

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

DONALD PARKELL, on his own behalf)
and as representative on behalf of all)
similarly situated inmates housed in)
C-Building at James T. Vaughn)
Correctional Center, on)
February 1, 2017 and February 2, 2017,)

Plaintiffs,)

v.)

Civ. No. 17-157-LPS

WARDEN DAVID PIERCE, individually)
and in his official capacity,)
PHILLIP PARKER, individually)
and in his official capacity,)
DANA METZGER, individually)
and in his official capacity,)
PERRY PHELPS, individually)
and in his official capacity,)
JACK MARKELL, individually,)
ROBERT COUPE, individually,)
JOHN AND JANE DOES 1-100, and)
individually and in their official capacities,)

Defendants.)

SECOND AMENDED COMPLAINT

I. Nature of the Action

1. Plaintiff Donald Parkell, on behalf of himself and all others similarly situated, by and through their attorneys Seitz, Van Ogtrop & Green, P.A., bring this action pursuant to 42 U.S.C. §1983 against the various defendants, individually and/or in their official capacities, for money damages and injunctive

relief for ongoing violations of the Plaintiffs' rights guaranteed by the Constitution of the United States of America and the State of Delaware.

2. As a result of Defendants' and their predecessors' reckless indifference to the safety and security of the correctional officers ("COs") and inmates at James T. Vaughn Correctional Center ("JTVCC"), on February 1, 2017, at approximately 10:00 a.m., a small group of masked, armed inmates housed in C-Building of the JTVCC (the "Building") attacked the COs assigned to the Building, killing Sergeant Steven Floyd ("Floyd") and severely injuring COs Winslow Smith ("Smith") and Joshua Wilkinson ("Wilkinson") and taking them hostage. These inmate attackers took control of the Building and held Patricia May, a social worker in the Building at the time of the attack and takeover ("Ms. May"), Mr. Parkell, and the other inmates housed in the Building hostage until after 5:00 a.m. on February 2, when police stormed the Building and ended the takeover.

3. The attack and takeover of the Building was a direct result of the Defendants' and their predecessors' reckless indifference to the safety of, not only the COs, but to the inmates themselves.

4. Defendants and their predecessors deliberately chose to understaff JTVCC with staff, which substantially increased security and safety concerns for staff and inmates.

5. Defendants and their predecessors deliberately chose to substantially underpay officers, despite their long-known knowledge that doing so would continually increase risks, dangers, and violence, as well as abuse by the officers upon the inmates. The intentionally low pay caused other problems such as employee retention, overtime dependence and abuse, high fatigue of officers, lack of initial attraction to potential cadets or recruits, and pervasive disdain between staff and prisoners.

6. Defendants and their predecessors recklessly failed to train and monitor corrections officers. As a result, rather than following standard operating procedures and industry standards, COs improvised, ignored certain security and safety procedures, and abused their authority. These effects were either done independently or with the direct knowledge and encouragement of their supervisors.

7. Staff who were permitted to and encouraged to abuse prisoners did so with impunity, causing humiliation, pain and distress to the prisoners physically, mentally, and emotionally.

8. The lack of uniform protocol or enforcement of rules and regulations upon both prisoners and officers alike created an atmosphere of chaos.

9. The Defendants' and their predecessors' reckless indifference to the safety and humane treatment of the inmates at JTVCC made the attack and

takeover of the Building predictable and inevitable. In fact, the President of the Corrections Officers Association of Delaware forewarned in 2016 that "sometime between January and July [of 2017] the wheels are going to come off."

II. Jurisdiction and Venue

10. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§1331, 1343, and 1367.

11. Plaintiffs' claims are authorized by 42 U.S.C. §1983.

12. Venue is proper under 28 U.S.C. §1391(b) because all claims asserted occurred in this District.

III. The Parties

13. Plaintiff Donald Parkell ("Parkell") is a prisoner in the custody of the Delaware Department of Corrections ("DOC"). On February 1 and 2, 2017, Mr. Parkell was housed in the Building. Mr. Parkell brings this action on behalf of himself and all others similarly situated to him – namely, other prisoners housed in Building C JTVCC on February 1 and 2, 2017 who were victims of an insurrection and takeover of the Building by a small number of inmates, and have been subjected to the punishments and constitutional deprivations by the Defendants as described in detail herein.

14. Defendant David Pierce was the warden of JTVCC on February 1 and 2, 2017. He is sued individually and in his official capacity.

15. Defendant Phillip Parker was a deputy warden at JTVCC on February 1 and 2, 2017, and was named acting warden of JTVCC on or about February 21, 2017. He is sued individually and in his official capacity.

16. Defendant Dana Metzger was appointed warden of JTVCC on May 19, 2017. He is sued individually and in his official capacity.

17. Defendant Perry Phelps is the Commissioner of the Delaware Department of Correction. He is sued individually and in his official capacity.

18. Defendant Jack Markell formerly was the duly elected Governor of the State of Delaware who assumed office in January, 2009 and relinquished that office in January, 2017 to current Governor John Carney. The Governor is vested with the supreme Executive powers of the State and the duty to faithfully execute all its laws. Defendant Markell is sued only in his individual capacity.

19. Defendant Robert Coupe formerly was the Commissioner of the DOC and served in that capacity from approximately 2013 until January 2017. He is sued only in his individual capacity.

20. Defendants John and Jane Does 1-100 are Delaware Department of Corrections officers whose identities are as yet unknown, but will be named as and when they are identified. Some of Defendants John and Jane Doe are members of CERT. These defendants are sued in their individual and official capacities.

21. The Delaware Department of Corrections ("DOC") is an executive branch agency of the State of Delaware. Its mission is to protect the public by supervising adult offenders through safe and humane services, programs, and facilities. DOC operates JTVCC.

IV. Facts

22. The Building is a medium security facility. Inmates assigned to the Building, thus, were entitled to many "privileges" not afforded to inmates housed in Security Housing Units ("SHU"). Parkell and the members of the class were classified as medium security inmates.

23. According to the DOC website, "all inmates at JTVCC are classified and assigned quality of life levels consistent with their criminal history, institutional behavior/history, threat to public safety and institutional safety and security, and program needs. The DOC website states: "The SHU houses those inmates who have demonstrated that they cannot be housed in a lesser security setting and/or those whose behavior and history are conducive to maximum security housing. In addition, inmates sentenced to the death penalty are housed in the SHU. There are 300 cells in the SHU. Each cell is single bunked. Inmates are locked in their cells 23 hours a day..." This is known as solitary confinement, a practice which has been widely criticized.

24. On the morning of February 1, 2017, an unknown number of inmates, approximately ten in number, coordinated an attack on three of the Building officers.

25. All three officers were taken hostage.

26. Ms. May was also taken hostage.

27. The three officers were savagely beaten and restrained. Their heads were shrouded with cloth bags or hoods.

28. The captors wore hoods or similar disguises to prevent identification.

29. At some point early in the attack, Floyd was brutally murdered.

30. Fires were lit in the Building in various places filling the Building with smoke and flames.

31. The attackers barricaded every exit point using multiple methods.

32. Ms. May, also hooded, was forced into a cell on B-tier.

33. Three inmates, Parkell, Michael Carello ("Carello") , and Tyreek Downing ("Downing"), not involved in any way in the premeditated attack, decided together to insinuate themselves into the cell with Ms. May. From that point forward, for nineteen hours, Ms. May was never left with less than two of the three inmates.

34. Throughout the ordeal, other inmates would venture close to the cell that Ms. May was protected in, to test the three inmates' determination to keep her safe and shielded. Those inmates were turned away.

35. Hooded attackers periodically checked the cell to make sure she was still there. At various points in the night, attackers would point their weapons at the three inmates as if to use them, but the three inmates creatively distracted them.

36. Early in the crisis, two armed attackers arrived to directly threaten the three inmates. The attackers made clear to the three inmates that if the three inmates wanted to protect Ms. May, then they would be held responsible for anything that might happen to her, with an attack on the three inmates meant to kill them for trying to be heroic.

37. The attackers absentmindedly lit a fire too close to one of the Building's sprinkler systems and triggered a fire alarm. The result was an open sprinkler and an incessant series of beeping and blaring noises.

38. The open sprinklers filled the entire Building with water.

39. The attackers used the sprinklers to fill locker boxes to further barricade the doors.

40. Parkell and Carello were forced to carry out tasks on demand by the attackers. Each of them was used to protect the attackers' identities. When one was told to do something, the other remained with Ms. May alongside Downing.

41. The attackers grew suspicious and paranoid and chose to force the three and Ms. May to another cell.

42. Separate groups of hostages banded together to cook food. This food was shared amongst the hostages. The attackers ate alone.

43. Parkell was told that he better make sure Ms. May ate so that she would better remain without concern. Parkell informed Ms. May that he was threatened with death if she didn't eat something. Ms. May could not eat due to the stressful situation, but kept a cookie in her hand to make it appear that she was eating, in a way, protecting Parkell in return.

44. Every hostage began the process of packing their belongings on top of their assigned bed racks. Every hostage was meticulous in ensuring his property was safely packed in boxes and bags with electrical cords wound compactly and all electronics placed alongside other personal belongings.

45. The inmate hostages thoroughly discussed the inevitability of the DOC destroying everyone's property. The inmates have become very aware of the CO behavior being influenced by their extreme disdain for the inmates. Great care was made by the hostages to protect each person's property.

46. By the time the rescue occurred, the Building's floors were virtually dry.

47. No inmate personal property was damaged during the ordeal. No water damage, no chemical damage, physical damage, or fire damage occurred.

48. The attackers released separate groups of hostages throughout the ordeal. The attackers spread the word that everyone left would be released at 6:00 a.m. on February 2, and that they (the attackers) would surrender at that point.

49. The hostages discussed the inevitability that the officers would beat everyone up. The discussion centered around the necessity that no one should resist, and to follow every order immediately, to hopefully not be attacked or worse yet, shot.

50. Shortly after 5:00 a.m. on February 2, 2017, a joint task force stormed into the Building using a backhoe, concussion grenades, and overwhelming numbers.

51. The three inmates with Ms. May immediately called out to the rescue unit. Ms. May was pulled to safety.

52. Ms. May could be heard as she was rushed to safety yelling to please not hurt the three who kept her safe and those three were hostages, as she was.

53. A Sergeant, who identified himself as Sergeant Bane ("Sgt. Bane"), told the three that they could relax and that they would be kept safe too.

54. Sgt. Bane told officers, "Don't hurt these three. Make sure everyone knows not to hurt them." As the three were escorted to medical, nearly every

officer and nurse thanked them one by one. Upon information and belief, orders had been given to punish all of the inmates physically, otherwise an order not to harm Parkell, Carello, and Downing would have been unnecessary.

55. The other hostages were thrown to the pavement and pummeled. These men were beaten while their hands were zip-tied behind their backs and they were face down and peacefully compliant. Sneakers were ripped off their feet and thrown in a pile without recording whose they were. Eyeglasses were punched off of faces and broken underfoot intentionally. Inmates were stripped of clothing arbitrarily. The officers injured nearly every man substantially, hostages included. The officers kicked, stomped, and used knees on the inmates who never resisted.

56. Inmates were sped through a one minute triage that DOC influenced to record no injured prisoners. In reality, the inmate hostages incurred a wide range of serious injuries, from broken bones, teeth knocked out, and swollen shut eyes, to being unable to walk, having trouble eating, concussions, and a myriad of bruising and lacerations.

57. Although Building C was a medium security facility, after the takeover, all of the inmates were moved to security housing units in Buildings 17, 18, and/or 19.

58. Upon arriving at Buildings 17, 18, and 19, inmates were refused clothes, except for the filthy ones they arrived in, denied shoes, and denied linens.

No soap or toothpaste was provided. No showers were provided. Without any sheets or blankets, the air conditioned cells were brutally cold.

59. The inmates were confined to their cells except for one (1) hour every 48 hours for showers and/or "recreation."

60. Inmates who received religious diets while in C-Building were not provided those diets that conform to their religious dictates for about one week. The same denial was made for allergy trays, forcing inmates to choose between starving and violating their beliefs, or even risking allergic reactions.

61. All inmates were repeatedly told that the DOC is going to destroy everyone's property, because the property was too much to look through and to prevent the attackers from receiving any of their property.

62. The Delaware State Police and the Federal Bureau of Investigation conducted brief interviews with each prisoner without knowledge of who was attacker or who was hostage. When asked about the property, the inmates were told that the property would be examined carefully for evidence, but that the DOC should return it eventually.

63. For an extended time, inmates from C-Building were punished by restricting their commissary purchases to writing supplies and cosmetics at a \$15.00 limit. They were prevented from buying replacement clothing, shoes, or over-the-counter medication.

64. The meals were reduced to about half of the normal diets.

65. For about two months, the medical staff and vendor was directed by the Defendants that they were not permitted to treat any inmate from C-Building.

66. Having endured being held hostage in very traumatic conditions, many inmates requested mental health care, but were told that the DOC would not permit any for C-Building inmates.

67. Most inmates suffered PTSD type symptoms. Most had injuries in need of medical treatment. Neither was permitted by Defendants.

68. Some inmates had dental problems, but the DOC would not allow dental staff to provide care.

69. After approximately two months, mental health staff was only permitted to conduct one minute discussions with the Plaintiffs. These interactions were conducted less than three feet from at least two officers. The inmate was inside his cell and forced to yell his medical/mental health troubles loudly, through the metal door. This practice chilled the inmates' desire to seek help due to the requirement of voicing their private medical information to two COs and the entire housing unit, full of prisoners. No one was able to discuss C-Building related issues due to the other inmates listening to discover and expose anyone "snitching," which would jeopardize their safety.

70. Only upon the filing and notice upon Defendants that Parkell was representing the class did medical receive permission from Defendants to carry out their duties.

71. Beginning around July 1, 2017, some of the excessive restrictive conditions have been lightened.

72. There remain an inordinate amount of easily addressed safety risks to the inmates and to staff.

73. The conditions and treatment of inmates is substantially different than in C-Building. Parkell is classified at a level which is actually below the C-Building standard, entitling him to lesser restrictions. Defendants have not made any attempt to provide him or the class members with the treatment consistent with their classification.

74. Only recently have the inmates begun to receive a semblance of care from mental health and medical staff.

75. The C-Building inmates' diets are routinely tampered with. Parkell's scheduled food has items missing from designated service on average once per day.

76. Buildings 17, 18, and 19 are extremely restrictive maximum security areas of JTVCC. Parkell is currently, as of the date of this filing, being held in

solitary confinement twenty-two hours per day. The Plaintiffs have not been charged criminally, nor have any misconduct charges been filed.

77. It has been more than seven months since the events of February 1 and 2, 2017.

78. As further retaliation, Defendants have formed teams of officers sent around the prison to terrorize the incarcerated. Many of the C-Building Plaintiffs were subjected to the conduct of those teams. That conduct consisted of:

- (i) being stripped and taken outside in winter weather and being forced to sit outside for hours in stress positions;

- (ii) being sprayed indiscriminately with vexor or similar chemical weapons;

- (iii) being punched;

- (iv) being kicked;

- (v) being forced to stand for long periods of time with their chins pressed against their chests;

- (vi) being subjected to "raids" or "shakedowns" by masked team members, and forced to strip in front of female COs;

- (vii) being forced to strip naked and put their hands on their anus or genitalia and then in their mouth, often in front of female COs;

- (viii) being beaten with nightsticks; and

(viii) being subjected to racial slurs.

79. The DOC officers are underpaid to such a low rate, that it guarantees that Delaware will not attract the best employees. The officers that do have great moral work ethic commensurate to a position in corrections are either hired to the surrounding states, where pay is much better, or they themselves acquire the damaging disdain so destructive in today's officers.

80. Upon information and belief, the officers that retook C-Building were given orders to abuse the inmates after they were restrained. These orders were uniformly followed, a perfect example of the disposition that the Defendants chose to employ.

81. Upon information and belief, the officers at JTVCC have been abusive and have posed a serious risk to the safety of the inmates for many years. The officers who are well known to use excessive force and to abuse the inmates receive very little to no discipline at all.

82. The many years of disdain from abusive officers, who abuse with impunity has led to a development of an extremely dangerous institution. The employ of unqualified, ill-tempered, underpaid, overworked, undisciplined, and uncaring staff, left to operate however they wanted is a textbook environment for abuse and corruption.

83. Ruth Ann Minner ("Minner") was the Governor of the State of Delaware from 2001 to 2009. The Corrections Officers Association of Delaware ("COAD") entered into a contract with Minner. Minner and her administration intentionally decided to not address operational needs and obligations to fill vacant security positions in the JTVCC and DOC.

84. JTVCC, as a result, has endured extreme understaffing for almost two decades.

85. The Human Resources Director of the DOC testified that there were "literally hundreds of vacancies in essential security positions."

86. Minner created a method to camouflage the extremely tenuous problems tied to understaffing by ordering any vacant job positions in DOC to be removed completely.

87. The DOC Commissioners assisted Minner.

88. As a result, the staffing numbers, including the allocated levels, did not come close to showing how desperate the situation was.

89. Minner and her cohorts deceived the public and the General Assembly, and distorted the perceptions of danger that she was deepening.

90. Chronic fatigue and extreme stress plagued the officers at JTVCC as the terrible understaffing forced untenable conditions.

91. In 2004, an outside DOC security expert publicly released a report he was commissioned to prepare. The report was highly critical of Minner and her cohorts for their intentional security lapses. The expert specifically warned, "somebody is going to be seriously injured or killed," unless change was made.

92. In 2004, there were also vast numbers of articles and stories in mixed media outlets over the glaring lack of safety in Delaware DOC due to, among other things, understaffing, lack of training, and security failures.

93. COAD itself warned Minner, the public and the multiple media outlets that there was an unsustainable situation in the prisons in Delaware, repeatedly, often times going so far as to pay for huge billboards with the warnings for all to see.

94. In 2003, COAD publicly warned that the "severe levels of understaffing would inevitably lead to murder, injury, or even rape" in the prisons.

95. In June 2004, COAD publicly revealed that the levels of the severe understaffing in the prisons was of "crisis proportions."

96. In July 2004, a JTVCC counselor was abducted and held hostage by an inmate for hours while the inmate repeatedly and violently raped her.

97. Minner's response to this tragic violation of a staff member was that "you almost expect this to happen," which was not only highly insensitive, but indicative of her admitting she expected it to happen.

98. A task force was created to examine the JTVCC in the aftermath of the rape. The report the task force created outlined the root causes and identified what was needed for JTVCC to address. The glaring issues were, among other things, severe understaffing, excessive overtime, complacency, and inadequate training and supervision. The officers were found to be working in "great confusion."

99. Minner ignored the key conclusions in the report.

100. Defendant Markell chose to continue the same conditions that led to the counselor's abduction on Minner's term.

101. The overtime budget doubled during Markell's administration.

102. Markell deliberately enacted a policy to rely even more on overtime rather than fill the critical understaffing of officers.

103. The DOC Commissioners, including Defendant Coupe, implemented Markell's policy.

104. By 2017, 40% of JTVCC's staffing was filled by overtime shifts.

105. Coupe admitted while Commissioner that security is threatened markedly by understaffing.

106. Markell ordered that at least 90 vacant DOC positions must go unfilled at all times.

107. Markell ordered that his vacant positions policy must be obeyed even when critical staffing and safety requirements necessitated they be filled.

108. The COAD President met multiple times with state officials, and others to warn of possible deaths of DOC officers.

109. Numerous officers have filed official reports about looming safety risks.

110. As an example of history repeating itself, the COAD President issued a warning that the same critical stage had been reached in 2016 as in 2004. His warning was: "sometime between January and July (of 2017), the wheels are going to come off."

111. Parkell was housed in B-Building in the summer of 2015. While there, he was attacked by an officer and subsequently filed suit. Within that suit, Parkell described the lack of security cameras in B, and the blind spots. Officers' abuses and undisciplined repercussions led to him being attacked. Parkell's lawsuit informed the Defendants that the situation in B was unsustainable.

112. B-Building and C-Building are virtually identical. The same conditions that led to the crisis on February 1, 2017 existed in B also. These warnings were ignored and the specific threats denied to even exist, by an indifferent DOC willing to spend vast funds fighting against alleviating the risks to inmate and officer safety.

113. Despite prior warnings, the Defendants only seek to improve the safety when they are caught by public opinion, somebody dies or is critically injured or raped, or a significant lawsuit is filed.

114. Parkell has repeatedly offered the Defendants his own perception and assistance to improve the unsustainable conditions in the Delaware DOC, but the Defendants see shame in the suggestion that a mere prisoner may be able to help prevent an officer's death. The Defendants' refusals to accept Parkell's assistance is proof of the pure indifference to the officers' and inmates' safety.

V. Class Allegations

115. Named Plaintiff, Donald Parkell, seeks to pursue claims both for himself, individually and for a class of others similarly situated ("the Class") pursuant to Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure

116. Named Plaintiff, Donald Parkell, seeks to represent a class consisting of the following people: All individuals who were housed in C-Building of JTVCC on February 1 and 2, 2017 who were not involved in the attack on Sgt. Floyd, COs Smith and Wilkinson and were not involved in the takeover of the C Building, but were hostages of the perpetrators of the attacks and takeover.

117. The individuals in this class are so numerous that joinder of all members is impractical. On February 1, 2017, there were approximately 125

inmates housed in C-Building. The perpetrators of the attack and takeover numbered only about ten (10).

118. There are questions of law and fact common to the claims of the Class. Among these common questions are:

(a) Whether Defendants' indiscriminate beatings of the hostage inmates during the "rescue" violated their rights under the Eighth Amendment;

(b) Whether Defendants violated the constitutional rights of the hostage inmates by destroying and confiscating their personal property;

(c) Whether Defendants violated the constitutional rights of the hostage inmates by refusing to provide them with medical care and treatment for injuries suffered in the takeover and "rescue;"

(d) Whether Defendants violated the constitutional rights of the hostage inmates by refusing to provide them with mental healthcare following the takeover and "rescue;"

(e) Whether Defendants violated the constitutional rights of the hostage inmates by placing them all in Security Housing Units (solitary confinement) following the takeover and "rescue;"

(f) Whether Defendants violated the constitutional rights of the hostage inmates by failing to provide them with clothing, shoes, bed linens, or blankets following the takeover and "rescue;"

(g) Whether Defendants violated the constitutional rights of the hostage inmates by refusing to accommodate religious and allergic dietary restrictions and otherwise restricting their food rations following the takeover and "rescue;"

(h) Whether Defendants violated the constitutional rights of the hostage inmates by:

(i) forcing them to strip naked in front of male and female COs;

(ii) forcing them to put their hands on their anuses and genitals and then in their mouths; and

(iii) forcing them to sit naked, cross-legged outside in the cold for hours.

(i) Whether Defendants' failure to adequately operate the JTVCC and C-Building with the requisite means to provide reasonable safety for the Class;

(j) Whether Defendants' failed to provide an amount of security staff (officers) in C-Building to prevent the uprising or to manage it when it began;

(k) Whether the Defendants violated the Class' Constitutional rights by failing to install security cameras in C-Building or other deterrents to a takeover;

(l) Whether the Defendants transferred certain inmates to C-Building and then assigned only three officers to manage 126 inmates in order to undermine the CLASI settlement, hoping for an incident;

(m) Whether the Defendants further exacerbated the risks by not only acquiescing in the abhorrent treatment of inmates by abusive and disrespectful officers, but intentionally scheduling the most troublesome officers to work in the same building C during the same shifts;

(n) Whether a lack of discipline of officers caused the already unsafe conditions to become explosive;

(o) Whether the Defendants' decisions to fail to implement the changes recommended as needed in the 2005 report constitute deliberate indifference;

(p) Whether the failure to take appropriate actions in the face of repeated warnings from respected officials and repeated actual crisis violated the Class' constitutional rights;

(q) Whether orders to keep vacant security positions unfilled constitute deliberate indifference to the right of safety of the Class;

(r) Whether the Defendant knew of the impending crisis and chose to do nothing;

(s) Whether Defendants' decisions to provide its officers such low pay, and knowing the security concerns it causes constitutes deliberate indifference;

(t) Whether Defendants created the risks and failed to protect Plaintiffs;

(u) Whether Defendants failed to train its officers properly regarding rehabilitation, sensitivity, respect toward inmates, the need to prevent co-workers from making conditions worse; and

(v) Whether Defendants failed to train its officers to be able to operate in overcrowded prison while understaffed.

119. Plaintiffs' claims are typical of the claims of the Class. Mr. Parkell was an innocent hostage of the takeover of the Building by the perpetrators of the attack and takeover. He was injured by protecting Ms. May and has suffered severe mental and emotional stress as a result of the attacks, takeover, and rescue. Although classified as a medium risk prisoner, since February 2, 2017, he has been housed in maximum security, deprived of medical and mental treatment, deprived of educational and religious programs, had no clothing, shoes, or bed linens or blankets for a week, had no kosher meals for a week and his food rations reduced thereafter, had his personal property seized and much of it never returned. In SHU, Mr. Parkell and the members of the Class were confined to their cells except for

one (1) hour of recreational or shower time every 48 hours and now, after six months, receive only two hours per day of out of their cells. Although Mr. Parkell was not beaten during the "rescue" because of his protection of Ms. May, nor subjected to the abusive shakedowns conducted by Defendants following February 2, 2017, his treatment following February 2, 2017 in all other respects has been typical of the other hostage inmates.

120. Parkell's physical and mental health have deteriorated in the seven months of isolated confinement since his "rescue," due to psychological issues, lack of proper nutrition, and too much time spent in a cell every day, that the prison doctor, Dr. Carla Cooper Miller, had to step in to order possibly lifesaving nutrition prescriptions.

121. Mr. Parkell will fairly and adequately represent the interests of the Class. The Court has appointed the undersigned counsel to represent him in this matter.

122. The questions of law and fact common to the Class predominate over any individual issues. In addition, a Class action would be the fairest and most efficient way to adjudicate the Class members' claims.

COUNT I
42 U.S.C. §1983 – Cruel and Unusual Punishment
(Eighth Amendment)

123. Plaintiff repeats and realleges each preceding paragraph of this Complaint as if fully set forth herein.

124. As described more fully above, Defendants inflicted unreasonable, unnecessary, and unjustified physical and emotional pain and suffering on Plaintiff and the members of the Class. They did so intentionally, wantonly, and/or with malice.

125. Alternatively, Defendants knew the risk of harm that their misconduct posed to Plaintiff and the members of the Class, and, nevertheless, acted with deliberate indifference in meting out the described punishments to Plaintiff and members of the Class simply because they were housed in the Building at the time of the attacks and takeover.

126. As a result of Defendants' unjustifiable and unconstitutional conduct, Plaintiff and other members of the Class suffered pain, emotional distress, and personal injuries, some of which may be permanent.

127. The injuries Plaintiff and member of the Class suffered were proximately caused by the policies and practices of the Defendants.

128. On information and belief, the Defendant COs executed their unconstitutional actions and violations pursuant to a policy, practice, and/or orders implemented by Defendants Pierce, Parker, Metzger, and Phelps.

129. Defendants continue to this day to deprive Plaintiff and members of the Class of their constitutional right to be free from cruel and unusual punishment by housing them in maximum security, restricting their food, activities, religious services, and medical and mental healthcare. Accordingly, Plaintiff, on his own behalf and on behalf of the Class seeks injunctive relief from this Court to stop the continuing constitutional violations.

130. Plaintiff, on behalf of himself and members of the Class, also seeks compensatory and punitive damages to compensate them for their physical, mental, and emotional injuries and constitutional deprivations.

COUNT II
42 U.S.C. §1983 – Violation of Due Process
(Fifth and Fourteenth Amendments)

131. Plaintiff repeats and realleges each preceding paragraph of this Complaint as if fully set forth herein.

132. Defendants violated the constitutional rights of Plaintiff and members of the Class to due process of law by seizing, destroying, and/or refusing to return their personal property.

133. Defendants violated the constitutional rights of Plaintiff and members of the Class to due process of law by placing them in maximum security housing despite their medium risk classifications, without any opportunity to be heard.

134. As a result of Defendants' violations, Plaintiff and the members of the Class have been deprived of their property and liberty without due process of law.

135. Plaintiff seeks injunctive relief to stay these violations.

136. Plaintiff also seeks money damages for the value of the personal property of Plaintiff and the members of the Class which has been destroyed and/or lost.

COUNT III
42 U.S.C. §1983 – Failure to Protect

137. Defendants violated the 8th Amendment by creating or worsening conditions in JTVCC that posed a substantial risk of serious harm. These Defendants knew that not only staff, but inmates as well, faced substantial risks and disregarded those risks by failing to take reasonable measures to abate it.

COUNT IV
42 U.S.C. §1983 – Cruel Unusual Punishment
Eighth Amendment

138. The Defendants subjected the Class to cruel and unusual punishments in failing to address security issues they perceived would arise upon initiation of the agreement entered with CLASI. They decided to disregard what they knew would occur based on their indignance in having to conform to the agreement.

COUNT V
Violation of Article I, Section 11 of the Delaware Constitution

139. Plaintiff repeats and realleges each preceding paragraph of this Complaint as if fully set forth herein.

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

141. Defendants' denial of medical and mental healthcare to Plaintiff and members of the Class constitutes cruel and unusual punishment in violation of Article I, Section 11 of the Delaware Constitution.

142. Defendants will continue to violate Article I, Section 11 rights of Plaintiff and the Class if this Court does not grant relief.

WHEREFORE, Donald Parkell, on behalf of all others similarly situated, respectfully requests that this Court enter judgment in his favor against Defendants awarding compensation damages, punitive damages, injunctive relief, attorneys' fees, and costs and such other and further relief as the Court deems just and the circumstances warrant.

DATED: 9/29/2017

SEITZ, VAN OGTROP & GREEN, P.A.

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