

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,)
PERRY PHELPS, individually)
and in his official capacity,)
ROBERT COUPE, individually.)

Defendants.)

FOURTH AMENDED COMPLAINT¹

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

¹ The attached redline version of the Fourth Amended Complaint indicates in what respect the amendment differs from the Third Amended Complaint.

ongoing violations of the Plaintiffs' rights guaranteed by the Constitution of the United States of America.

2. As a result of Pierce, Phelps, and Coupe's 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 more than 100 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 Pierce, Phelps, and Coupe's reckless indifference to the safety of, not only the COs, but to the inmates themselves.

4. Pierce, Phelps, and Coupe deliberately chose to understaff JTVCC, which substantially increased security and safety concerns for staff and inmates.

5. Pierce, Phelps, and Coupe 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. Pierce, Phelps, and Coupe 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 were permitted to and encouraged to abuse prisoners by Pierce, Phelps, and Coupe, 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. Pierce, Phelps, and Coupe's 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 ("COAD") 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"), at the time of the actions complained of herein, was 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 ("Pierce") was the warden of JTVCC on February 1 and 2, 2017. Pierce joined DOC as a correctional officer in 1996. He became a deputy warden in 2004, and was named warden in August 2013. He was placed on administrative leave on February 21, 2017. He is sued individually and in his official capacity.

15. Defendant Phillip Parker (“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. Parker began his employment with the DOC in 1992. In 2013, he was named deputy warden at JTVCC. He is sued individually and in his official capacity.

16. Defendant Perry Phelps (“Phelps”) is the Commissioner of the Delaware Department of Correction. Phelps began his employment at DOC in 1988 as a corrections officer, and was promoted through the ranks to deputy warden. In 2008, he was named warden of JTVCC. In 2013, he became chief of DOC’s bureau of prisons. In 2017, he became Commissioner of DOC. He is sued individually and in his official capacity.

17. Defendant Robert Coupe formerly was the Commissioner of the DOC and served in that capacity from approximately 2013 until January 2017. Prior to being named commissioner of the DOC, Coupe was a career Delaware state police officer and superintendent of the Delaware state police. He is sued only in his individual capacity.

18. Non-party, 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. It was the Defendants' duty to provide safe and humane services, programs, and facilities for Plaintiff and the Class.

IV. Background Facts

19. 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.

20. JTVCC, as a result, has endured extreme understaffing for almost two decades. As long-time DOC employees, this was well known to Pierce, Phelps, and Parker as well as Coupe.

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

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

23. The DOC Commissioners including Coupe assisted Minner.

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

25. Chronic fatigue and extreme stress plagued the officers at JTVCC as the extreme understaffing created untenable conditions.

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

27. 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.

28. 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.

29. 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.

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

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

32. 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.

33. 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. ("Final Report of the Task Force on Security Issues at the Delaware Correctional Center Submitted to Governor Ruth Ann Minner, February 14, 2005") 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." The Report also found a need for additional security cameras.

34. Minner and the DOC commissioners and administrators ignored the key conclusions in the report.

35. Pierce admitted that the 2005 Report's recommendations were not completely carried out and some issues, like staffing levels, were never resolved, and the staffing crisis continued.

36. Minner's successor, Governor Markell chose to continue the same conditions that led to the counselor's abduction on Minner's term.

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

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

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

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

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

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

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

44. 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."

45. 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 lack of discipline led to him being attacked. Parkell's lawsuit informed the Defendants that the situation in B was unsustainable.

46. 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 Markell and Coupe.

47. On August 6, 2015, the Community Legal Aid Society, Inc. (“CLASI”) filed a complaint in this Court (C.A. No. 15-688 GMS) alleging, inter alia, that Defendant Coupe failed to adequately address the serious mental health needs of DOC inmates with mental illness who were housed in solitary confinement.

48. On August 31, 2016, CLASI and Coupe entered into an Agreement and Order in order to provide, inter alia, additional out-of-cell time for inmates such as those inmates who, at the time of the filing of the complaint, were in restrictive housing, particularly for those inmates with mental illness, and to provide for additional and improved mental health care (the “CLASI Order”).

49. Among other things, the CLASI Order requires DOC to:

- (a) make a mental health evaluation by a qualified mental health professional within 24 hours of placement in restrictive housing;
- (b) prohibit the use of alternate meal plans as a disciplinary sanction;
- (c) increase its security and other staff to the extent necessary to maintain security and operation and provide mental health and other services required by the Order;

(d) conduct mental health assessments as a result of a cell front contact in a confidential setting;

(e) conduct mental health rounds on inmates in restrictive housing once a week;

(f) make mental health services accessible to all inmates in need of such services;

(g) develop a plan to maximize use of existing space to provide treatment to severely mentally ill and mentally ill inmates and implement the plan by 11/30/16;

(h) train security staff in how to deal with mentally ill inmates; and

(i) improve conditions of confinement and other aspects of restrictive housing and increase out-of-cell time.

50. In an effort to undermine the CLASI Order, Coupe and Pierce not only moved mentally ill inmates to Building C, but also moved rival gang members to Building C, thus, creating a highly volatile environment in a medium security building.

51. In contravention of the CLASI Order, Coupe, Phelps, and Pierce did not increase JTVCC and Building C security and other staff to the extent necessary to maintain security and operations, nor did they train staff to deal with mentally ill inmates.

52. Despite the extremely volatile mix of inmates in Building C, on November 16, 2017, Pierce issued a directive to all correctional staff that they were no longer permitted to prevent an inmate from yard or tier recreation except under certain limited circumstances. To exacerbate matters, Pierce instructed a sergeant to interpret the policy change to require all inmates to participate in recreation at the same time. However, Pierce did not train staff to deal with the mass movement of inmates resulting from this policy.

53. On January 15, 2017, just two weeks before the uprising and takeover in Building C, inmates staged a protest on the A and B tiers of Building C refusing to return to their cells until they spoke to the supervisor regarding the conditions in Building C.

54. Following this incident, certain correctional officers including Sergeant Floyd identified inmates responsible for the January 15, 2017 incident and notified Pierce that these inmates should be removed from C-Building for security reasons. Pierce denied this request.

55. The actions and inactions of Coupe and Pierce demonstrate a conspiracy to cause the implementation of the CLASI Order to fail, and to seriously jeopardize the safety and security of the staff and inmates in the process.

56. Pierce, Coupe and Phelps failed to train the DOC staff in many ways that led to the deterioration of safety at JTVCC. Had the training been available, the attack on C-Building would not have occurred.

57. Coupe and Pierce chose not to train officers to recognize and compensate for the severe understaffing nor to implement policies to address the fatigue, confusion, and stress the extreme overtime work caused them.

58. Years of neglect, incompetence, intentional sabotage, misdirected financial priorities, understaffing, a culture of distrust and abuse, a failure to provide necessary training, an overreliance on overtime, undervalued staff, underpaid officers, a shift away from rehabilitation, a lack of jobs, education programs and treatment for inmates, a disproportionate reliance on isolated confinement, a failure to discipline abusive staff or provide reasonable ways for reports of misconduct by staff be investigated, permitting known abusers to remain as officers, and more, created an inevitability that crisis events would not only happen, but would repeat themselves at JTVCC.

59. The decisions made by governors and General Assembly in Delaware led to corrections officers being paid extremely low salaries. These low salaries created a large rate of turnover and led to a vast understaffing of the JTVCC. The Delaware DOC human resources director testified that there are “literally hundreds of vacancies in essential security positions.”

60. The understaffing levels necessitated a policy of mandatory overtime upon officers to cover the number of vacant shifts caused by a lack of employees. This overtime became more and more a means to staff JTVCC and led to a high rate of burnout of officers.

61. Fatigued officers can be a liability to the security of a prison.

62. The mandatory overtime policy led to more turnover, which exacerbated the cycle of deteriorating safety at JTVCC.

63. Pierce enacted policies that encouraged the officers to abuse inmates. This was done by refusing to discipline officers accused of abuse, or to adequately investigate reports of abuse. Pierce's policy of encouraging abusive behavior left the officers no avenue to report abusive coworkers.

64. Officers were permitted to continue to work in supervisory and security positions even with protection from abuse orders against them, DUI convictions, and one extreme case in which one officer worked a JTVCC Monday through Friday shift, and then served a prison sentence on the weekends for a conviction. Understaffing, incompetence, complacency, and a culture of conflict existed in JTVCC amongst all levels of staff and served to create a violent and unsafe facility. This violent atmosphere manifested itself in a crisis of very unfortunate events.

65. The many years of disdain from abusive officers, who abuse with impunity 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 was a textbook environment for abuse and corruption.

66. The defendants chose to perpetuate the risks at JTVCC for two main reasons. First, their agenda was to house as many people in isolated confinement as possible, thereby spending as little as possible on corrections and rehabilitation. It was well-known that Pierce did not believe in rehabilitation of inmates and he steadily eliminated inmate programs. Second, the CLASI order required a reversal of their agenda, prompting their decisions to undermine the security at JTVCC in order to blame the CLASI Order as the reason for resulting violence.

V. Facts Surrounding The Events of February 1 And 2, 2017

67. 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.

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

69. All three officers were taken hostage.

70. A counsellor, Ms. May was also taken hostage.

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

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

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

74. The non-perpetrators of the attack were held hostage, threatened, and terrorized by the attackers.

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

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

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

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

79. Hooded attackers periodically checked the cell to make sure Ms. May 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.

80. 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.

81. 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. Parkell's rib was separated as a result of carrying Ms. May to the restroom twice.

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

83. 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.

84. 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.

85. 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.

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

87. 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.

88. 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.

89. 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.

90. 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 physical 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, as well as the trauma of the ordeal.

91. Despite the CLASI Order requiring mental health evaluations to be performed within 24 hours of placement in restrictive housing, and Pierce ordered that no Building C inmates should receive mental health, medical, or dental treatment when transferred to SHU following the retaking of Building C. Numerous

medical personnel have confirmed that they were ordered not to provide medical or mental health treatment to the Building C inmates following the retaking of Building C by the authorities.

92. Multiple mental health workers told Parkell that Pierce ordered that mental health care must be withheld.

93. Multiple medical staff employees told Parkell that Pierce ordered that medical care must be withheld.

94. As a result of these orders, Parkell's injuries were never treated. His rib was separated while protecting the counselor and could not heal without treatment. His mental health deteriorated to the critical state requiring intervention in order to likely save his life.

95. Defendant Parker was appointed as an interim warden giving him the ability to order all withheld medical and mental health care to be immediately provided. Instead, his action was to permit the denials to continue. The inherent nature of Delaware DOC's motives became more evident once Parker was afforded control over JTVCC. He formed teams of hooded, masked and unidentifiable officers to roam JTVCC harassing, terrorizing and assaulting inmates. 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. This included Parkell, Carello, and Downing, whom the Defendants knew were not perpetrators.

96. 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.

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

98. 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.

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

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

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

102. Parkell and members of the Class suffered PTSD type symptoms needing mental health care. Most had injuries in need of medical treatment. Neither was permitted by Defendants.

103. Parkell and members of the Class had dental problems, but Pierce and Parker would not allow dental staff to provide care.

104. 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. This was in contravention of the CLASI Order. 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.

105. 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.

106. Beginning around July 1, 2017, some of the excessive restrictive conditions were lightened.

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

108. For more than a year after the events of February 1 and 2, 2017, Parkell's PTSD and rib injuries had not been treated.

VI. Class Allegations

109. 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

110. 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.

111. 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) to eighteen (18).

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

(a) Whether Pierce, Parker, and Phelps 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;"

(b) Whether Pierce, Parker, and Phelps violated the constitutional rights of the hostage inmates by refusing to provide them with mental healthcare following the takeover and "rescue;"

(c) Whether Pierce, Phelps, and Coupe failed to adequately operate the JTVCC and C-Building with the requisite means to provide reasonable safety for the Class;

(d) Whether Pierce, Phelps, and Coupe failed to provide an amount of security staff (officers) in C-Building to prevent the uprising or to manage it when it began;

(e) Whether Pierce, Phelps, and Coupe violated the Class' Constitutional rights by failing to install security cameras in C-Building or other deterrents to a takeover;

(f) Whether Pierce and Coupe 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;

(g) Whether Pierce, Phelps, and Coupe 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 building C during the same shifts;

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

(i) Whether Pierce, Phelps, and Coupe's decisions to fail to implement the changes recommended as needed in the 2005 report constitute deliberate indifference;

(j) Whether Pierce, Phelps, and Coupe's failure to take appropriate actions in the face of repeated warnings from respected officials and repeated actual crises violated the Class' constitutional rights;

(k) Whether Pierce, Phelps, and Coupe knew of the impending crisis and chose to do nothing;

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

(m) Whether Pierce, Phelps, and Coupe created the risks and failed to protect Plaintiffs;

(n) Whether Pierce, Phelps, and Coupe failed to train DOC officers properly regarding rehabilitation, sensitivity, respect toward inmates, and the need to prevent co-workers from making conditions worse; and

(o) Whether Pierce, Phelps, and Coupe failed to train DOC officers to be able to operate in an overcrowded prison while understaffed.

113. 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, following February 2, 2017, he was housed in maximum security, deprived of medical, dental, and mental health 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, 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.

114. Parkell's physical and mental health deteriorated in the 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.

115. 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.

116. 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)

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

118. As described more fully above, Pierce, and Parker 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. by ordering medical vendors to withhold medical, dental and mental health care from the class.

119. Alternatively, Pierce, and Parker 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.

120. The injuries Plaintiff and member of the Class suffered were proximately caused by the policies and practices of Pierce, Parker, Phelps, and Coupe.

121. 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 – Failure to Protect

122. Defendants Coupe, Pierce, and Phelps were aware of the risk to inmates created by the policies described above and were deliberately indifferent to the risk they posed to Plaintiff and the Class, and failed to protect Plaintiff and the Class from that risk.

123. The takeover of Building C and attack on February 1 and 2 was a highly predictable consequence of the overtime, vacant positions, and pay policies implemented and carried out by Defendants Coupe, Pierce, and Phelps.

124. Defendants Coupe, Pierce, and Phelps were aware of and were deliberately indifferent to the risk of their actions in moving mentally ill inmates and rival gang members to Building C following the CLASI Order without providing for

the additional security the Order required, nor the training officers needed to deal with the mentally ill inmates and mass movement of inmates.

125. Defendants Coupe, Pierce, and Phelps were aware of the risk to inmates, including Parkell, created by the overtime, vacant positions, and pay policies for corrections officers they implemented and carried out.

126. Defendant Pierce was deliberately indifferent to the warnings given by certain officers, including Sgt. Floyd that certain inmates posed a security risk and should be removed from Building C shortly before the attack and takeover.

127. Pierce, Phelps, and Coupe 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 them. Pierce, Phelps, and Coupe subjected the Class to cruel and unusual punishments in failing to address security issues they knew or should have known would arise upon implementation of the CLASI order, and by undermining the CLASI order.

128. As a result of Defendants Coupe, Phelps, and Pierce's deliberate indifference to the risk to inmate safety they created, Parkell and the Class suffered the injuries complained of herein.

JURY DEMAND

129. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a Trial by Jury.

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: July 27, 2018

SEITZ, VAN OGTROP & GREEN, P.A.

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