

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JEREMY P. DEFOUR,
Plaintiff,

v.

Case no: 1:19-CV-1355
(CMH/TCB)

K9 Officer JONES; K9 Officer FRANKLIN; Corrections Officer (C/O) AGUMPFORT; Investigator CARPENTER; Unit Manager PERKINS; Doctor BROOKS; Health Services Authority (HSA) SADLER; Qualified Mental Health Professional (QMHP) MYRGA; Warden B. CABELL; Unit Manager SHELTON; Chief of Housing and Programs (CHAP) R. WHITT; (QMHP) SMITH; (QMHP) SADLER; (QMHP) WIDENER; Warden C. DAVIS; Unit Manager ELY; (CHAP) D. COLLINS; (QMHP) HAWKINS; (QMHP) COUCH; Head of Psychology R. SAYLOR; Doctor MCDUFFIE; Warden C. MANIS; Chief Psychologist MALONE; Director of Health Services JOHN DOE (Name Unknown); Regional Operations Chief G. HOLLOWAY; Regional Operations Chief MATHENA; Director of Offender Management Services J. PARKS; Chief of Corrections Operations D. ROBINSON; Director of Department of Corrections H. CLARKE; sued in their individual and official capacities; Defendants.

JURY TRIAL DEMAND

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

I. Introduction

1. This is a Civil Rights action filed by the Plaintiff, Jeremy DeFour, a State prisoner, for damages and injunctive relief under 42 USC § 1983; alleging excessive use of force and denial of medical and mental health care in violation of the Eighth Amendment of the United States Constitution, confinement in segregation, and destruction of property in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and retaliation against exercising his right to file complaints, law suits, and free speech in violation of the First Amendment of the Constitution of the United States.

2. The Plaintiff also alleges the Torts of assault and battery and negligence in violation of the laws of the State of the Commonwealth of Virginia.

II. Jurisdiction

3. Jurisdiction of this Court is invoked pursuant

to 28 USC § 1331 in that this is a Civil action arising under the Constitution of the United States.

4. Jurisdiction of the Court is invoked pursuant to 28 USC § 1343(a)(3) in that this action seeks to redress the deprivation, under color of State law, of rights secured by Acts of Congress providing equal rights of persons within the jurisdiction of the United States.

5. The Court also has supplemental jurisdiction over the Plaintiff's State law tort claims under 28 USC § 1367.

6. The Plaintiff filed a Notice of Claim, concerning the tort claims, with the Director of the Division of Risk Management for the Commonwealth of Virginia, as required by the law of the State of Virginia, and the Director of Risk Management has failed to settle the claim or respond within the six month period designated by State law.

III. Parties

7. Plaintiff Jeremy DeFour, at all times relevant, was confined by the Virginia Department of Corrections (VADOC).

8. Confined at Sussex 2 State Prison (S2SP), from

10/12/2018 to 12/20/2018

9. Confined at Keen Mountain Correctional Center (KMCC), from 12/20/2018 to 2/01/2019.

10. Confined at Wallens Ridge State Prison (WRSP), from 2/01/2019 to current date of pleading.

11. Defendants K9 Officer JONES and K9 Officer FRANKLIN are Correctional Officers which handle K9 attack dog escort through the prison grounds at Sussex 2 State Prison, 24427 Musselwhite Drive, Waverly, VA. 23891. C/O AGUMPFORT is the Property Officer at Sussex.

12. Defendant Investigator CARPENTER is the Intel Officer at Sussex 2 and has the rank of Lieutenant. Her job is to investigate staff or offender misconduct on Sussex 2 State Prison (address same as above).

13. Defendant Unit Manager PERKINS is the 3 building Segregation Administrator whose duties are Managing Unit 3 building on Sussex 2 State Prison (address same as paragraph 11.)

14. Defendant Doctor BROOKS is the Medical doctor at Sussex 2 State Prison (address same as in 11.)

15. Defendant HSA SADLER is the Administrator for Medical services at Sussex 2 State Prison (address same as in 11.)

16. Defendant QMHP MYRGA is a mental health

Staff member whose duties consist of screening inmates for mental issues and referring them to a Mental Health Doctor at Sussex 2 State Prison (address same as in paragraph 11.)

17. Defendant Warden B. CABELL is the Superintendent of Sussex 2 State Prison (address same as 11.)

18. Defendant Unit Manager SHELTON is the Administrator for A Building (Segregation) on Keen Mountain Correctional Center, 3402 Kennel Gap Road, Oakwood, VA. 24631.

19. Defendant C.H.A.P. R. WHITT is in charge of the housing of inmates on Keen Mountain Correctional Center (address same as paragraph 18.)

20. Defendant Warden C. DAVIS is the Superintendent on Keen Mountain Correctional Center (Address same as paragraph 18.)

21. Defendants QMHP SADLER and QMHP WIDENER are both mental health staff with the duty of assessing inmates and making recommendations to a Mental Health Doctor at Keen Mountain Correctional Center (address same as in 18.)

22. Defendant Unit Manager ELY is the Administrator for D building (Segregation) on Wallens Ridge State Prison, 272 Dogwood Drive, Big Stone Gap, VA. 24219.

23. Defendant CHAP. D. COLLINS is in charge of all housing matters on Wallens Ridge State Prison, (address same as paragraph 22.)

24. Defendant Warden C. MANIS is the Superintendent at Wallens Ridge State Prison (address same as in 22.)

25. Defendant Doctor MCDUFFIE is the Psychiatrist employed by Wallens Ridge State Prison (address same as in 22.)

26. Defendants QMHP HAWKINS and QMHP COUCH are mental health staff at Wallens Ridge State Prison (address same as in 22.)

27. Defendant Head of Psychology SAYLOR is the head psychologist and mental health administrator at Wallens Ridge State Prison (address same as in 22.)

28. Defendants Chief Psychologist MALONE and Director of Health Services JOHN DOE are the chief Mental Health and Medical Administrators for the entire VADOC, 6900 Atmore Drive, Richmond, VA. 23225

29. Defendant R.O.C. G. HOLLOWAY is the Eastern Region Operations Chief for VADOC, 14545 Old Belfield Rd, Capron, VA. 23829

30. Defendant R.O.C. MATHENA is the Western Regional Operations Chief for the VADOC, 5427 Peters Creek Rd., Suite 350, Roanoke, VA 24019.

31. Defendant O.M.S.D. J. PARKS is in charge of inmate classification and transfer throughout the VADOC, 6900 Atmore Drive, Richmond, VA. 23225.

32. Defendant C.C.O. D. ROBINSON is in charge of the proper operation of all VADOC facilities throughout the VADOC, 6900 Atmore Drive, Richmond, VA 23225

33. Defendant Director H. CLARKE is in charge of all departments and facilities of the entire VADOC, 6900 Atmore Drive, Richmond, VA. 23225.

34. Defendants acted under color of State law at all times relevant to this complaint, and are sued in their individual and official capacities.

IV. Exhaustion of Available Remedies

35. Plaintiff has exhausted all available administrative remedies before filing complaint.

36. The Plaintiff has filed affidavit of exhaustion with Notice of Claim in regards to State tort law.

V. Factual Statement

37. On October 12, 2018 the Plaintiff, Jeremy DeFour, a VADOC inmate, was housed on Sussex 2 State Prison in 2A Pod.

38. At about 7:00pm an altercation took place between the Plaintiff and another inmate in which the Plaintiff was pursued and pinned down by the other inmate while Correctional Officer (C/O) Branch (Officer assigned to 2A pod floor) tried to prevent the other inmate from striking Plaintiff.

39. During the altercation C/O Chapman (Officer assigned to 2A pod surveillance booth) called in a fight in 2A pod using code 10-33.

40. K9 Officer Jones was the first officer to respond to the call and K9 Officer Franklin arrived shortly after.

41. C/O Chapman opened the entry door to 2A pod to allow K9 Officer Jones and his K9 into the pod.

42. When K9 Officer Jones entered the pod, at approximately 7:01p.m., C/O Branch was attempting to pull the other offender off of the Plaintiff.

43. K9 Officer Jones announced his entrance

by yelling, "K9 in the pod, everyone on the ground face down," as he approached where the Plaintiff, his assailant, and C/O Branch were located (approximately 10-15 feet from the pod entrance).

44. Officer Branch then got off of the inmate that was on top of the Plaintiff, the other inmate got off of the Plaintiff and laid face down with his hands out to his sides as ordered, approximately 3-4 feet to the Plaintiff's right, and the Plaintiff rolled from his side on to his chest, placing his hands out to his sides as ordered and remained completely still.

45. At this time the K9 Officer Jones directed his K9 to attack the Plaintiff.

46. K9 Officer Jones allowed his K9 to bite DeFour several times in his groin area and buttocks over the course of approximately 60 seconds as K9 Officer Jones encouraged his K9 by stomping his feet and saying "that's right get him."

47. The Plaintiff remained completely still with his hands out to his sides during the entire attack.

48. The K9 ripped the Plaintiff's sweat pants open and ripped his shorts completely off and continued to bite the Plaintiff on his bare flesh

While the K9 officer continued to urge his K9. On.

49. The Plaintiff calmly asked Defendant K9 Officer Jones to "get his dog off" of him stating "I'm not doing anything."

50. K9 Officer Jones continued to allow his dog to bite Plaintiff.

51. Plaintiff Defour pleaded with K9 Officer Jones to remove his dog at which time K9 Officer Franklin placed his K9, which was barking and lunging, just inches away from Plaintiff's face and yelled "Shut the fuck up before I let my dog go too."

52. K9 Officer Franklin did not do anything to try to stop Defendant K9 Officer Jones from unnecessarily using his K9.

53. The Plaintiff remained completely still until K9 Officer Jones ordered his dog off of Plaintiff.

54. C/O Branch did not do anything to intervene in K9 Officer Jones misuse of the K9.

55. The entire incident was captured by Security Camera Footage which Investigator Carpenter confirmed existed and she preserved.

56. Plaintiff Defour suffered mental and physical injury including several deep puncture wounds to his crotch, groin area, right testicle,

thigh, and buttocks as well as lacerations to these areas.

57. He was then escorted to the administrative building where pictures were taken of his injuries by LT. Williams and water poured on his wounds.

58. The Plaintiff informed the nurse that he was in severe pain in his testicles, buttocks, and groin.

59. No physical examination was done and no pain medication given.

60. The Plaintiff was taken to segregation.

61. While in segregation the Plaintiff informed several staff members that he was in severe pain, including the pill call nurses who passed his door each day during pill pass.

62. They all told DeFour he would have to fill out a Sick Call Request to be treated.

63. The Plaintiff filled out a sick call request on October 13, 2018.

64. Several days passed as DeFour continued to endure extreme pain and continued to inform staff that he was in extreme pain.

65. The Plaintiff's wounds were not healing and he also informed staff of this on a daily and wrote

another sick call request on October 15, 2018 requesting treatment for his pain as well as to have his wounds cleaned and closed.

66. All of his verbal as well as written request were ignored.

67. HSA Sadler is the Medical Department Administrator at Sussex and is responsible for ensuring the Administrative processes operate correctly and offenders are scheduled and treated for medical issues.

68. On October 16, 2018 the Plaintiff submitted a complaint directly to the Medical Administrator, Defendant HSA Sadler, which was received on the 19th of October 2018, stating his wounds were not healing and he was in severe pain and had not received any treatment.

69. On October 21, 2018 the Plaintiff spoke to the Segregation Unit Manager B. Perkins, when he did his rounds.

70. At that time the Plaintiff pulled down his pants and showed Defendant Unit Manager Perkins his bloody underwear and bleeding-open wounds and informed Defendant Perkins of his severe pain, and also informed Perkins that his subordinates were

denying him transport to medical to be treated.

71. Perkins did not order his building staff to take Defour to medical for treatment; neither did Perkins contact any medical staff to request Plaintiff receive treatment for his obvious medical need.

72. On October 22, 2018 Plaintiff Defour informed Investigator Carpenter about his attack and not receiving medical care and asked her to review and preserve the security camera footage and take action to secure Plaintiff medical care and investigate the incident.

73. On October 25, 2018 the Plaintiff was taken to medical for a previously scheduled appointment that was unrelated to his dog bite injuries.

74. While at medical, on October 25, 2018 the Plaintiff informed Defendant Doctor Brooks that he was bitten in his testicle, groin, and buttocks by the K9 attack dog two weeks prior and that he did not received any medical exam or treatment and his wounds were not healing and he was in extreme pain.

75. He informed Doctor Brooks it was hard for him to perform everyday things like sitting down at length, using the restroom, and walking without severe pain.

76. Doctor Brooks told the Plaintiff that he was not at medical to be seen for any dog bites that day and after two weeks dog bites should be well healed.

77. He informed Plaintiff that he had been bitten by a dog before and the pain should not be bad because his bites were not that painful.

78. The Plaintiff pleaded with Defendant Brooks to be treated and given something for pain but Doctor Brooks refused and had the Plaintiff removed.

79. On October 31, 2018, in response to his complaint to the Defendant HSA Sadler, her agent J. Carson repeated what the doctor told Defour.

80. The Plaintiff immediately wrote to HSA Sadler informing her that he did not receive treatment and his letter was ignored.

81. The Plaintiff continued to request treatment verbally and in writing.

82. On November 9, 2018 the Plaintiff appealed his denial of medical care to the Warden B. Cabell.

83. On November 29, 2018 (forty seven (47) days after injuries), and before the Warden's response, the Plaintiff was seen by a Doctor for a scheduled appointment for his injuries at which point

no thorough examination of his testicle was done neither was anything given for his severe pain even though the Doctor acknowledged pain medication was needed, however none was given.

84. Every day after this visit the Plaintiff asked pill call nurses did they have anything for his pain.

85. They informed him that he had no pain medication order.

86. The Plaintiff continued to request verbally and in writing to the Defendant HSA Sadler (Medical Administrator) to be treated for his extreme pain which was so bad that it hindered him from performing necessary everyday actions like walking, using the toilet sitting down, and sitting down for long periods.

87. He also suffered severe pain in his groin area throughout the day and when using the restroom, often times prohibiting use when his groin area severely burned with sharp pain.

88. On December 14, 2018, in response to his grievance to the Warden, the Defendant Warden B. Cabell stated that DeFour was prescribed medication for pain.

89. However, as his medical records will show, DeFour did not/had not been given anything for pain at the date of the Warden's response (62 days after

his injury). The warden did not investigate his claim.

90. Also no thorough examination was done on any of his injuries including his testicle injury, even though this is a very sensitive area of the body, it caused plaintiff severe pain, and untreated posed a very serious risk to permanent damage to his reproductive system

91. Plaintiff DeFour appealed his complaint to the Director of Health Services for VADOC, Defendant John Doe, about his denial of adequate medical care (He is responsible for all health care in VADOC)

92. On January 16, 2019 Defendant John Doe (Name unknown) responded by saying DeFour received health "care" in November and December.

93. By his responses failure to refer to any specific care he acknowledged there was none.

94. Neither of the Plaintiff's interactions with medical staff in November or December consisted of any "care".

95. The November meeting was with a Doctor who acknowledged the Plaintiff's injuries, and pain therefrom, required treatment, but did nothing to treat them.

96. The December interaction stemmed from the

Plaintiff's repeated complaints of pain, injuries not properly healing, and not receiving treatment.

97. At this December 11, 2018 meeting, it was determined by the nurse's observation that the wounds were "open" and not healing properly (2 months after injury), and Defour's pain symptoms and physical condition warranted a Doctor's attention, which was recommended, but never took place.

98. Plaintiff did not receive any treatment for pain until January 9, 2019, after being transferred to another prison, approximately 90 days after his injury.

99. However, he did not receive an examination of his testicle injury until March 1, 2019 (5 months after injury), after being transferred to a third prison, at which time he received an ultrasound. The reviewing Doctor then recommended Defour see a Urologist based on the ultrasound, however, was never scheduled or seen by Urologist.

100. Nevertheless, the pain persisted and continued to interfere with his performance of daily activities, and persist at the date of this pleading.

101. After his attack the Plaintiff began to suffer from extreme anxiety, panic attacks, nightmares, and extreme stress and paranoia when he thought about the attack.

102. These symptoms were enhanced at the thought of being near an attack dog again.

103. Before the Plaintiff's first transfer, while housed at Sussex 2 State Prison (location of assault), he informed Mental Health Staff, Defendant QMHP MYRGA, on October 15, 2018, when he stopped her at his segregation cell door, that he was suffering from extreme anxiety, panic attacks, and nightmares since his attack and informed her that his symptoms were enhanced at just the thought of being near a K9 attack dog.

104. Myrga refused to recommend DeFour for treatment of his psychological symptoms.

105. Instead Myrga simply told DeFour that the kind of symptoms that he was experiencing were normal after a traumatic event.

106. The Plaintiff also informed his Unit Manger Defendant Perkins of his symptoms and asked he secure him help in person and in writing, all of his request were ignored.

107. After being denied any help for his complaint about his mental issue DeFour filed a complaint to Myrga on October 25, 2018.

108. In response to his complaint Myrga stated Psychotropic meds are not indicated.

109. However, QMHP Myrga is not authorized to prescribe or deny Psychotropic Medication, neither is

She authorized to determine if any inmate will benefit or not from any Psychotropic Medicinal treatment.

110. Myrge is only allowed to record inmates symptoms and recommend that an inmate's symptoms be reviewed by a Mental Health Doctor/Psychiatrist.

111. A Psychiatrist is the only one authorized to diagnose and treat Mental Disorders.

112. Defendant Myrge did not recommend Plaintiff for evaluation by a Doctor, which is the only person authorized to treat Plaintiff.

113. The Plaintiff did not receive any Mental Health Care for the next 2 months he was housed on Sussex 2 State Prison.

114. On December 20, 2018 the Plaintiff was moved from Sussex 2 to Keen Mountain Correctional Center (KMCC).

115. When he arrived at KMCC DeFarr informed Mental Health Staff member QMHP Sadler on December 27, 2018 that he suffered from extreme anxiety, panic attacks, and nightmares and his symptoms were enhanced at the thought of being near a K9 attack dog, and he had been in segregation since October 12, 2018 (2 months) because he could not bring himself

to return to General Population under K9 attack dog escort since his attack because of his mental condition.

116. He informed her that he did not receive any treatment.

117. Defendant Sadler (QMHP) informed Plaintiff she would get back with him but never did.

118. On January 2, 2019 he explained his symptoms to QMHP Smith and that he had experienced them for almost 3 months.

119. He also informed Smith that he felt extremely depressed because the only housing assignment security staff would allow him was either under the K9 attack dog escort or segregation, despite his mental condition, even though an alternative existed and DeFour met the criteria for housing in this alternative assignment.

120. He informed her that the prospect of being housed under attack dog escort or remain in segregation indefinitely was extremely discouraging and mentally tormenting.

121. In response to Plaintiff's concerns and symptoms QMHP Smith told Plaintiff he will have to fill out a mood log for 4 weeks and

write an explanation of his symptoms on a daily basis for an entire month before he will be considered for treatment.

122. Defour Stressed to Smith that he had already been experiencing his symptoms for almost 3 months and his condition was very tormenting.

123. Nevertheless, Smith insisted that he endure yet another month before even being considered for a Consultation with a Mental Health Doctor.

124. Defour was never allowed to see Mental Health Care while on KMCC. (to see Mental Health Doctor)

125. Twenty Nine Days later the Plaintiff was transferred a second time.

126. On February 1, 2019 Plaintiff Defour was transferred from KMCC to Wallens Ridge State Prison (WRSP).

127. When the Plaintiff arrived on WRSP he informed mental health staff of his condition.

128. On February 4, 2019 QMHP Monahan told Plaintiff he had to write his symptoms down and he would give it to the Doctor.

129. The Plaintiff immediately wrote his symptoms

down and gave it to Monohan however he was not seen by any one in the following weeks.

130. The Plaintiff wrote several request and complaints to WRSP Mental Health, VADOC Central Staff, and the Office of the State Inspector General.

131. Two months after arriving on WRSP and six months after first experiencing his symptoms the Plaintiff was seen by a Psychiatric Doctor for the first time on April 3, 2019.

132. At this consultation Defendant Doctor McDuffie determined that the Plaintiff was suffering from Post Traumatic Stress Disorder (PTSD) symptoms and diagnosed Plaintiff with Acute Stress Disorder and noted could develop into PTSD.

133. Doctor McDuffie prescribed Plaintiff Psychotropic Medicinal Treatment and determined that Plaintiff needs Therapy to help relieve symptoms of his condition.

134. On April 23, 2019, DeFurr was seen by Doctor McDuffie again at which point Plaintiff was diagnosed with PTSD and Depression and his medicine dosage increased.

135. At this meeting DeFurr explained to

McDuffie that he had been housed in segregation for almost 7 months and his housing assignment was extremely depressing and discouraging and Security Staff constantly insisting that Plaintiff only be housed under K9 attack dog escort or remain in segregation was very tormenting and discouraging.

136. Doctor McDuffie acknowledged that a person with the Plaintiff's mental condition resulting in extreme anxiety, panic attacks, nightmares, acute stress, etc and whose symptoms are enhanced at just the thought of being near a K9 attack dog, and has been literally paralyzed from conducting normal everyday activities due to this disorder should not be forced to face the cause of this disorder or punished for not doing so. And said he would talk to security.

137. Security nevertheless continued to demand that Plaintiff be housed under K9 escort or remain in segregation and denied Plaintiff any of the several alternative housing assignments.

138. The Plaintiff asked ^{McDuffie} to recommend he be housed in a housing assignment outside of segregation and not under K9 attack dog escort,

due to his diagnosed mental condition.

139. McDuffie stated that he could not make such a recommendation. (April 23, 2019)

140. The Plaintiff insisted that Dr. McDuffie could make any recommendation that he believed in his professional opinion would help Plaintiff and it would then be up to security to accept or deny his recommendation.

141. The Plaintiff pleaded with security staff to house him in any assignment outside of segregation that did not use K9 attack dog escort, but security refused and stated they would only house Plaintiff under K9 escort or in segregation.

142. On June 19, 2019 after being housed in segregation for over nine months, the Plaintiff again asked McDuffie to recommend what he acknowledged as sound treatment, McDuffie again refused to recommend Plaintiff be housed outside of segregation in a setting that did not use K9 escort, even though he acknowledged this was sound treatment.

143. Before leaving Sussex 2 the Plaintiff had filed several complaints about his attack and denial of medical and mental health care to the administration

at Sussex 2, VADOC central administrative office, the American Corrections Association (ACA), Congress Robert Scott, and the Office of the State Inspector General.

144. The Plaintiff had filed several request for protective custody to VADOC Central Office and Sussex 2 Warden due to his fear his attack was due to his many complaints previously filed against numerous Sussex 2 Staff and he feared it may happen again.

145. DeFurr also requested protective custody from the K9 Officer who had assaulted him, and expressed his specific fear verbally and in writing to Segregation Unit Manager Defendant Perkins and Institutional Investigator Lt. Carpenter.

146. On November 1, 2018 the Plaintiff filed a complaint that the administration, including Unit Manager Perkins was ignoring his request for protective custody status and continued to demand that Plaintiff return to Sussex 2 General Population under K9 C/O Jones escort

147. Seven days later on November 8, 2018 the Plaintiff was asked by C/O Lee does he want to go to General Population (Under K9 Officer Jones escort).

148. The Plaintiff expressed to C/O Lee that he feared for his safety and had made the report of his fear to Defendant Perkins and Defendant Carpenter.

149. DeFour showed C/O Lee the request forms and complaint receipt about his report of his fear for his safety.

150. C/O Lee stated he will go talk to Perkins about it.

151. The next day, on November 9, 2018, the Plaintiff was served a Disciplinary Offense Report for "Refusing to Enter General Population."

152. This report was written only 8 days after Plaintiff's complaint against Perkins and only 1 day after C/O Lee stated he will talk to Perkins about his housing.

153. When the Plaintiff saw the reporting officer, days later, he asked him, Sgt Coke (reporting officer), why he was written the Offense Report when he showed staff documented proof of his "specific" fear which was verifiable and VADOC policy states when an offender has "specific" fear he should receive Protective Custody.

154. Sgt Coke responded that he was instructed to write the Plaintiff up by Unit Manager Perkins.

154. On November 20, 2018 spoke to Perkins and explained that he should not be punished for his fear and should have been given protective custody in

accordance with policy given the fact that his attack can be verified by the security camera footage as unprovoked.

155. Perkins stated that DeFour will not be given any protective custody

156. On November 14, 2018 the Plaintiff spoke to Defendant Carpenter expressing the fact that he should not be denied protective custody and he should not be punished for his fear and he knew his rights and would pursue legal action.

157. He asked Carpenter to confirm his attack as unprovoked to the Chief of Housing Wallace so he can be housed at his proper security housing level where no K9 attack dogs are used and away from K9 C/O Jones.

158. Defendant Carpenter responded "oh you're gone, but your not going where you think".

159. The Plaintiff asked her what she meant by her statement and she smiled with a sinister look and said "oh, you'll see".

160. The Plaintiff assumed Carpenter was suggesting he will be moved to a far away region which is a normal retaliatory practice of VADUC administrators for inmates they label "complainers", or file law suits.

161. A couple weeks later Plaintiff DeFour saw

Carpenter who sarcastically stated "see ya, hope you have fun."

162. On December 11, 2018, just days after Defendant Carpenter's comments, the Plaintiff was put in for a transfer to a higher security level prison than he scored, approximately 400 miles away from the eastern region, where the Plaintiff's family's home is.

163. The Plaintiff was transferred to KMCC 10 days later on December 20, 2018.

164. When the Plaintiff left Sussex 2 State Prison he was forced to leave a Property Box in the Property Department containing food, hygiene, books, personal and legal mail, and personal and legal papers.

165. Much of the legal material was important Affidavits and very important legal documents.

166. On December 19, 2018 Sussex property Officer Agumport told DeForr, while packing his property for transfer, that he would have to write or have his family call in order for him to find out the cost of shipping.

167. DeForr informed Agumport that he knew the policy and that she was supposed to tell him the cost of shipping right then and there

50 he can either have someone send the cost or he could pay for it from his trust account or loan by signing a postage withdrawal.

168. Agumport stated the Plaintiff was wrong, and refused to follow policy.

169. When Defour arrived at KMCC he immediately wrote Sussex Property Department and asked for the cost of shipping his property.

170. He also had his family call, repeatedly.

171. Sussex did not respond to the Plaintiff's letters or his family's messages.

172. Defour wrote Sussex again and asked KMCC Property Staff to contact Sussex and have his property sent, and continued to have his family call.

173. Sussex did not respond until May by calling Defour's family and stating his property had been destroyed and could not give a reason within policy for the action.

174. When Plaintiff arrived on KMCC the Plaintiff informed Chief of Housing, Defendant R. Whitt, on December 27, 2018, that he had panic attacks, extreme anxiety, and severe paranoia at just the thought of being anywhere near a K9 attack dog and asked to be treated by mental health

before a decision was made on his housing.

175. Whitt said that he has nothing to do with that and ordered Defour released to KMCC General Population under the K9 escort.

176. On this date Mental Health Staff Widener was present and did not intervene.

177. The Plaintiff informed Whitt that he did not qualify to be housed at KMCC and was only sent there after Sussex spitefully miscalculated his security housing level to retaliate against him by sending him far away from home and to a prison that uses K9 attack dog escort knowing his mental condition.

178. The Plaintiff asked Whitt to look at his score and recommended he be housed at his proper security level which does not use K9 escort.

179. Whitt refused to review Plaintiff's housing score and refused to allow him mental health treatment before demanding he be housed under K9 attack dog escort.

180. The Plaintiff complained about Whitt's decision and just days later, after Defour's complaints to the ACA, and Inspector General, and to the Warden of KMCC, the Plaintiff was called

back to a meeting with CHAP R. Whitt and Unit Manager Shelton along with mental health Staff Widener on January 15, 2019.

181. At this meeting, CHAP R. Whitt stated "I tried to be nice, but now I'm going to send you to Wallens Ridge" (the most restrictive prison in Virginia. Where K9's are also used)

182. The Plaintiff asked Whitt why he was being sent to Wallens Ridge State Prison (WRSP).

183. Whitt responded saying "you can drop your dog issue, or you are going to Wallens Ridge"

184. The Plaintiff complained that he had no disruptive behavior and had no reason to be sent 2 levels above his scored security housing level.

185. Security housing scores are automatically calculated by VADOC regulation and can only be overrode manually by an administrator and is only done "if an offender's score does not reflect the 'risk' an offender may pose at a lower level security housing" and is usually used for offenders with disruptive behavior, risk to security, and/or several recent disciplinary infractions. (none of which applied to Plaintiff).

186. At the time of this meeting the Plaintiff didn't have any Disciplinary Infraction Convictions in over 18 months, besides the unfair, and unauthorized by VADOC regulation, infraction for his fear to enter Sussex 2 Population under his attacker's presence, written in retaliation for his Complaints.

187. The Plaintiff had no disruptive behavior, and did not exhibit any risk to security, and was only in segregation due to his mental Condition of extreme anxiety, and because he experienced panic attacks at just the thought of being near an attack dog.

188. No general population setting at the Plaintiff's scored security housing level used attack dog escort. However he was denied housing at his scored level.

189. The Plaintiff also informed Whitt that he would have to complete the 4 week mood log mental health staff Ms. Smith gave to him before he can be treated and transferring him would only delay his treatment.

190. Whitt replied that he "does not care about that" (referring to Plaintiff's mental health care).

191. Fifteen days later, only 40 days after arriving on KMCC, the Plaintiff was sent to WRSP after his Security level housing score was overridden and raised 2 levels above his VADOC calculated housing level.

192. The specific written reason stated for the override and security level increase was "recent pattern of poor adjustment, and failure to enter KMCC general population".

193. However, in another ICA (ICA is board of administrators designated to make housing decisions for inmates in which Whitt was Chairman) report given just days after the security level increase, by the same board, Whitt and his ICA board stated "offender Deforr will be moved up to Step Down 1" (segregation status with more privileges such as 2 more phone calls a month) "due to recent pattern of stable adjustment" clearly contradicting his security level increase report; further evidence that his report of "poor adjustment" was just a pretext for his true reason for Deforr's 2 level score increase and transfer.

194. The Plaintiff was transferred to
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WRSP on February 1, 2019.

195. On February 4, 2019 the Plaintiff was taken before the WRSP ICA board.

196. This board consisted of Unit Manager Ely (Chairman), CHAP Collins, LT. Hall, Assistant Warden Anderson (Major at time), Mental Health Staff Defendant Couch and several other administrators.

197. At the ICA meeting, Plaintiff Defour expressed the symptoms of his mental disorder of nightmares, extreme anxiety, and K9 phobia (at which point the room erupted in laughter).

198. Defour explained he had panic attacks at just the thought of being near a K9, and needed mental health care to help him deal with his issues and at the time he could not bring himself to go near a K9 attack dog, which WRSP uses for all escort, and he did not qualify to be housed at WRSP, and was only sent to WRSP after his security level housing score was override and raised for his complaints against Sussex 2, KMCC, and Central Classification (CCS) Staff.

199. The Plaintiff explained that he had no disruptive behavior and had been in segregation

for four months with out any mental health care.

200. Unit manager Ely waived Defour off and motioned to have him removed.

201. Before Defour was removed and escorted back to his cell one of the administrators stared at Defour and said "we better not hear any more complaints out of you".

202. Unit Manager ELY Stared at the Plaintiff with the same menacing look and shook his head in agreement with the administrator's statement.

203. When unit manager ELY made rounds in segregation later that day the Plaintiff asked him how long will he be punished for his mental condition and only be offered housing under K9 escort or segregation even though an alternative exists

204. Ely responded by saying I dont care if you are in segregation forever and its your decision when you let your little "thing" you got going go.

205. As explained earlier in complaint, Plaintiff Defour did not receive Mental Health treatment until 2 months after arriving on WRSP.

206. From the time of Plaintiff's arrival on WRSP

he submitted numerous complaints to the Warden, David Robinson, Harold Clarke, The ACA, ACLU, DOJ, and State Inspector General about his security level increase, denial of mental health care, and torturous conditions on WRSP.

207. On March 6, 2019 Defendant CHAP D. Collins had Plaintiff escorted to the investigator's office at which point at which point he asked Plaintiff what his "heartburn" was with Warden C. Manis.

208. Collins referred to a letter the Plaintiff had sent to the Inspector General which was forwarded to Warden C. Manis in which Plaintiff complained of his treatment by Wallens Ridge

209. Collins stated that if Plaintiff stopped his complaints he will talk to Central Classification Manager Troy Ford and have Plaintiff moved to a setting outside of segregation where no K9 attack dogs were used.

210. Collins emphasized that "the complaints would have to stop though."

211. Weeks later Collins went back on his word and told the Plaintiff he will not be going anywhere.

212. On April 5, 2019 Unit Manager Ely and Counselor Caughron conducted an annual review

of Plaintiff's security housing assignment and good time earning level.

213. At this meeting DeFour asked Defendant Unit Manager Ely to assign him to the housing level his score reflected according to VADOC policy.

214. As previously expressed in this complaint, the VADOC has a system that automatically assigns a security level housing score based on various factors including: crime committed, prior record, current age, institutional violence, disciplinary infractions, etc.

215. The Plaintiff scored medium security level 3 housing score.

216. No K9 escort is used at any of the security level 3 prisons in Virginia.

217. Wallens Ridge is a Maximum Security level 5 one level above Close Security (level 4) and 2 levels above Plaintiff's scored Medium level 3 score.

218. In response to Plaintiff's request for housing outside of segregation at his scored level considering his mental disorder and he has no disruptive behavior or disciplinary issues

in the past 22 months Ely stated that "he does not give a blank about the Plaintiff's mental condition" and told Plaintiff "he needs to leave him out of his little lawsuits."

219. Defurr argued that he knew policy and his rights and he should not be penalized for his mental condition or for complaining about mistreatment.

220. Ely responded that he "does not care about anything the Plaintiff had to say" and Defurr needs to "talk to CHAP D. Collins if he does not like the decision."

221. Ely overrode the Plaintiff's security housing level, raising it 2 levels from a level 3 to a level 5 on April 5, 2019.

222. D. Collins approved Ely's action on April 29, 2019 and Regional Operations Chief Defendant Mathena approved Ely's action on May 15, 2019. Warden C. Maris approved action May 2, 2019.

223. Just as KMCC CHAP R. Whitte had no legitimate penological interest in overriding the Plaintiff's scored security housing level, Ely also overrode Defurr's score because of his complaints against WRSP.

224. The Plaintiff complained to the
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Warden who approved Ely's and Collins action on May 2, 2019.

225. The Plaintiff also complained to the State Inspector General about Ely's comments during his annual review, done on April 5, 2019.

226. Weeks later on April 23, 2019 Ely ordered DeFou be removed from SD-2 status (segregation status that is least restrictive) and placed in the most restrictive status.

227. VADOC regulation has a segregation program aimed towards relieving the stress and negative effect of the restrictiveness of segregated confinement.

228. This program is called (RHU) Restrictive Housing Unit instead of segregation, but is just another name for segregation.

229. RHU consists of 3 statuses in which prisoners are classified.

230. These statuses are: (1) General Detention, (2) Step Down 1 (SD-1) and (3) Step Down 2 (SD-2).

231. In Step Down 1 (SD-1) prisoners get 2 extra phone calls a month and in (SD-2) prisoners get 4 extra phone calls a month and are allowed to order \$10 dollars a month of consumables.

232. General Detention is the most restrictive status in RHU.

233. VADOC regulation states that "RHU shall not be used as a punishment" and "General Detention status shall only be used for the immediate confinement of an offender that poses an unacceptable risk to security in General Population or in a Step Down status."

234. On April 23, 2019 after Defour's complaints about his annual review and Ely's comments, Ely ordered Defour be removed from SD-2 and made General Detention status (the most restrictive).

235. Ely's action went against VADOC RHU regulation and policy clearly showing it served no penological interest that was "legitimate."

236. The Plaintiff then complained to the Warden who approved Ely's action on June 4, 2019 and Defendant Mathena approved this action on June 24, 2019.

237. The Plaintiff also complained to the Inspector General pointing out that he feared for his safety due to all the retaliation and the threats by staff.

238. A week later on May 2, 2019 LT Flemming
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Called Plaintiff into the Pod office and questioned DeFour about his complaints against Ely.

239. The Plaintiff felt very intimidated by LT. Flemming and asked to go back to his cell.

240. About 3 hours later the Plaintiff was escorted into a breezeway where no cameras are located at which point Defendant Unit Manager Ely, LT. Hall and Counselor Caughron (all three listed in Plaintiff's complaints to the Inspector General) entered the Breezeway where Plaintiff was held shackled and hand cuffed, escorted by two officers.

241. Ely stood face to face with the Plaintiff and said "your complaints don't intimidate me" and the Plaintiff responded that he will continue to report any violation of his rights and he was not trying to intimidate any one but will not be intimidated either.

242. Ely said "we will see", in a threatening tone.

243. Days later at his ICA meeting on

May 7, 2019 Defour again asked to be housed at his scored security level Ely refused and told Defour that his Mental disorder was "the dumbest thing ever" and "he needed to drop his complaints because they will not do any good".

244. Defour responded that he only wants what he is supposed to have including proper housing Ely told Plaintiff that "he should not write people up if he wants them to help him".

245. The Plaintiff stated he did not want his help but for Ely to stop violating his rights.

246. The Plaintiff was ruffly removed from the ICA meeting.

247. The Plaintiff repeated his request to be placed back on SD-2 and housed outside of segregation in a setting consistent with his security needs and help with his mental disorder.

248. On ~~the~~ May 23, 2019 Warden C. Manis came to Defour's cell door and told him to get ready to come to the

office to speak to him.

249. The Plaintiff was shackled and handcuffed and brought to the office where Assistant Warden Anderson (Major at the time), Defendant CHAP D. Collins, and Defendant Warden C. Manis were present.

250. The Warden stated that the complaints needed to stop.

251. The Plaintiff responded by saying the retaliation needed to stop and explained all of the things that was being done to him in retaliation for his complaints, and told the Warden he feared for his safety.

252. The Warden said that he would not be going anywhere and he needed to stop with all the complaints.

253. The Plaintiff asked why was he placed on the most restrictive segregation status when policy states it will only be used for offenders that pose an unacceptable risk in Step Down and he posed absolutely no risk.

254. Assistant Warden Anderson stated "Stop the complaints and we will make you this status, but the complaints have to stop."

255. The Plaintiff was told not to file any more paper work once more before being escorted

back to his cell

256. Days later on June 3, 2019 The Plaintiff was made SD-1 Status and 3 days later made SD-2 Status again.

257. One month later Ely once again removed Plaintiff from this Status, placing him back in the most restrictive Segregation Status.

258. On August 21, 2019 DeFour asked Ely will he let his gudge go, and allow Plaintiff to be housed in his proper housing Status until someone in Central office or the Court gets him moved out of Segregation all together.

259. Ely refused and said "you like to write me up, I dont think so".

260. The Plaintiff made Complaints to the Department of Justice (DOJ), American Corrections Association (ACA), Congressman Robert Scott (of VA), and the Inspector General of Virginia in regards to the Director of Offender Management J. Parkes, Operations Chief D. Robinson, and Director of VADOC H. Clarke approving all of Sussex 2, KMCC, and WRSP abuses of Authority, use of force, use of segregation to retaliate, destruction of property to retaliate, and security level increase and transfer to retaliate, and denial of mental and medical care.

261. Upon information and belief these agencies forwarded the Plaintiff's complaints directly to these Administrators.

262. These Administrators did nothing to intervene.

263. The Plaintiff also wrote directly to J. Parks, D. Robinson, and H. Clarke pointing out that he does not pose any risk to security and should not be denied housing at his VADOC regulation calculated level where no K9s are used.

264. On March 22, 2019, James Parks (Defendant) responded stating that overrides are used when an offender's score does not reflect the risk they pose at a lower level.

265. The Plaintiff responded again pointing out to Defendant J. Parks that he does not pose any risk, with a K9 phobia, in a general population setting that does not use K9 attack dogs, and if his housing score was not overrode he does not even qualify to be housed at a prison that uses K9's, but yet the administration states the override is used because the Plaintiff will not enter General Population under K9 escort so the override itself creates the whole issue.

266. The Plaintiff informed J. Parks that it is obvious this override is spiteful and is being used for retaliatory purposes, and also constituted punishment for his diagnosed mental illness.

267. Defendant J. Parks upheld DeFour's Classification Status in his response on March 22, 2019, and on May 21, 2019 responded to Plaintiff with second denial.

268. The Plaintiff also pointed his rights violations out to D. Robinson directly on April 16, 2019; sent straight to his office, in Richmond.

269. D. Robinson did not intervene.

270. The Plaintiff pointed out his rights violations to H. Clarke, directly on April 16, 2019; sent straight to his office in Richmond.

271. H. Clarke did not intervene.

272. At the date of this Pleading the Defendants have refused to allow Plaintiff housing in general population in a setting that does not use K9 attack dogs for 340 days straight.

273. For 340 days the Plaintiff has been held in segregation while repeatedly explaining his symptoms of extreme anxiety, panic attacks, and trouble sleeping because of nightmares at just the thought of being near a K9 attack dog.

274. The Plaintiff repeatedly explained that because of his attack dog phobia, which stemmed from a traumatic experience with dogs earlier in life and was triggered again by his attack on Sussex 2, he had been in segregation because no administrator would house him at his actual scored level where no K9's were used.

275. He explained that his lengthy stay in segregation with the constant prospect that he will only be housed under K9 escort or in segregation indefinitely made his mental condition worse and added to his symptoms, causing him greater anxiety, panic, paranoia, depression, discouragement, and mental anguish.

276. He repeatedly asked the Defendants to consider his diagnosed mental condition of Anxiety Disorder, Acute Stress Disorder, PTSD, ASPD, and Depression and house him outside of segregation because segregation only made his mental condition worse.

277. He repeatedly asked the Defendants to house him in a population setting outside of segregation that did not use K9 attack dog escort because the thought of being near a K9 triggered his symptoms

278. He explained this to the Defendants in writing, at every ICA meeting, and any time the Defendants would listen when they passed his segregation door.

279. He specifically explained this to QMHP Myrka in person on October 15, 2018 and in writing on October 25, 2018.

280. He explained this to Unit Manager Perkins in person on October 21, 2018 and November 15, 2018.

281. He explained this to Unit Manager Shelton, CHAP R. Whitt and QMHP Sadler on December 27, 2018 in person, and January 15, 2019.

282. He explained this to QMHP Smith on January 2, 2019 in person.

283. To QMHP Widener and again to CHAP R. Whitt, and Unit Manager Shelton in person on January 15, 2019.

284. To QMHP Monahan, Defendants QMHP Couch, Unit Manager Ely, and CHAP D. Collins during his ICA meeting in person on February 4, 2019; February 8, 2019; March 21, 2019; April 23, 2019; July 30, 2019; August 27, 2019.

285. He explained this to QMHP Hawkins on August 9, 2019 and September 11, 2019 in person.

286. To Doctor McDuffie in person on April 23, 2019 and June 19, 2019 and in writing on June 28, 2019.

287. He explained this to Head Psychologist Saylor on March 26, 2019 and August 2, 2019 in writing.

288. To Chief of Psychology Malone on 4/24/19 and August 2, 2019 in writing.

289. He explained it in writing to Warden Menis several occasions and in person on March 28, 2019 and May 23, 2019.

290. To Warden C. Davis on January 15, 2019 and January 30, 2019 in person.

291. To G. Holloway on December 27, 2018 and January 9, 2019 in writing.

292. To J. Parks on March 22, 2019, April 16, 2019 and August 11, 2019, in writing.

293. To Chief of Operations D. Robinson on April 16, 2019 and August 11, 2019, in writing.

294. To Regional Chief Mathena in writing on April 25, 2019, May 2, 2019, June 5, 2019.

295. To Director H. Clarke on April 16, 2019 and August 11, 2019 in writing.

296. All Defendants are authorized to recommend or directly order that Plaintiff

be housed in a setting outside of segregation that does not use K9 escort.

297. All Defendants refused to secure Plaintiff housing outside of segregation in a setting that does not use attack dog escort, knowing that long term segregation only exacerbated his diagnosed serious mental illness and VADOC has policies in place that acknowledges the negative effect on long term segregation on all offenders but especially those with serious mental illness as DeFour has long been diagnosed with and even longer exhibited symptoms of.

298. The Plaintiff was denied housing at his VADOC scored level at every review of his segregation status these reviews were as followed.

299. On December 27, 2018, January 15, 2019, and January 30, 2019 no meaningful review was done in ICA conducted by R. Whitt and Unit Manager Shelton on KMCC.

300. On February 4, 2019, February 8, 2019, April 23, 2019, July 30, 2019, August 27, 2019 or any ICA conducted by Unit Manager Ely and D. Collins there ~~was a meaningful review~~ was no meaningful review.

301. On each of these reviews there was only

one thing considered and that was will Plaintiff enter the K9 presence.

302. Plaintiff's housing score, behavior, disciplinary record, threat level at his scored housing, mental condition, serious mental illness diagnosis, long duration of solitary confinement, the effects of long term segregation or any other factor was never considered discussed or noted in regards to the review of Plaintiff's housing in segregation.

303. Only one question was asked - segregation or K9 presence, even though several alternative housing settings existed.

304. No consideration was made for housing Plaintiff in the alternative to the two housing statuses that only exacerbated his symptoms, even though several alternatives existed.

305. In every meeting the Plaintiff requested that these things be considered and in every meeting Unit Manager Ely responded he does not care about the Plaintiff's concerns - either the K9 or segregation.

306. In every meeting the Plaintiff requested these things be considered to R. Whitt as well, who also responded he does not care about the Plaintiff's concerns and told the Plaintiff either the K9 or KMCC or Wallens Ridge State Prison.

307. Month after month the Plaintiff was escorted

to his ICA meetings held to review his segregation status and asked is he over his mental condition yet.

308. When the Plaintiff expressed he still suffered from extreme anxiety, panic attacks, extreme paranoia, etc. at just thought of being near attack dogs he was escorted back to his segregation cell and cut short of pleading his cause to be housed outside of segregation in a setting that does not use attack dogs.

309. In his letters to the top administrators of VADOC the Plaintiff explained all of his rights violations in extensive detail to each administrator.

310. None of these administrators intervened to stop, prevent, or remedy any of the listed violations.

311. In his letters to Chief Psychologist Malone on April 24, 2019 and again on August 2, 2019 sent straight to her office the Plaintiff explained in extensive detail that long term segregation enhanced his symptoms and caused him additional symptoms and not receiving proper care including therapy as recommended facilitated his mental deterioration.

312. Chief Psychologist Malone ignored his concerns.

313. In his letters to J. Parks he responded by approving his subordinates use of housing and transfer to punish Plaintiff for his mental illness and complaints on 3/22/19 and 5/21/19. J. Parks did not respond to 3rd letter.

314. In Plaintiff's letters to Chief of Operations D. Robinson and Director H. Clarke the Plaintiff described his rights violations in extensive detail including the unnecessary use of the K9; Sussex 2 use of Disciplinary action to retaliate for complaints, and use of transfer for the same; Sussex 2 denial of mental health care, and medical care as well as KMCC and WRSP denial of mental health and medical care and there use of security housing and transfer to punish Plaintiff for his mental condition and complaints.

315. All of these details were extensively pointed out to D. Robinson on April 16, 2019 and August 11, 2019 and to H. Clarke on April 16, 2019 and August 11, 2019.

316. Neither Operations Chief D. Robinson or Director H. Clarke intervened to attempt to alleviate further injury pain and suffering of the Plaintiff.

VI. Claims for Relief

A. Excessive Force

317. The actions of Defendants K9 C/O Jones, and K9 C/O Franklin of using physical force against Plaintiff, by Jones using his K9 without need or provocation, and by Franklin failing to intervene to prevent the misuse of force, were done maliciously and sadistically and constituted cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. These actions caused Plaintiff serious physical and mental injury and pain and suffering.

318. The actions of Defendants K9 C/O Jones, and K9 C/O Franklin of using physical force against Plaintiff, by Jones using his K9 without need or provocation, and by Franklin failing to intervene to prevent the misuse of force, constituted the tort of assault and battery under the law of the Commonwealth of Virginia. These actions caused Plaintiff serious physical and mental injury and pain and suffering.

319. The actions of K9 C/O Jones, and K9 C/O Franklin of using physical force against Plaintiff

by Jones using his KS without need or provocation, and by Franklin failing to intervene to prevent the misuse of force resulted in injury due to gross negligence in violation of the tort law of the Commonwealth of Virginia.

320. The Defendants Jones and Franklin owed Plaintiff a duty of reasonable care to prevent injury to Plaintiff. Both Defendants breached this duty and acted with gross negligence. This breach of duty proximately caused the Plaintiff serious injury, mentally and physically, and damages in violation of Virginia Law. Notice of Claim was Submitted to the Director of the Division of Risk Management and was not settled within the SIX month time period as dictated by Virginia Law.

B. Deliberate Indifference to Medical Needs (Including Mental Health Needs)

321. The refusal of Defendant Doctor Brooks to examine and treat Plaintiff's dog bite wounds with cleaning, antibiotics, stitches, bandages, pain medication, or any treatment at all, despite the sensitive area of Plaintiff's injuries to his testicle and

and crotch, and his wounds were not healing, and his complaints of severe pain, constituted deliberate indifference to his serious medical need in violation of the Eighth Amendment of the U.S. Constitution.

322. The refusal of HSA Sadler, and Director of Health Services John Doe to take steps to secure treatment for Plaintiff's dog bite wounds and pain despite Plaintiff's repeated complaints of severe pain and his wounds not healing constituted deliberate indifference to Plaintiff's serious medical needs in violation of the Eighth Amendment.

323. Defendants Doctor Brooks, HSA Sadler, and Director of Health Services John Doe have an unwritten policy of giving no care or minimal care to inmates when such care may be time consuming or expensive due to the shortage of staff and funds available to VADOC facilities such as Sussex 2 State Prison

324. The failure of Defendant's Doctor Brooks, HSA Sadler, and Director of Health Services John Doe to provide medical care to plaintiff resulted in the plaintiff suffering further injury, physically

and mentally.

325. The refusal of Defendants Unit Manager Perkins, Investigator Carpenter, and Warden B. Cabell to secure Plaintiff medical care for his injuries, despite his several complaints, of not receiving medical care, and being in severe pain and that his wounds were not healing, constituted deliberate indifference to his serious medical needs in violation of the Eighth Amendment of the U.S. Constitution. As a result Plaintiff suffered further physical and mental injury, pain, and suffering.

326. The refusal of QMHP Myrza, QMHP Smith, QMHP Sadler, QMHP Widener, to recommend Plaintiff to be examined and treated by a Mental Health Doctor/Psychiatrist despite Plaintiff's symptoms indicating a serious mental illness constituted deliberate indifference to his serious mental health needs in violation of the Eighth Amendment of the U.S. Constitution.

327. The refusal of Doctor McDuffie, QMHP Myrza, QMHP Smith, QMHP Sadler, QMHP Widener, QMHP Hawkins, QMHP Couch, Head of Psychology Saylor, and Chief Psychologist

Malone to recommend that Plaintiff be housed in a setting that did not further aggravate his mental condition, as does segregation or the K9 presence, constituted deliberate indifference to his serious mental health care needs in violation of the Eighth Amendment of the U.S. Constitution.

328. The action of Defendants Unit Manager Shelton and CHAP R. Whitt of transferring Plaintiff while mental health Staff Smith was evaluating him for treatment, through completion of the 4 week mood log Smith instructed him to fill out before consideration for treatment, delayed his treatment unnecessarily, constituting interference with his mental health treatment in violation of the Eighth Amendment of the U.S. Constitution.

329. The Defendants, Unit Managers: Perkins, Shelton, and Ely; CHAP's: R. Whitt and D. Collins; Regional Chiefs Mathena and G. Holloway; QMHP's: Myrnga, Widener, Hawkins, Couch, Smith, and Sadler; Doctor McDuffie, Head of Psychology Saylor, and Chief Psychologist Malone; Offender Management Services Director J. Parks, and Director H. Clarke, refusal to recommend or order Plaintiff be housed in a

in a general population setting that did not use attack dog escort despite his serious mental illness, the long duration of time he had been held in segregation, he had no behavioral issues in years, he qualified for housing where no attack dog escort was used, they knew that long term segregation only exacerbated his mental illness, and there was no other reason Plaintiff was in segregation other than his mental disorder which caused him extreme fear to be housed under attack dog escort, constituted deliberate indifference to his serious mental health needs in violation of the Eighth Amendment of the U.S. Constitution.

330. VADOC Mental Health Staff have a custom of refusing to recommend treatment for prisoners that may be time consuming, expensive, or that security and administrative staff may not like, regardless of the fact that in their professional judgement the treatment may alleviate the symptoms of a prisoner's mental illness or the treatment may cure the disorder all together, and refusing the treatment will only exacerbate and aggravate their symptoms.

The Defendants, Myrnga, Smith, Sadler, Widener,

Hawkins, Couch, Dr. McDuffie, Saylor and Malone were following this custom when they refused to recommend treatment they acknowledge would alleviate Plaintiff's symptoms and prevent the risk of further injury caused by the long term confinement in segregation of an offender with a diagnosed serious mental illness as the Plaintiff. As a result the Plaintiff suffered further mental injury and pain and suffering.

331. The refusal of Defendants, Unit Manager Perkins, Warden B. Cabell, Unit Manager Shelton, CHAP R. Whitt, Warden C. Davis, Unit Manager Ely, CHAP D. Collins, Warden C. Manis, Regional Operations Chief G. Holloway and Mathena, Offender Management Services Director J. Parks, Chief of Operations D. Robinson, and Director H. Clarke, to house Plaintiff in a General Population setting that did not use K9 attack dog escort despite their awareness of his diagnosed mental disorder, their awareness of the negative affects of longterm segregation, and Plaintiff qualifying to be housed in any of the many General Population settings in VADOC that does not use attack dog escort, constituted deliberate indifference to his serious mental health needs, and punishing him for his mental disorder instead of treatment, in violation of

the Eighth Amendment of the U.S. Constitution. These actions caused Plaintiff further mental injury and emotional pain and suffering including mental anguish. All of the Defendants actions/inactions were a reckless disregard for Plaintiff's rights.

C. Denial of Due Process

332. The actions of Defendants Unit Manager Shelton, CHAP R. Whitt, Unit Manager Ely, and CHAP D. Collins of denying Plaintiff a meaningful review of his Segregation Status, at his ICA Reviews, and Annual Review Hearings denied Plaintiff due process in violation of the Fourteenth Amendment of the U.S. Constitution. These actions/inactions caused Plaintiff severe mental anguish in subjecting him to an Atypical Condition in comparison to normal incident of prison life for 340 days plus. The Plaintiff was told that he will only be allowed housing under attack dog escort, despite his mental condition being aggravated by this housing, or else be held in segregation until he got over his mental condition for 340 days, during most of which he was denied Mental Health Care and medical care along with being denied most of his personal

property, the ability to work, attend educational programs, watch television, associate with other prisoners, attend outdoor recreation in a congregate setting with the ability to engage in sports, attend meals with other prisoners, attend religious services, all while being tormented by staff to either get over his mental condition or remain in segregation indefinitely. During this time he was also harassed by staff who ridiculed him for his mental condition. The Plaintiff endured these conditions and additional adverse conditions on a daily basis because all staff labeled him a "complainer." During this 340 day period each of his reviews consisted of one question, "are you still afraid of the attack dog presence" and when the Plaintiff expressed fear he was remanded to segregation even though the entire 340 days that he was isolated he qualified to be housed away from K5's.

D. Cruel and Unusual Punishment (Conditions)

333. The actions of Defendants Unit Manager Perkins, Shelton and Ely; CHAP's R. Whitte and D. Collins; Wardens C. Davis and C. Manis; Regional Operations Chief Mathona; Offender

Management Director J. Parks, Operations Chief D. Robinson, and Director H. Clarke, of ordering and/or approving the order of, Plaintiff's security level being overridden and raised and he be housed only under attack dog escort or in segregation despite their awareness of Plaintiff's mental illness and symptoms therefrom, even though a reasonable alternative existed, and Plaintiff met all criteria, according to VADOC regulations, to be housed in this alternative and the only way he met the criteria to be housed under attack dog escort is by VADOC housing regulations being overrode and his security level raised constituted punishing Plaintiff for his mental illness instead of and in place of offering treatment for his condition constituting deliberate indifference to his serious mental health care need and was also done maliciously and sadistically and in reckless disregard for Plaintiff's rights in violation of the Eighth Amendment of the U.S. Constitution. These actions caused Plaintiff further mental injury and emotional pain and suffering. The Plaintiff's confinement also was atypical. The very fact that he was denied medical and mental health care for the majority of his 340 plus days in confinement makes it atypical to the normal incidents of prison life.

334. The actions of Unit Manager Ely, CHAP D. Collins, Warden C. Manis, and Regional Operations Chief Mathena, of ordering or approving the order of Plaintiff to be housed in the most restrictive segregation status due to his mental illness, constituted punishing him for his mental illness, constituting deliberate indifference to his serious mental illness and health care needs and was done maliciously and sadistically and was a reckless disregard to his rights constituting a violation of his Eighth Amendment right to be free from cruel and unusual punishment. These actions caused further mental injury and pain and suffering.

335. The actions of Defendants, Unit Manager Shelton, CHAP R. Whitt, Warden C. Davis, Offender Management Director J. Parks, Unit Manager ELY, CHAP D. Collins, Warden C. Manis, and Regional Chief Mathena, of overriding VADOC regulation housing level calculations, or approving this override, and raising Plaintiff's security housing level for no other reason than his mental illness to facilitate housing him at only a prison that uses attack dogs and at VADOC's most restrictive prison

Constituted punishing him for his mental illness and was done maliciously and constituted deliberate indifference to his serious mental health care needs and was a reckless disregard for his rights in violation of the Eighth Amendment of the U.S. Constitution. As a result of these actions the Plaintiff suffered further injury, pain, and suffering.

E. Retaliation

336. The actions of Defendants, Unit Manager Ely, CHAP D. Collins, Warden C. Manis, and Regional Chief Mathera, of housing Plaintiff in the most restrictive segregation status in retaliation for his grievances, and complaints to the American Corrections Association (ACA), and the State Inspector General, constituted punishing him for a protected action in violation of the First Amendment of the U.S. Constitution. These actions took place only days after complaints and were also done in violation of VADOC regulation, further showing they served no "legitimate" penological interest and would not have been done but for plaintiff's complaints. These actions caused Plaintiff further injury, pain, and suffering.

337. The actions of Defendants, Unit Managers; Perkins, Shelton, and Ely; CHAP's R. Whitt and D. Collins; Wardens C. Davis and C. Manis; Regional Operations Chief Mathena; Offender Management Director J. Parks, Operations Chief D. Robinson, and Director H. Clarke of ordering and/or approving the order of Plaintiff to be housed only under K9 escort or in Segregation and denying him housing in his calculated security housing level, as calculated by VADOC regulation, despite their awareness of his mental illness and the symptoms therefrom, for his grievances for his attack, denial of medical and mental health care, and his complaints to the ACA, and Inspector General, and statements that he will sue for his rights violations, constituted retaliation for his protected actions in violation of the First Amendment of the U.S. Constitution. These actions took place in sequence of days behind each complaint and were also done in violation of established VADOC regulation, further showing they served no "legitimate" penological interest and would not have been done but for Plaintiff's complaints.

338. The actions of Defendants, Unit Manager Shelton, CHAP R. Whitt, Warden C. Davis, Unit Manager

Ely, CHAP D. Collins, Warden C. Manis, Regional Chief Mathena, and Offender Management Director J. Parks, of overriding, or approving the override of, Plaintiff's security housing score and raising his security housing level, to facilitate his housing-only under attack dog escort or segregation and—at the most restrictive prison and housing level in VADOC, after his grievances and complaints to the ACA, and State Inspector General, and his statements that he will pursue legal action for his rights violations, was done in retaliation for his protected action constituting a violation of the First Amendment of the U.S. Constitution. These actions took place only days after complaints and was done in violation of established VADOC regulation, further showing that they served no "legitimate" penological interest and would not have been done but for Plaintiff's complaints.

339. The actions of Defendants Property C/O Agumport and Warden B. Cabell of destroying, and/or approving the destruction of, Plaintiff's property after transfer without notice or opportunity for an adversarial process, as VADOC regulation requires, and done for no other reason than to retaliate against Plaintiff for his grievances, complaints, and statements that he

sue for his attack constituted punishing Plaintiff for his protected actions in violation of the First Amendment of the U.S. Constitution. These actions being done soon after his complaints and in violation of VADOC Policy further shows they served no "legitimate" penological interest and would not have been done but for Plaintiff's complaints. These actions caused Plaintiff further injury, pain, and suffering.

340. The action of Unit Manager Perkins of ordering Plaintiff be written a Disciplinary Offense Report, despite VADOC regulation having Specific Rules for Protective Custody of inmates with "specified" fears, just days after Plaintiff's complaint against Perkins showed this report was in retaliation for his complaint, which is a protected action, in violation of the First Amendment of the U.S. Constitution. This action being done in violation of VADOC regulation further shows it served no "legitimate" penological interest and would not have been done but for Plaintiff's complaints.

341. The actions of Defendants Unit Manager Perkins and Investigator Carpenter having Plaintiff transferred to the farthest region of Virginia approximately 400 miles away from Plaintiff's

family and region of potential litigation was done for no other reason than to retaliate against Plaintiff for his grievances, complaints, and statements that he would seek legal action, constituted punishing Plaintiff for his protected action in violation of the First Amendment of the U.S. Constitution

342. All of these retaliatory actions taken together also amounts to a "campaign of harassment." These retaliatory actions were directly connected to Plaintiff's protected actions based on the Defendants' comments and the sequence of these actions in relation to Plaintiff's protected actions.

343. As a result of the Defendants' retaliatory actions the Plaintiff suffered loss of property, liberty, and emotional pain suffering and injury. All of Defendants actions and/or inactions were a reckless disregard for the Plaintiff's rights.

VII. Relief Requested

WHEREFORE, plaintiff requests that the Court grant the following relief:

A. Issue a declaratory judgement stating that:

1. The physical abuse of the Plaintiff by Defendant K9 C/O Jones violated the Plaintiff's rights under the Eighth Amendment to the United States Constitution.
2. The physical abuse of the Plaintiff by Defendant K9 C/O Jones constituted an assault and battery under State law, and/or the tort of negligence under State law.
3. Defendant's Franklin's failure to take action to intervene in the physical abuse of Plaintiff by K9 C/O Jones violated the Plaintiff's rights under the Eighth Amendment to the United States Constitution.
4. Defendant Franklin's failure to take action to intervene in the physical abuse of Plaintiff by K9 C/O Jones constituted an assault and battery under State law, and/or the tort of negligence under State law.
5. Defendants HSA Sadler's, and/or Director of Health Services John Doe's actions of failing to secure Plaintiff adequate medical care violated Plaintiff's rights under the Eighth Amendment to the U.S. Constitution.

6. Defendants Unit Manager Perkins' and/or Investigator Carpenter's and/or Warden B. Cabell's actions of failing to secure Plaintiff adequate medical care violated Plaintiff's rights under the Eighth Amendment to the U.S. Constitution.

7. Defendant Doctor Brooks' action of failing to provide adequate medical care for the Plaintiff violated the Plaintiff's rights under the Eighth Amendment to the U.S. Constitution.

8. The actions of Defendants, QMHP Myrge, QMHP Smith, QMHP Sadler, QMHP Widener, of failing to refer Plaintiff to a Mental Health Doctor for treatment violated Plaintiff's rights under the Eighth Amendment of the U.S. Constitution.

9. Defendants Unit Manager Shelton's and/or CHAP R. Whitt's action of transferring Plaintiff in the middle of his mental health assessment delaying his treatment violated his rights under the Eighth Amendment.

10. The actions of Defendants, Unit Manager Shelton, CHAP Whitt, Warden C. Davis, Unit Manager Ely, CHAP D. Collins, Warden C. Manis, Regional Chief Mathena, Regional Chief G. Holloway, Offender Management Director J. Parks, Chief of Operations D. Robinson and

Director H. Clarke, of ordering or approving the order of Plaintiff to be housed only in segregation or under K9 escort despite his condition and qualification to be housed in an alternative housing constituted punishing plaintiff for his mental illness in violation of the Eighth Amendment of the U.S. Constitution.

11. The actions of Unit Manager Shelton, CHAP R. Whitt, Unit Manager Perkins, Unit Manager ELY, CHAP D. Collins, Warden C. Davis, Warden C. Manis, Regional Chief G. Holloway, Regional Chief Mathena, Offender Management Director J. Parks and Director H. Clarke of ordering Plaintiff only be housed in segregation or in the attack dog presence in retaliation for his complaints violated his First Amendment Rights of the U.S. Constitution.

12. The Actions of Defendants Unit Manager Shelton, CHAP Whitt, Warden C. Davis, Unit Manager ELY, CHAP D. Collins, Warden C. Manis, Regional Chief Mathena, Offender Management J. Parks of overriding, and/or approving the override of, Plaintiff's security housing level for his complaints constituted a violation of his First Amendment Rights of the U.S. Constitution.

13. The Actions of Defendants Unit Manager

Shelton, CHAP R. Whitt, Warden C. Davis, CHAP D. Collins, Unit Manager Ely, Warden C. Manis, Regional Chief Mathena and Offender Management Director J. Parks, of overriding, and/or approving the override of, Plaintiff's security housing level to punish Plaintiff because of his mental illness violated his Eighth Amendment rights under the U.S. Constitution.

14. The actions of Unit Manager Ely, CHAP D. Collins, Warden C. Manis, and Regional Chief Mathena, of housing Plaintiff in the most restrictive housing status for his mental illness violated his Eighth Amendment Rights to the U.S. Constitution.

15. The actions of Unit Manager Ely, CHAP D. Collins, Warden C. Manis and Regional Chief Mathena, of housing Plaintiff in the most restrictive housing status in segregation for his complaints violated Plaintiff's First Amendment rights of the U.S. Constitution.

16. The actions of CIO Agumport and/or Warden B. Cabell, of destroying and/or approving the destruction of his property violated his First Amendment rights under the U.S. Constitution, As property was destroyed for his complaints.

17. The actions of Unit Manager Perkins and Investigator Carpenter, of having plaintiff transferred over 400 miles away from his home and away from place of potential litigation to retaliate for his complaints was a violation of his First Amendment Rights under the U.S. Constitution.

B. Issue on injunction ordering:

1. Defendant Director of Health Services John Doe, immediately arrange for plaintiff to see a urologist as prescribed by Doctor that reviewed Plaintiff's ultrasound of his testicle.

2. Defendant Director of Health Services carry out without delay the treatment directed by Urologist.

3. Defendant Offender Management Services Director J. Parks release the Plaintiff from segregation into a population setting that does not use attack dog escort.

4. Defendant Offender Management Service Director J. Parks allow Plaintiff housing as his VADOC regulation calculated security score dictates.

5. Defendant Operations Chief D. Robinson have the disciplinary conviction described in this complaint expunged from Plaintiff's institutional record

6. Defendant Chief Psychologist Malone

Immediately arrange for Plaintiff to receive mental health therapy to help alleviate the symptoms of his diagnosed mental illness as prescribed by the Psychiatrist.

C. Award Compensatory damages in the following amounts:

1. \$ 75,000 jointly and severally against defendants K9 C/O Jones and K9 C/O Franklin for the physical and emotional injuries sustained as a result of the Defendant's misuse of force and failure to intervene with this misuse.

2. \$ 7,500 jointly and severally against defendants Unit Manager Perkins, Investigator Carpenter, and Warden B. Cabell for the punishment, including deprivation of liberty and amenity, and emotional and mental injury resulting from denial of plaintiff housing outside of segregation in a setting giving his mental condition and their punishment of segregation and transfer for this mental condition and complaints.

3. \$ 7,500 jointly and severally against defendants Unit Manager Shelton, CHAP R. Whitt, Warden C. Davis, Offender Management J. Parks, Regional Chief Mathers, Unit

Manager Ely, CHAP D. Collins, and Warden C. Manis for the punishment, including deprivation of liberty and amenity, and emotional and mental injury resulting from denial of Plaintiff housing outside of segregation in a setting without K9 escort given his condition and the punishment of raising plaintiff's security score and housing him in the most restrictive housing in segregation as punishment for his mental illness and complaints.

4. \$ 35,000 jointly and severally against defendant Doctor Brooks for the physical and emotional injury resulting from his failure to provide adequate medical care to Plaintiff.

5. \$ 15,000 jointly and severally against defendants HSA Sadler and Director of Health Services John Doe for the physical and emotional injury resulting from failure to provide adequate medical care through arranging and/or scheduling such care for Plaintiff

6. \$ 15,000 jointly and severally against defendants Unit Manager Perkins and Investigator Carpenter for the physical and emotional injury resulting from their failure to secure Plaintiff medical care

7. \$ 10,000 jointly and severally against defendants QMHP Myrza, QMHP Hawkins, QMHP Couch, QMHP

Widener, Dr. McDuffie, Head of Psychology Saylor, and Chief of Psychology Malone for the mental injury and emotional pain and suffering resulting from their failure to recommend Mental Health care, based on their professional judgement as being proper care

E. Award Punitive damages in the following amounts:

1. \$10,000 each against defendants K9 C/O Jones and K9 C/O Franklin.
2. \$ 2,000 each against defendants Unit Manager Perkins and Investigator Carpenter and Warden B. Cabell.
3. \$ 2,000 each against defendants Unit Manager Shelton, CHAP R. Whitt, Warden C. Davis, Unit Manager Ely, CHAP D. Collins, Warden C. Manis, Regional Chief Matrana, Regional Chief G. Holloway, Offender Management Services Director J. Parks, and Director H. Clarke and Chief of Operations D. Robinson
4. \$ 2,000 each against defendants Head of Psychology Saylor, and Chief Psychologist Malone.
5. \$ 3,000 each against Doctor Brooks, HSA Sadler, and Director of Health Services John Doe.

F. Grant such other relief as it may appear that

plaintiff is entitled.

September 18, 2019

Respectfully submitted,
Jeremy DeFour

Jeremy DeFour # 1127163
Wallens Ridge State Prison
P.O. Box 759
Big Stone Gap, VA 24219


VERIFICATION

I JEREMY P. DEFOUR State:

I have read the foregoing complaint and hereby verify the matters alleged therein are true.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at, Big Stone Gap Virginia,
on this 18th day of September, 2019.

Signed: 
Jeremy DeFour, Plaintiff

Jeremy DeFour #1127163
Wallens Ridge State Prison
P.O. Box 759
Big Stone Gap, VA 24219