' motion on this basis, arguing that their complaint contains sufficient facts to show that Director Kane and Warden Ebbert were personally involved in the alleged constitutional deprivations. *Doc. 38* at 22. In support, the Plaintiffs argue that the Defendants' contention—that neither Director Kane nor Warden Ebbert are mentioned or discussed throughout the complaint—is misleading, as the complaint

refers to all "Defendants." *Id.* at 23-24. The Plaintiffs also argue that they are not seeking money damages, as suggested by Defendants, but instead are seeking declaratory and injunctive relief under the Eighth Amendment to the United States Constitution.[5] *Id.* at 24-25. The Plaintiffs finally argue, that Director Kane and Warden Ebbert are the individuals who exercise ultimate control over the SMU, as well as the designation of prisoners who are sent to the SMU, including those suffering from mental illness, and thus were (and presumably are) ultimately responsible for the prisoners' health and safety in the SMU. *Id.* at 24.

Having reviewed the parties' arguments and the relevant case law, we conclude that the Defendants' motion to dismiss Director Kane and Warden Ebbert from the complaint should be denied. Even if we were to conclude that the complaint fails to allege the personal involvement of Director Kane and Warden Ebbert in the past constitutional violations, as is argued by the Defendants, this does not preclude the Plaintiffs from obtaining declaratory relief or injunctive relief for ongoing constitutional violations. *See Parkell v. Danberg*, 833 F.3d 313, 332 (3d Cir. 2016) ("*Parkell*") (concluding that that, although the state defendants lacked personal involvement in the past constitutional violations, this did not preclude the plaintiff from obtaining prospective injunctive relief for ongoing

[5] The Plaintiffs oppose the Defendants' characterization that their complaint has been filed under either *Bivens* or the Administrative Procedure Act. *See doc. 38* at 14 n.3, 24-25.

violations). And, in this regard, the complaint is clear that the Plaintiffs are only seeking declaratory and injunctive relief to end the alleged constitutional violations and to ensure that prisoners confined in the SMU at USP Lewisburg receive constitutionally adequate mental health care. *Doc. 1* at ¶ 174.

In seeking such relief, the Plaintiffs are required to name defendants who are ultimately responsible for ensuring that the requested relief is carried out. *See Parkell*, 833 F.3d at 332 (stating that the plaintiff, in seeking prospective injunctive relief, was required to name an official or officials who can respond to or otherwise ensure that the relief is carried out (citing *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013), and *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011) (per curiam));[6] *see also Knight First Amendment Inst. at Columbia Univ. v. Trump*, No. 17 5205, 2018 WL 2327290, at *9 (S.D.N.Y. May 23, 2018) ("*Knight First*") ("[T]he Second Circuit and several other Courts of Appeals have recognized that in cases seeking prospective relief, an official

[6] In *Gonzalez*, the United States Court of Appeals for the Seventh Circuit observed that the plaintiff had not alleged any specific involvement by the then-Warden in the treatment of the plaintiff's hernia. 663 F.3d at 315. The Seventh Circuit concluded, nevertheless, that the warden of the prison was a proper defendant since the plaintiff sought injunctive relief. *Id.* As explained by the Seventh Circuit, had the plaintiff only sought damages, then the warden's lack of personal involvement would be conclusive. *Id.* Since, however, the plaintiff sought injunctive relief it was irrelevant whether the warden had participated in the alleged wrongdoing. *Id.* Thus, the Court of Appeals substituted the prison's current warden as a defendant, since he was the individual responsible for ensuring that any injunctive relief would be carried out. *Id.*

defendant's lack of personal involvement in past constitutional violations does not render that defendant an improper one for purposes of prospective declaratory or injunctive relief from continuing violations—provided that the defendant maintains some connection to, or responsibility for, the continuing violation." (emphasis in original) (collecting cases, including *Parkell*)). And here, there is no allegation or suggestion that the Director of the BOP or the Warden of USP Lewisburg (or their successors) would not be the appropriate defendants to ensure that the Plaintiffs' requested relief is carried out. Thus, we recommend denying the Defendants' motion to dismiss Director Kane and Warden Ebbert from the complaint on the basis that they lack personal involvement in the alleged constitutional deprivations.

Before moving on to the Defendants' next argument, we acknowledge the following point of contention between the parties: although Director Kane was serving as the Acting Director of the BOP at the time the complaint was filed, he was not severing as the Director or even the Acting Director at the time of the alleged events. *See doc. 38* at 23 n. 7 (citing *doc. 29* at 14 n.2). This point of contention, however, is of little import. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Director Kane's successor, Mark S. Inch, is automatically substituted as a defendant. *See* FED. R. CIV. P. 25(d); *see also doc. 29* at 14 n.2 (stating that Mark S. Inch was sworn in as the Director on September

18, 2017). Thus, we recommend directing the Clerk of Court to substitute Mark S. Inch for Director Kane.

2. Favorable Termination Rule.

Next, the Defendants argue that to the extent the Plaintiffs are attempting to challenge the validity of their underlying disciplinary proceedings, their challenge is barred by the favorable termination rule, which was announced by the United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). *Doc. 29* at 15. In *Heck*, the United States Supreme Court held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such [a] determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Id.* at 486-87, 490 (footnote omitted). "Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.*

The rationale in *Heck* was based, in part, on a desire to avoid parallel litigation over the issues of probable cause and guilt, to prevent the creation of two conflicting resolutions arising out of the same transaction, and to preclude a convicted criminal defendant from collaterally attacking a conviction through a civil suit. *Royal v. Durison*, 254 F. App'x 163, 165 (3d Cir. 2007). Even if the plaintiff has exhausted available state remedies, his § 1983 cause of action is deferred unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 489.

The United States Supreme Court has since extended the rationale of *Heck* to disciplinary proceedings. In *Edwards v. Balisok*, the Supreme Court addressed the "question whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits is cognizable under § 1983." 520 U.S. 641, 643 (1997). There, the inmate argued that the procedures used in a prison disciplinary proceeding that resulted in the loss of good-time credits violated due process. *Id*. Claiming that the procedures used were wrong, but not necessarily that the result reached was wrong, the prisoner sought declaratory and injunctive relief as well as compensatory and punitive damages. *Id*. at 643, 645. "The Court acknowledged that it was 'clearly established in our case law' that a plaintiff is entitled to nominal

damages in a § 1983 action where the plaintiff proves 'that the procedures were wrong' but 'not necessarily that the result was.'" *Harris v. Ricci*, 595 F. App'x 128, 132 (3d Cir. 2014) (citing *Balisok*, 520 U.S. at 645). The Court nevertheless extended the rationale of *Heck* to prison disciplinary proceedings resulting in the loss of good-time credits and held that where "the nature of the challenge to the procedures" "necessarily imply the invalidity of the punishment imposed," a claim under § 1983 is not cognizable. *Balisok*, 520 U.S. at 645, 648.

"[A] state prisoner's §1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of the confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005). The reasoning of *Heck* and *Balisok* has been applied to federal prisoners' *Bivens* claims. *See Lora-Pena v. F.B.I.*, 529 F.3d 503, 506 n.2 (3d Cir. 2008) ("Although *Heck* involved a § 1983 action by a state prisoner, the reasoning in *Heck* has been applied to bar *Bivens* claims."); *Turner v. Tuttle*, No. CV 3:16-0269, 2017 WL 1086185, at *7 n.3 (M.D. Pa. Mar. 20, 2017) ("While Heck, and

Balisok all involved § 1983 cases, courts have extended their holdings to Bivens actions.").[7]

Here, the Plaintiffs argue that, because the complaint does not raise any claims relating to the fact or duration of their confinement, their claims are not barred by the favorable termination rule of *Heck*. *Doc. 38* at 25-26. Rather, the Plaintiffs contend, they are "simply point[ing] out that the systemic denial of constitutionally adequate mental healthcare at times results in additional disciplinary procedures." *Id.* at 26 (citing *doc. 1* at ¶ 11). The Defendants argue, however, that these assertions are inconsistent with the Plaintiffs' claim for relief in the complaint. *Doc. 48* at 7. That claim for relief provides, in material part, as follows:

> 169. Defendants' policies, practices, and procedures systemically violate the Eighth Amendment rights of individuals with mental illness. Such policies, practices and procedures include, without limitation:
>
> * * *
>
> b. A disciplinary system that does not consider a prisoner's serious mental illness and the impact of isolation in assessing whether to sanction the prisoner or, if so, the nature of the sanction[.]

Doc. 1 at ¶ 169(b).

[7] Although *Heck* has historically been applied to § 1983 and *Bivens* actions, neither party has argued that it would not be applicable here in the context of an Eighth Amendment claim, seeking declaratory and injunctive relief.

In connection with the Plaintiffs' claim for relief, the Defendants explain that one of the available sanctions in the BOP's prisoner disciplinary system is the loss of good conduct time, which the Defendants argue, necessarily relates to the duration of a prisoner's confinement. *Doc. 48* at 7. In fact, the Defendants argue, named Plaintiff Coppola alleges in the complaint that he has lost over two years of good conduct time as a result of the alleged lack of mental health treatment at USP Lewisburg. *Id.* at 7-8 (citing *doc. 1* at ¶ 155). Thus, the Defendants contend that the Plaintiffs' challenged action relates directly to the duration of Coppola's confinement and not just the conditions thereof. *Id.* at 8.

Having reviewed the parties' arguments, the allegations in the complaint, and the relevant case law, we conclude that it is unclear whether the complaint is, in fact, challenging the fact or duration of the Plaintiffs' confinement, or whether it is merely challenging the conditions thereof, such that a finding in the Plaintiffs' favor would not alter their sentence or undo their conviction. More specifically, we conclude that there are times in the complaint when the Plaintiffs do not seem to be challenging the duration of their sentence. For instance, there are times when the Plaintiffs are simply providing context to the alleged fact that untreated mental health issues can lead to disciplinary issues for prisoners who need treatment or medication to help control their behavior (*see, e.g.*, *doc. 1* at ¶ 11), and there are times when the Plaintiffs are merely attempting to show that a prisoner's

confinement in isolation combined with the harsh disciplinary practices (such as four pointing) pose a substantial risk to that prisoner's mental health (*see, e.g.*, *id.* at ¶¶ 7, 85).

There are other times in the complaint, however, when it appears that the Plaintiffs may be challenging the duration of their sentence. More specifically, the Plaintiffs claim that, as a result of the inadequate mental health treatment, Coppola has received a loss of over two years of good conduct time. *See, e.g.*, *id.* at ¶¶ 155, 160. In addition, and as noted by the Defendants, the Plaintiffs have explicitly addressed the Defendants' disciplinary system in the claim for relief section of the complaint. *See id.* at ¶ 169(b).

Thus, against this background, we find it appropriate to reiterate the teachings of the United States Court of Appeals for the Third Circuit:

> A challenge, such as this one, to a disciplinary action that resulted in the loss of good-time credits, is properly brought pursuant to [28 U.S.C.] § 2241, as the action could affect the duration of the petitioner's sentence. *See Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) (challenge that affects fact or duration of confinement must be brought in habeas petition); *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir.2001) (petition that challenges prison disciplinary sanction, including loss of good-time credits, is a challenge to execution of sentence properly brought under § 2241); *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir.1997) (same); *see also Moscato v. Fed. Bureau of Prisons*, 98 F.3d 757, 758-59 (3d Cir.1996) (entertaining, without discussion of propriety of the vehicle, prisoner's challenge to loss of good time credits following disciplinary proceeding brought pursuant to § 2241).

Queen v. Miner, 530 F.3d 253, 254 n.2 (3d Cir. 2008) ("*Queen*"); *see also Solomon v. Warden, FCI Fairton*, 506 F. App'x 147, 148-49 (3d Cir. 2012) ("A challenge to a disciplinary action resulting in the loss of good conduct time is properly brought pursuant to § 2241, 'as the action could affect the duration of the petitioner's sentence.'" (citing *Queen*, 530 F.3d at 254 n.2)).

Accordingly, because it is unclear to the Court whether the Plaintiffs are, in fact, challenging actions that would affect the duration of one or all of their sentences, we recommend that the Plaintiffs be instructed to amend their complaint, so that they can clarify the precise contours of their Eighth Amendment claim as it relates to their allegations concerning the Defendants' disciplinary action at USP Lewisburg. Given this recommendation, we conclude that the Defendants' motion to dismiss, on the basis of the favorable termination rule, should be denied at this time.

3. Conditions of Confinement Claims.

In addition, the Defendants contend that the Court should dismiss the Plaintiffs' Eighth Amendment conditions of confinement claims for failure to state claims upon which relief can be granted. *Doc. 29* at 16. In support thereof, the Defendants argue that the complaint is riddled with sweeping and generalized allegations regarding the conditions of the Plaintiffs' confinement at USP Lewisburg. *Id.* The Plaintiffs, however, have not separately addressed this

argument; instead, they have only addressed the Defendants' arguments regarding their Eighth Amendment claim for deliberate indifference to their serious medical needs. *Compare doc. 29* at 16-18 (raising arguments as to the Plaintiffs' alleged conditions of confinement claims) *with doc. 38* at 26-48 (addressing the Defendants' arguments as they pertain to the Plaintiffs' medical care claims).

Although we tend to agree with the Defendants that there are allegations throughout the complaint, which pertain to the Plaintiffs' conditions of confinement at USP Lewisburg, it does not appear that the Plaintiffs are actually raising a separate Eighth Amendment claim based upon those conditions. *See doc. 1* at 54 (titling the Eighth Amendment claim as one for "Failure to Treat"). Rather, it appears that the Plaintiffs are only making such allegations in order to show the Defendants' deliberate indifference to their serious mental health needs. *See doc. 38* at 27-28 (containing the Plaintiffs' brief in support, wherein they explain that in the context of inadequate mental healthcare, courts have found that subjecting prisoners, who are suffering from mental illness, to the harsh conditions of solitary confinement may support allegations of deliberate indifference).

Thus, because it does not appear that the Plaintiffs are actually raising an Eighth Amendment conditions of confinement claim, we recommend denying the Defendants' motion on this basis. To the extent, however, that the Plaintiffs find themselves inclined to file objections, arguing that they are, in fact, asserting a

conditions of confinement claim, then we recommend that the Plaintiffs be instructed to more clearly define that claim in an amended complaint.

4. Eighth Amendment Medical Care Claims.

The final argument the Defendants raise in their motion to dismiss is that the Plaintiffs' Eighth Amendment medical care claims should be dismissed from the complaint for failure to state claims upon which relief can be granted. *Doc. 29* at 19. In order for the Plaintiffs to allege a viable Eighth Amendment medical care claim, they must allege facts from which it can reasonably be inferred that the Defendants acted with deliberate indifference to their serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). This is a two-part inquiry: the Plaintiffs must make a subjective showing that the Defendants were deliberately indifferent to their medical needs, as well as an objective showing that those medical needs were serious. *Pearson v. Prison Health Serv.*, 850 F.3d 526, 534 (3d Cir. 2017) (quoting *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999)).

A medical need is serious if it "has been diagnosed by a physician as requiring treatment" or if it "is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (quoting *Pace v. Fauver*, 479 F. Supp. 456, 458 (D.N.J. 1979), *aff'd*, 649 F.2d 860 (3d Cir. 1981) (table)). Additionally, "if 'unnecessary and wanton infliction of pain' results as a

consequence of denial or delay in the provision of adequate medical care, the medical need is of the serious nature contemplated by the eighth amendment." *Id.* (quoting *Estelle,* 429 U.S. at 103). Further, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." *Id.*

Deliberate indifference is a subjective standard. *Farmer v. Brennan*, 511 U.S. 825, 840 (1994). "To act with deliberate indifference to serious medical needs is to recklessly disregard a substantial risk of serious harm." *Giles v. Kearney*, 571 F.3d 318, 330 (3d Cir. 2009). Thus, the prison official must have known of the substantial risk of serious harm and must have disregarded that risk by failing to take reasonable measures to abate it. *Farmer*, 511 U.S. at 837. In other words, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.*

The mere misdiagnosis of a condition or medical need, or negligent treatment provided for a condition, is not actionable as a constitutional claim because medical malpractice is not a constitutional violation. *See Farmer*, 511 U.S. at 835 (holding that "deliberate indifference describes a state of mind more blameworthy than negligence"); *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004) ("Allegations of medical malpractice are not sufficient to establish a Constitutional

violation."); *Singletary v. Pa. Dep't of Corr.,* 266 F.3d 186, 192 n. 2 (3d Cir. 2002) (claims of medical malpractice, absent evidence of a culpable state of mind, do not constitute deliberate indifference under the Eighth Amendment). Instead, deliberate indifference represents a much higher standard, one that requires "obduracy and wantonness, which has been likened to conduct that includes recklessness or a conscious disregard of a serious risk." *Rouse*, 182 F.3d at 197 (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)).

"Indeed, prison authorities are accorded considerable latitude in the diagnosis and treatment of prisoners." *Durmer v. O'Carroll*, 991 F.2d 64, 67 (3d Cir. 1993) (citations omitted). And courts will "disavow any attempt to second guess the propriety or adequacy of a particular course of treatment . . . (which) remains a question of sound professional judgment." *Spencer v. Courtier*, 552 F. App'x 121, 124 (3d Cir. 2014) (quoting *Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979)). "Mere disagreement as to the proper medical treatment does not support an Eighth Amendment claim." *Caldwell v. Luzerne Cnty. Corr. Facility Mgmt. Employees*, 732 F. Supp. 2d 458, 472 (M.D. Pa. 2010). Thus, "[w]here a prisoner has received some amount of medical treatment, it is difficult to establish deliberate indifference, because prison officials are afforded considerable latitude in the diagnosis and treatment of prisoners." *Palakovic v. Wetzel*, 854 F.3d 209, 227 (3d Cir. 2017). "Nonetheless, there are

circumstances in which some care is provided yet it is insufficient to satisfy constitutional requirements." *Id*.

The United States Court of Appeals for the Third Circuit has found deliberate indifference where a prison official: "(1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197. The Third Circuit has also found that "[n]eedless suffering resulting from the denial of simple medical care, which does not serve any penological purpose, . . . violates the Eighth Amendment." *Atkinson v. Taylor*, 316 F.3d 257, 266 (3d Cir. 2003). "For instance, prison officials may not, with deliberate indifference to the serious medical needs of the inmate, opt for 'an easier and less efficacious treatment' of the inmate's condition." *Palakovic*, 854 F.3d at 228 (quoting *West v. Keve*, 571 F.2d 158, 162 (3d Cir. 1978). "Nor may 'prison authorities deny reasonable requests for medical treatment . . . [when] such denial exposes the inmate to undue suffering or the threat of tangible residual injury.'" *Id*. (quoting *Monmouth Cnty. Corr. Institutional Inmates*, 834 F.2d at 346). Thus, "[a] 'failure to provide adequate care . . . [that] was deliberate, and motivated by non-medical factors' is actionable under the Eighth Amendment, but 'inadequate care [that] was

a result of an error in medical judgment' is not." *Parkell v. Danberg*, 833 F.3d 313, 337 (3d Cir. 2016) (quoting *Durmer*, 991 F.2d at 69).

"[T]here is a critical distinction 'between cases where the complaint alleges a complete denial of medical care and those alleging inadequate medical treatment.'" *Pearson*, 850 F.3d at 535 (quoting *United States ex. rel. Walker v. Fayette Cty*., 599 F.2d 573, 575 n.2 (3d Cir. 1979)). "Because 'mere disagreement as to the proper medical treatment' does not 'support a claim of an eighth amendment violation,' when medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care." *Id*. (quoting *Monmouth Cty. Corr. Inst.*, 834 F.2d at 346). And "there are two very distinct subcomponents to the deliberate indifference prong of an adequacy of care claim." *Id*. at 536. "The first is the adequacy of the medical care—an objective inquiry where expert testimony could be helpful to the jury." *Id*. "The second is the individual defendant's state of mind—a subjective inquiry that can be proven circumstantially without expert testimony." *Id*. But a claim that medical care was delayed or denied completely "must be approached differently than an adequacy of care claim." *Id*. at 537. "Unlike the deliberate indifference prong of an adequacy of care claim (which involves both an objective and subjective inquiry), the deliberate indifference prong of a delay or denial of medical treatment claim involves only one subjective inquiry—since there is no

presumption that the defendant acted properly, it lacks the objective, propriety of medical treatment, prong of an adequacy of care claim." *Id*. "All that is needed is for the surrounding circumstances to be sufficient to permit a reasonable jury to find that the delay or denial was motivated by non-medical factors." *Id*.

Here, in connection with these legal benchmarks, the Plaintiffs contend that the Defendants have not challenged whether the complaint alleges serious medical needs, stemming from the Plaintiffs' mental illnesses. *Doc. 38* at 30. Instead, the Plaintiffs contend, the Defendants' challenge focuses on whether the Plaintiffs have sufficiently alleged that the Defendants were deliberately indifferent to those serious medical needs. *Id.* We are in accord with the Plaintiffs' understanding of the Defendants' motion and, thus, our discussion will be confined to whether the Plaintiffs have sufficiently alleged that the Defendants were deliberately indifferent to the Plaintiffs' serious medical needs.

With respect to all of the named Plaintiffs, the Defendants essentially argue that the allegations in the complaint do nothing more than reflect the Plaintiffs' disagreement with the adequacy of the treatment that they received at USP Lewisburg. *See doc. 29* at 23-27, 35-37, 44-45. The Plaintiffs argue, however, that they have alleged facts from which it can be reasonably inferred that the Defendants acted with deliberate indifference to their serious mental health needs. *See doc. 38* at 30-31. We agree with the Plaintiffs.

Having thoroughly reviewed the complaint, we observe that it alleges the Defendants' awareness of the Plaintiffs' serious mental health needs. *See, e.g.*, *doc. 1* at ¶¶ 91-92, 102, 129, 153 (alleging that the BOP diagnosed or was otherwise aware of the Plaintiffs' array of serious mental health issues). The complaint also alleges the Defendants' awareness of the devastating effects that solitary confinement has on prisoners, especially those suffering from mental health issues. *See, e.g.*, *id.* at ¶¶ 39, 46-50, 55 (alleging that the Defendants were and have been aware that the callous conditions of solitary confinement, and double-cell solitary confinement, can cause severe harm and psychological damage). In addition, the complaint avers that, despite this awareness, the Defendants provided the Plaintiffs with constitutionally deficient mental healthcare, and the Defendants subjected the Plaintiffs to extended periods of solitary confinement, ultimately leading to unnecessary suffering and the exasperation of their mental health issues. *See, e.g.*, *id.* at ¶¶ 10-11, 52-53, 65-66, 85, 113-114, 116, 119, 133, 137-140, 142, 155-157, 159-160, 162 (alleging that the Defendants: confined the prisoners to solitary confinement or double-solitary confinement for 23 hours per day and for months on end; provided the prisoners inadequate therapy, consisting of two-minute conversations through a cell door; denied or abruptly altered the prisoners' prescription medication for no reason; provided the prisoners crossword puzzles and colorable cartoons as a form of

treatment for the prisoners' mental illnesses; subjected the prisoners, who are suffering from mental illnesses, to harsh punishment, such as four pointing; and did not offer the prisoners the opportunity to speak with a psychiatrist *via* the tele-psych).

Although the Defendants attempt to frame these allegations in the complaint as mere disagreement and dissatisfaction with the treatment that the Plaintiffs received at USP Lewisburg, we decline to accept their framing. As instructed by the United States Court of Appeals for the Third Circuit:

> [T]here are circumstances in which some care is provided yet it is insufficient to satisfy constitutional requirements. For instance, prison officials may not, with deliberate indifference to the serious medical needs of the inmate, opt for "an easier and less efficacious treatment" of the inmate's condition. *West v. Keve*, 571 F.2d 158, 162 (3d Cir. 1978) (quoting *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974)). Nor may "prison authorities deny reasonable requests for medical treatment . . . [when] such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury.'" *Monmouth County Corr. Inst. Inmates*, 834 F.2d at 346 (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 (6th Cir. 1976)). And, "knowledge of the need for medical care [may not be accompanied by the] . . . intentional refusal to provide that care." Id. (alterations in original) (quoting *Ancata v. Prison Health Servs*., 769 F.2d 700, 704 (11th Cir. 1985)).

Palakovic v. Wetzel, 854 F.3d 209, 228 (3d Cir. 2017).

Thus, when we accept the allegations in the complaint as true, we conclude that the Plaintiffs have sufficiently alleged that the Defendants had knowledge of their serious mental health issues and that, despite this knowledge, the Defendants

intentionally or at least recklessly provided the Plaintiffs with such a minimal amount of treatment or healthcare that it plausibly violated the strictures of the Eighth Amendment to the United States Constitution. Accordingly, we recommend denying the Defendants' motion to dismiss on this basis. *See, e.g.*, *Palakovic*, 854 F.3d at 228-29 (concluding that the complaint stated an Eighth Amendment medical care claim, where the parents of a mentally ill young man, who had committed suicide in solitary confinement, alleged that: their son requested counseling, but his requests were ignored and he did not receive treatment; the prison's psychologist would speak to prisoners in solitary confinement for one to two minutes at a time, through solid steel doors; prisoners suffering from mental illness were punished, rather than treated; and despite their son's mental health issues and history of self-harm and suicide attempts, the defendants allowed him to repeatedly endure the harsh and unforgiving conditions of solitary confinement).

IV. The Defendants' Motion for Summary Judgment Should be Denied.

In the alternative, the Defendants have moved for summary judgment on the Plaintiffs' Eighth Amendment claims. *Doc. 29* at 19-47. The Plaintiffs oppose the Defendants' motion for summary judgment, arguing that such a motion is improper at this early stage of the litigation because the Plaintiffs have not yet had an opportunity for discovery. *See doc. 38* at 39-42. Thus, pursuant to Rule 56(d) of

the Federal Rules of Civil Procedure, the Plaintiffs request the Court to deny the Defendants' motion in order to allow them to obtain such discovery, which, they contend, will bear on genuine issues of material fact in this case. *See id.* In support of this request, the Plaintiffs have submitted a declaration from their counsel, averring that discovery is needed in order to fully and fairly respond to the Defendants' motion. *See id.* at 40-41 (citing *doc. 38-1*).

In order to obtain time for discovery, Rule 56(d) generally requires a party to "show[ ] by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition" to a summary judgment motion. FED. R. CIV. P. 56(d). The party's affidavit or declaration must show "'what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not been previously obtained.'" *Doe v. Abington Friends Sch.*, 480 F.3d 252, 255 n.3 (3d Cir. 2007) (quoting *Dowling v. City of Philadelphia*, 855 F.2d 136, 140 (3d Cir.1988)). When the party makes such a showing, the court may: "(1) defer considering the [summary judgment] motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." FED. R. CIV. P. 56(d).

Generally speaking, courts '"usually grant properly filed Rule 56[d] motions as a matter of course[,]" especially when "there are discovery requests outstanding or relevant facts are under the control of the [party moving for summary

judgment]." *Murphy v. Millennium Radio Grp. LLC*, 650 F.3d 295, 309-10 (3d Cir. 2011) (quoting *Doe*, 480 F.3d at 257). Moreover, courts are "'obliged to give a party opposing summary judgment an adequate opportunity to obtain discovery[,]'" *Doe*, 480 F.3d at 257 (quoting *Dowling*, 855 F.2d at 139), since "by its very nature, the summary judgment process presupposes the existence of an adequate record[,]" *id.* (citing Fed. R. Civ. P. 56(c)).

Here, we conclude that the Plaintiffs' request to obtain discovery should be granted and that the Defendants' motion for summary judgment should be denied as premature. As explained by counsel in the Plaintiffs' accompanying declaration, the Defendants have set forth new facts in their motion for summary judgment, which stem from over 1,200 pages of materials that have been attached to their dispositive motion. *Doc. 38-1* at ¶ 5; *see also id.* at ¶ 8 (asserting that the Defendants' records are incomplete and that the Defendants possess additional records that are relevant to the Plaintiffs' case and opposition). As further explained by counsel, the Plaintiffs have not yet had the opportunity to engage in discovery related to the credibility of the factual averments contained in those materials. *Id.* at ¶ 5. Thus, the Plaintiffs assert that they need to conduct discovery into these factual averments and into the state of mind of the staff at USP Lewisburg, including the psychology and medical staff. *Id.* at ¶ 6. The Plaintiffs further assert that they will need to depose these staff members, and others who

interacted with these staff members or the Plaintiffs themselves. *Id.* at ¶ 7. Through these depositions, the Plaintiffs contend that they will be able to establish facts demonstrating the ineffective medical care that is provided to mentally ill prisoners at USP Lewisburg. *Id.*

In addition to these depositions, the Plaintiffs assert that they also need discovery regarding USP Lewisburg's practices, policies, procedures, and training for "discontinuing or providing" mental health treatment to prisoners, in order to establish that the staff acted contrary to such policies and procedures, and with deliberate indifference to the Plaintiffs' serious medical needs. *Id.* at ¶ 9. Finally, the Plaintiffs assert that they need to discover facts regarding USP Lewisburg's use of restraints, confinement, and other measures, which are used to "punish or treat" prisoners suffering from mental illnesses. *Id.* at ¶ 10.

Having thoroughly reviewed these assertions in counsel's declaration, we conclude that the Plaintiffs have sufficiently explained what information they seek, how, if that information is uncovered, it would preclude summary judgment, and why that information has not been previously obtained. Thus, we find no reason to depart from the well-settled principle that we are obliged to give a party opposing summary judgment an adequate opportunity to obtain discovery. We thus recommend granting the Plaintiffs' request to obtain such discovery. Given this recommendation, we similarly recommend denying the Defendants' motion for

summary judgment, as well as the Defendants' pending motion to stay discovery (*see doc. 45*).

V. Conclusion.

In sum, we conclude that the Defendants' dispositive motion should be denied in its entirety. With respect to the Defendants' motion to dismiss, we conclude that: the Director of the BOP and the Warden of USP Lewisburg are the appropriate defendants to ensure that the Plaintiffs' requested relief is carried out; the Plaintiffs should be directed to amend their complaint since it is unclear whether they are challenging the fact or duration of their confinement; and the Plaintiffs do not appear to be raising an Eighth Amendment conditions of confinement claim—but to the extent they are, they should also be directed to amend their complaint in this regard. And, with respect to the Defendants' motion for summary judgment, we conclude that the Plaintiffs have not yet had the opportunity to conduct discovery, which bears on genuine issues of material fact in this case. Thus, because the Defendants' dispositive motion should be denied in its entirety, we also conclude that the Defendants' motion to stay discovery should be denied.

VI. Recommendation.

IT IS RECOMMENDED that the Defendants' motion to dismiss or, in the alternative, motion for summary judgment (*doc. 23*) be **DENIED**. **IT IS FURTHER RECOMMENDED** that the Defendants' motion to stay discovery (*doc. 45*) also be **DENIED**. **IT IS FINALLY RECOMMENDED** that the Court direct the Clerk of Court to substitute "Mark S. Inch" for Director Kane in this action.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive

further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this **20th** day of **June, 2018**.

S/Susan E. Schwab
Susan E. Schwab
United States Chief Magistrate Judge