

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF NEW YORK

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SIDNEY HIRSCHFELD, Director, Mental Hygiene Legal Service, Second Judicial Department, on behalf of **L. D., J. P., R. M., W. F., A. S.**, and all other similarly situated constituents,

CASE NO.

Plaintiff,

CV 07

1819

- against-

COMPLAINT

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; CHARLYNN GOINS, Chairperson, New York City Health and Hospitals Corporation, in her official capacity; **ALAN D. AVILES**, President and Chief Executive, New York City Health and Hospitals Corporation, in his official capacity; **JEAN G. LEON**, Executive Director, Kings County Hospital Center, in her official capacity; **KATHY T. RONES**, Medical Director, Kings County Hospital Center, in her official capacity; **DAVID DAILEY**, Chief of Service - Psychiatry, Kings County Hospital Center, in his official capacity; **JOSEPH CHARLOT**, Medical Director, Comprehensive Psychiatric Emergency Program, Kings County Hospital Center, in his official capacity; **ELLEN TABOR**, Medical Director, Adult Psychiatric Inpatient Services, Kings County Hospital Center, in her official capacity; **JACQUELINE PURSER**, Captain, New York City Health and Hospitals Corporation Hospital Police, Kings County Hospital Center, in her official capacity; **OSWALD DAVID**, Assistant Director of Nursing/Product Line Manager for Comprehensive Psychiatric Emergency Program, Kings County Hospital Center, in his official capacity; and **ELSA P. BUSH**, Associate Executive Director of Nursing, Kings County Hospital Center, in her official capacity,

ROSS, J.

MATSUMOTO, M.J.

Defendants.

X

Plaintiff Sidney Hirschfeld, Director, Mental Hygiene Legal Service, Second Judicial Department ("MHLS"), brings this suit against the Defendants on behalf of constituents who have been, are presently, or will be detained at or admitted to Kings County Hospital Center

("KCHC") for psychiatric care, and whose constitutional and statutory rights have been, are, and continue to be, violated on a daily basis.

PRELIMINARY STATEMENT

1. Every day hundreds of New Yorkers seeking psychiatric care are unnecessarily and illegally subjected to horrendous conditions and abuse of their fundamental rights by the very entity meant to provide the treatment they seek and need. The psychiatric center ("G Building") at KCHC in Brooklyn should — and is statutorily required to — be a place of treatment, care, refuge, and respite for New Yorkers in need of emergency and inpatient psychiatric services. Instead, it is a chamber of filth, decay, indifference, and danger where individuals — who are deprived of their freedom to leave KCHC until a staff psychiatrist provides the necessary clearance — are subjected to overcrowded and squalid conditions often accompanied by physical abuse and unnecessary and punitive injections of mind-altering drugs.

2. For far too long, Defendants have known that the psychiatric facility at KCHC — which contains a psychiatric emergency ward known as the Comprehensive Psychiatric Emergency Program ("CPEP"), and inpatient psychiatric wards where longer-term care is provided — has been a shameful place. Despite this knowledge, the Defendants have failed to take adequate steps to remedy the situation. Instead, the Defendants have knowingly maintained a system of psychiatric care that fails to provide statutorily adequate and humane treatment for patients and lacks the minimal requirements of basic cleanliness, space, privacy, and personal hygiene that are constitutionally guaranteed even to convicted felons.

3. From the moment a person steps through the doors of KCHC's CPEP she is stripped of her freedom and dignity and literally forced to fight for the essentials of life. Unable to leave of her own will, she will often wait days before even receiving an initial evaluation. While waiting for medical attention, she will have to sit in a crowded, loud, putrid, poorly

ventilated room with dozens of other desperate people. Often there are not enough chairs, so the choice is between sitting on the dirty floor or standing for hours on end.

4. Even worse, when she must sleep, she has little chance of doing so for any meaningful period of time. Because the number of patients far exceeds the available beds in the CPEP, foam mats are often brought out at night and placed on the floor right next to one another. Thus, she often must try to sleep with her body crammed against other patients. If no mats are available, she may have to sleep on the grimy floor of the CPEP, which can be stained with blood or urine, using her own clothing as bedding. If she is lucky enough to find a real bed in which to rest for a while, she will lose that coveted spot if she gets up even for a few moments. Despite the fact that persons are admitted to the CPEP around the clock and many are desperately in need of rest, these extra mats are removed in the morning, leaving new patients with nowhere to lie down.

5. If she is hungry, she will often have to wait hours for barely edible food as the CPEP does not follow a regular meal schedule. If she must use the toilet or shower, she will have to wait in line only to endure a filthy, fly-ridden, flooded bathroom, often with no soap or towels.

6. A patient in KCHC's CPEP must navigate a treacherously thin line. In order to obtain essentials like medical attention, food, clothing, and a bed, she must either constantly approach the staff with these requests, or assert herself vis-a-vis other patients. But, a patient must be careful not to be seen as "difficult," for the consequences may be severe and harrowing: handcuffing, the forcible injection of psychotropic, mind-altering drugs and beatings.

7. It is bitterly ironic that the New York Legislature created CPEPs to improve the emergency treatment of psychiatric patients. KCHC's CPEP was designed and is licensed to

provide specialized care to persons who are believed to be mentally ill and who are in need of psychiatric emergency services. However, the KCHC CPEP has failed to come close to meeting its statutory mandate.

8. If a patient is not permitted to leave KCHC's CPEP, she is eventually transferred to one of the hospital's inpatient psychiatric wards. A patient who endures up to a week of horrendous conditions in the CPEP will face similarly intolerable conditions on the inpatient wards, for a longer period of time. She will sleep on dirty linens in a crowded room without privacy, eat stale food, and spend endless hours without being seen by a psychiatrist or being offered any sort of structured therapeutic activity. She may be verbally or physically assaulted by other patients, and may be injected with psychotropic drugs as a means of punishment — not treatment — if she verbally expresses her frustration.

9. A patient with physical disabilities faces even more challenges on KCHC's inpatient wards. The single bathroom for people with physical disabilities for the entire KCHC inpatient psychiatric facility is not fully compliant with the Americans with Disabilities Act ("ADA"). That bathroom contains a shower that works irregularly, has only a partial curtain, does not lock, and is used by all the patients on the ward. The staff's unwillingness to assist patients with physical disabilities in using the bathroom, as they are required to do, has caused such patients to soil themselves and to feel humiliated and dehumanized.

10. The overcrowding, lack of beds, unsanitary conditions, neglect, abuse, and lack of professional judgment exercised by Defendants, as well as the absence of ADA-compliant bathrooms, have deprived patients of their liberty interests and have created a chaotic, unhealthy environment. This environment is fundamentally at odds with KCHC's legal obligations to

provide for the recovery, rehabilitation, or stabilization of psychiatric symptoms, and violates patients' constitutional rights.

11. Indeed, the environment at KCHC is so unhealthy that many patients actually experience a deterioration of their psychological well-being as a result of their confinement in the G Building.

12. The squalid conditions, and the physical and psychological mistreatment to which patients in KCHC's psychiatric facility are subjected, violate numerous New York State laws and regulations, federal civil rights laws, and the basic rights of individuals that are protected by the federal and New York State Constitutions. This action seeks to put an end to the wretched environment at the G Building and the harm inflicted upon those who have sought and will seek psychiatric treatment at KCHC.

13. Accordingly, Plaintiff, on behalf of his constituents, seeks declaratory and injunctive relief requiring Defendants to provide each individual receiving services at the KCHC CPEP with a safe and suitable environment and a prompt psychiatric evaluation, and to provide all patients in KCHC's psychiatric facility with adequate and humane conditions, including ADA-compliant places for sleeping, eating meals, and attending to matters of personal hygiene and bodily functions. Additionally, Plaintiff seeks declaratory and injunctive relief enjoining Defendants from unlawfully restraining patients and administering intramuscular injections of psychotropic medication, or the threat of such, except under conditions and circumstances provided for under New York State and federal law.

JURISDICTION

14. This action is brought pursuant to the Constitution of the United States and pursuant to 42 U.S.C. § 1983. Jurisdiction is conferred upon this court by 42 U.S.C. § 1983 and

28 U.S.C. §§ 1331 and 1343(a)(3) and (4), this being an action seeking redress for the violation of constitutional and civil rights.

15. Plaintiff further invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all parties that are so related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy.

16. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(a) because it is the district in which the Plaintiff's claims arose.

PARTIES

Plaintiff

17. Plaintiff Sidney Hirschfeld is the Director of the New York State Mental Hygiene Legal Service, Second Judicial Department ("MHLS"), and brings this action in his official capacity on behalf of all patients at KCHC who have been, are presently, or will in the future be confined for purposes of care and treatment in the CPEP and the inpatient psychiatric wards.

18. MHLS is a duly authorized agency of the State of New York, independent of the Office of Mental Health, that was created by New York Mental Hygiene Law Article 47 and is statutorily mandated to provide protection and advocacy services for individuals receiving services for mental disabilities, or alleged to be in need of such services, including those in facilities licensed or operated by the Office of Mental Health. As Director of MHLS, Plaintiff Hirschfeld is responsible for fulfilling this mandate pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 694.2.

19. Plaintiff's mandate includes taking "any legal action deemed necessary to safeguard the right of any patient or resident to protection from abuse or mistreatment." N.Y.

Mental Hyg. Law § 47.03(e). This mandate also includes the duty to ensure that individuals confined in facilities for the mentally disabled are afforded their full statutory and constitutional protections. *Id.* § 47.01. Plaintiff Hirschfeld is required to “to provide legal services and assistance to patients or residents and their families related to admission, retention and the care and treatment of such persons.” *Id.* § 47.03(c).

Defendants

20. Defendant New York City Health and Hospitals Corporation (“HHC”) is and was at all times relevant herein a municipal public benefit corporation which is responsible for the operation of New York City’s municipal hospital system, including the CPEP and inpatient psychiatric services provided at KCHC. HHC is a recipient of federal funds.

21. Defendant Charlynn Goins, Chairperson of HHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC.

22. Defendant Alan D. Aviles, President and Chief Executive of HHC, is being sued in his official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC.

23. Defendant Jean G. Leon, Executive Director of KCHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Leon exercises overall responsibility for the day-to-day operation and control of KCHC and the care, custody, and treatment provided to those individuals confined at KCHC. As such, Defendant Leon is responsible for enacting and enforcing the policies and practices at KCHC.

24. Defendant Kathy Ronas, Medical Director of KCHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer

of the municipal agency HHC at KCHC. Defendant Ronés is responsible for planning, evaluating, and supervising the care and treatment of patients at KCHC.

25. Defendant David Dailey, Chief of Service - Psychiatry at KCHC, is being sued in his official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Dailey is responsible for planning, evaluating, and supervising a comprehensive mental health program for the CPEP, and is responsible for providing care and treatment to the patients in the CPEP and inpatient services.

26. Defendant Joseph Charlot, Medical Director of the CPEP, is being sued in his official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Charlot is responsible for evaluating and supervising the care and treatment of patients in the CPEP.

27. Defendant Ellen Tabor, Medical Director of Adult Psychiatric Inpatient Services at KCHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Tabor is responsible for planning, evaluating, and supervising the adult inpatient services at KCHC.

28. Defendant Jacqueline Purser, Captain of the HHC Hospital Police at KCHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Purser is responsible for the training and supervision of the hospital police force located in the G building at KCHC.

29. Defendant Oswald David, Assistant Director of Nursing/Product Line Manager for the CPEP, is being sued in his official capacity, and is and was at all times relevant herein a

duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant David is responsible for the planning, evaluation, and supervision of the nursing department in the CPEP.

30. Defendant Elsa P. Bush, Associate Director of Nursing at KCHC, is being sued in her official capacity, and is and was at all times relevant herein a duly appointed and acting agent and officer of the municipal agency HHC at KCHC. Defendant Bush is responsible for investigating incidents, including patients' allegations of abuse by staff, and participates in the planning, evaluation and supervision of the nursing program at KCHC.

31. All Defendants' actions at all relevant times were taken under color of state law and without lawful justification. Acting in the course and scope of their duties and functions as agents and officers of Defendant HHC, Defendants maintained a pattern and practice of subjecting Plaintiff's constituents to unjustified and unconstitutional conditions of confinement.

CONSTITUENTS AND CONSTITUENT REPRESENTATIVES

32. Plaintiff Hirschfeld brings this lawsuit on behalf MHLS's "constituents" — individuals who have been, are presently, or will be patients in the G Building. All constituents are individuals with disabilities, or are perceived to have such disabilities, for purposes of the ADA and Section 504 of the Rehabilitation Act of 1973, as their mental and physical impairments substantially limit one or more of their major life activities.

33. Included below are summaries of affidavits from five such constituents describing the abusive and neglectful treatment and conditions at the G Building. These individuals, referred to by their initials to maintain their privacy, are known collectively as "constituent

representatives.”¹ They are not parties to the case; rather, their experiences are included here to provide but a few examples of the appalling treatment and conditions to which patients at the G Building are subjected.

L. D.

34. L. D. was admitted to the CPEP after presenting herself to the general emergency room at KCHC complaining of sinus pain and grief over the death of her mother and nephew.

35. In the CPEP, a hospital police officer, Officer Hannibal, verbally abused L. D. and threatened her with his baton. After L. D. complained to staff about Officer Hannibal’s treatment, she was involuntarily given an intramuscular injection of psychotropic medication.

36. L. D. waited in the CPEP for over twenty-four hours before being seen by a psychiatrist.

37. While in the CPEP, L. D. was not given a pillow, linens, a blanket, a gown, or grooming supplies. When she was finally given a bed, it was covered in linens that had not been laundered. After L. D. asked for a blanket, a staff member handed her a blanket and made a comment that it might be infested with lice.

38. Despite her request to be released, L. D. was held in the CPEP and inpatient ward for almost two weeks. As a consequence of this hospitalization she lost her apartment and is now homeless.

¹ The constituent representatives are referred to by their initials because they were or are residents in facilities for the mentally disabled and, as such, confidentiality attaches to records and files in this proceeding. *See* N.Y. Comp. Code R. & Regs. tit. 22, § 694.7 (2006); N.Y. Mental Hyg. Law § 33.13 (2007). The Defendants will be provided with the actual identities of the constituent representatives upon entry of a protective order or execution of a confidentiality agreement.

J. P.

39. J. P. was admitted to the CPEP on March 29, 2006. Though J. P. normally walks with a cane, upon entering the CPEP the cane was taken from her and she was given a wheelchair.

40. While in the CPEP, J. P. got up from her bed in the middle of the night to use the bathroom. When she returned, there was another patient sleeping in the bed. J. P. spent the rest of the night trying to sleep in her wheelchair.

41. On March 30, 2006, J. P. was transferred to an inpatient ward. The bathrooms on this ward are not wheelchair accessible. The staff told her that the only accessible bathroom in the building is on Ward 21, but that the bathroom had been out of order for several weeks.

42. Because J. P. could not get her wheelchair into the bathrooms, J. P. could only shower by standing up, which caused her foot and leg to swell.

43. At one point J. P. was crying because she did not want to be transferred from the CPEP to an inpatient ward. The staff responded by injecting her with psychotropic medication over her objections.

R. M.

44. R. M. was admitted to the CPEP on or about February 12, 2006. He was admitted to an inpatient ward on February 15, 2006.

45. During the entire time that R. M. was in the CPEP he never received a pillow, sheets, towels, blankets, or slippers. His clothes were never laundered.

46. At one point, despite the fact that there was neither an emergency, a court order authorizing such treatment, nor an attempt by hospital staff to secure such an order, R. M. was

given an injection of psychotropic medication against his will. He became confused and fell into a deep sleep in a busy hallway. When he awoke, his wallet and jewelry were missing.

47. A week after being admitted to an inpatient ward, R. M. had not yet received soap, shampoo, deodorant, or a toothbrush.

48. R. M. has been hospitalized at KCHC several times for mental health treatment. He has stated that patients are never given towels in G Building, only sheets with which to dry themselves after bathing.

W. F.

49. W. F. was admitted to the CPEP on October 4, 2006. His first night in the CPEP he slept on a chair. Throughout his stay in the CPEP he witnessed other patients sleeping on the floor, in chairs, and pacing for the night when there was no space to lie down.

50. While in the CPEP, W. F. repeatedly requested towels, soap, a toothbrush, toothpaste, and deodorant. He was given a sheet to use as a towel and was told that it was the policy of the KCHC CPEP to provide patients with bed sheets to use as towels. After several days, he was given a toothbrush, but only on occasion was he allowed toothpaste or soap. He was only allowed deodorant on one occasion.

51. While in the CPEP, W. F. watched as staff and hospital security taunted and provoked patients. When patients would react to this treatment, they were forcibly medicated by injection. W. F. also saw hospital police throw patients against the walls and physically strike them.

52. In addition to the above conditions, W. F. was horrified by the bugs and filth in the CPEP. He saw insects crawling over people as they slept, and observed that the bathroom was never cleaned more than once a day, despite the fact that patients would urinate on the

floors, leaving the bathrooms filthy and wet until the next day's cleaning.

A. S.

53. A. S., a 54 year-old man, was admitted to the CPEP in May 2006, eight days after he had open heart surgery. A. S. had to sleep on the CPEP floor in the reception area next to a leaking water fountain.

54. He witnessed several hospital police beat a non-violent patient with a night stick in the mouth, causing that individual to bleed profusely. He also saw them handcuff the patient and saw staff forcibly inject him with medication. Later, he saw the officers laughing about the beating.

55. Once admitted to an inpatient ward, A. S. was given a fold out chair to sleep on. Another patient gave A. S. his bed out of concern that A. S. was recovering from open heart surgery. As a result of giving up his bed to A. S., the other patient ended up sleeping on a chair for over a week.

56. Although A. S. required the use of a wheelchair after his surgery, he was admitted to a ward without a wheelchair accessible bathroom.

STATEMENT OF FACTS

KCHC's Psychiatric Services

57. KCHC, which is operated by the New York City Health and Hospitals Corporation ("HHC") and receives federal funding, is statutorily charged with providing psychiatric services to the community. These services consist of (i) a Comprehensive Psychiatric Emergency Program ("CPEP"), where patients are to be provided evaluations, assessment, stabilization, or other psychiatric emergency services; and (ii) an inpatient mental health facility, where patients are admitted to receive psychiatric care and treatment in a hospital as appropriate

to their mental condition. Both of these psychiatric services are housed in what is known as the G Building on the KCHC campus.

58. Among the services a CPEP is statutorily required to provide are: psychiatric and medical evaluations and assessments; prescription and adjustment of medication; counseling and other stabilization and treatment services designed to reduce symptoms of mental illness; and extended observation beds. The objectives of these and other services supplied by a CPEP are to provide psychiatric crisis intervention in the community through timely triage, assessment, intervention, and links to other community-based mental health services, as well as to control inpatient admissions to psychiatric wards.

59. The CPEP at KCHC consists of two wings. The first wing is a waiting area for patients who have not been evaluated or who are waiting to be discharged back into the community. The wing contains a general waiting area, separate waiting rooms for men and women, a nurses' station, and a hospital police booth. The general waiting area has a number of hard plastic chairs, while the separate waiting rooms each hold approximately three "chair beds," chairs that can be converted into a bed roughly the size of a twin, or single, mattress.

60. The CPEP's second wing is an extended care wing for patients who need further evaluation and/or are waiting to be admitted to the inpatient wards. This wing contains two extended observation rooms, one for females and one for males. KCHC is certified to house a maximum of six extended observation beds. Thus, each of the observation rooms is designed to house three beds.

61. The second wing also contains a small nurses' station, a pediatric room, a medical observation room, and the CPEP "dining room," a small area with one table for six people which also doubles the CPEP's "therapy room."

62. There are four bathrooms in the CPEP. Two have a single toilet and one shower. The other two simply have a toilet.

63. KCHC's inpatient service consists of seven wards spread over four floors. Each ward has two wings that are accessible to all patients and staff on that ward. Typically the wings are divided by gender, with the exception of ward G51, which is an all-male ward.

64. Each ward has a day room where patients can watch television, eat their meals, and meet visitors. The wards also have a nurses' station, an activities room which is only used for group sessions led by staff, and a chart room. Some wards have a gated room outside, but they are rarely used and are not conducive for sports or other physical activities that would allow patients to release their physical energy.

KCHC's General Obligations to Persons Confined in CPEP or Inpatient Wards

65. All psychiatric inpatient facilities and CPEPs within New York State, including those at KCHC, are statutorily obligated to provide, among other things, an individualized plan of treatment or services that is suited to a patient's needs which is skillfully, safely, and humanely administered with full respect for a patient's dignity and personal autonomy. Additionally, KCHC has a legal obligation to subject its patients to the least restrictive and shortest institutionalized treatment possible.

66. KCHC is further obligated to provide this care and treatment in a safe and suitable environment that ensures that patients are free from abuse and mistreatment by employees or other residents of the facility. Additionally, New York law mandates that KCHC must provide appropriate personal clothing, adequate grooming and personal hygiene supplies, and clean linens for residents, as well as a reasonable degree of privacy in sleeping, bathing, and waiting areas.

67. Furthermore, New York state law prohibits KCHC and its staff from limiting, either as a form of punishment or for reasons of convenience, the clothing, safety, privacy, hygienic supplies, and individualized treatment to which KCHC psychiatric patients are entitled.

68. In addition to state statutory mandates, patients at KCHC are afforded rights by the United States Constitution, the New York State Constitution, and applicable federal civil rights statutes.

Horrendous and Unsanitary Conditions at KCHC's CPEP and Inpatient Psychiatric Wards

69. The conditions at G Building violate a number of New York State laws and regulations. Moreover, the environment at G Building is so unhealthy that it also violates the patients' rights under the federal and New York State Constitutions.

70. Whether a person comes to CPEP voluntarily in search of emergency psychiatric care or is brought to G Building against her will by law enforcement officers, the result is the same: a forced stay in an environment that can only be described as third-world. Even a cursory visit to KCHC's psychiatric facilities reveals the abject conditions that patients must endure: severe overcrowding, individuals forced to wear filthy clothes that are not cleaned because washing machines and dryers are unavailable or inoperative, and unbathed patients waiting several days to see a doctor for a psychiatric evaluation.

71. At times, up to sixty people are crammed into the CPEP's waiting area. Dozens of these persons vie for the six available extended observation beds. The chronic overcrowding and lack of beds force patients to find a place to sleep wherever they can. The hallways, chairs, tables, stretchers, and the floor, including the floors of the extended observation rooms, often serve as "beds" for individuals for days on end.

72. Such basics as blankets, pillows, and pillowcases are scarce in the CPEP. When they are available, it is not uncommon to find them replete with holes, stained with dirt, urine, blood, and lice, and reeking of body odor. Sheets — when they are available — may not be washed for a week or may be given to other patients without any washing.

73. The stress and toll on a person's well-being caused by the overcrowding and prolonged stays at the CPEP are severely exacerbated by the shortage — or complete absence at times — of basic toiletries. Soap, toothbrushes, toothpaste, and even toilet paper are rare commodities. It is not uncommon to find persons who have been at the CPEP for days who have not had the opportunity to brush their teeth or simply wash themselves.

74. The two showers at the CPEP are frequently so rancid and dirty that they are not fit for human use.

75. Persons at the CPEP often arrive in dirty clothes. They are forced to wear these clothes for days, as the washer and dryer are often not functional. Even when the machines work, KCHC does not provide clothes for patients to change into while their clothes are being cleaned.

76. After being evaluated, patients may be transferred to KCHC's inpatient wards where they may be confined for time periods ranging from several days to months. Conditions on the inpatient wards are only marginally better than in the CPEP.

77. Often, patients are forced to sleep in rooms that contain many more occupants than the legal maximum. The proximity of patients to one another promotes the transmission of communicable diseases and further impinges on the patients' already diminished privacy.

78. Frequently, the inpatient ward lacks bedding and towels. Other times, the limited articles that are available are stained and dirty.

79. As in the CPEP, basic hygienic needs are often unmet on the inpatient wards, as there is an insufficient supply of items like soap, toothpaste, toothbrushes, and clean clothes.

80. Unsanitary conditions in the bathrooms are the norm. In the summer, the air conditioning often does not work, leaving the crowded rooms hot, uncomfortable, and malodorous.

KCHC's Illegal Use of Restraints and Forced Intramuscular Injections

81. In addition to having to endure the wretched conditions at the CPEP and inpatient wards, individuals confined in KCHC's G Building are subjected to unnecessary and illegal physical restraints as well as forced intramuscular injections of psychotropic, mind-altering medication.

82. Directly contrary to well-established law, restraints and medication are used to control patients in non-threatening situations. Simply raising one's voice or complaining about the unbearable conditions can result in an injection or being strapped to a gurney in the hallway. Injections have been given to patients — against their will — for simply engaging in non-threatening arguments with one another.

83. The intramuscular injections are generally of Haldol, a powerful drug that leaves an individual dazed for many hours. After being forcibly injected with Haldol, patients can experience significant side effects, such as drooling, dry mouth, sweating, sleep disturbances, and restlessness. Haldol can also cause Parkinson's-like symptoms in some individuals and even death. Additionally, Ativan — a powerful tranquilizing drug — is used.

84. Threats of forced injections of psychotropic medication and other restraints are used by staff at KCHC in order to suppress unwanted behavior — even when that behavior does not constitute a threat to the patient or others. Patients are told, for instance, that if they continue to complain or cry they will be restrained or injected.

85. Defendants knowingly have permitted these practices to exist within G Building despite the fact that they are contrary to clearly established federal and New York State law.

Staff Abuse and Neglect of KCHC's Psychiatric Patients

86. In addition to the illegal use of injections and restraints, individuals confined at both the CPEP and inpatient wards at KCHC are subjected to neglect and abuse by the staff and hospital police, further adding to the unsafe and unhealthy environment in G Building.

87. Staff have failed to intervene in physical altercations between patients - instead watching fights as a form of entertainment - then forcibly medicating patients only after the disputes have ended and the danger to patients has ceased to exist.

88. Staff taunt and ridicule patients, laughing at them even when they are being physically assaulted or molested by other patients. Staff have refused to take action when patients report being the victim of sexually predatory conduct. Additionally, staff use the horrendous conditions at G Building as a means of tormenting patients by telling them, to cite but one example, that the blankets they are receiving may be full of lice.

89. Hospital police have dragged, kicked, and punched patients confined at G Building without justification. While in some cases the officers have used only their fists, in others they have made use of the metal baton which they are authorized to carry. They have handcuffed patients to chairs without provocation or justification. They have hurled racial insults at patients, and have even threatened sexual violence against them. Patients are left bloody and bruised, and in fear of physical abuse by the very people who are supposed to protect them.

KCHC's Lack of Adequate Therapeutic Services

90. The neglect of the physical environment and the disregard for patients' rights to be free from unnecessary injections in KCHC's inpatient ward are matched by the indifference to

patients' mental welfare. Counseling and other therapeutic programs are shockingly scarce and plainly inadequate to meet even the basic requirements of professional judgment.

91. Counseling and other therapeutic activities occur only on an intermittent basis, and are not appropriately or adequately tailored to the needs of patients. Often, for the sake of appearances, a schedule full of therapeutic activities is posted on the ward for all to see while in reality few, if any, of the activities actually occur.

92. When therapeutic and counseling activities do occur, staff make only minimal — if any — efforts to encourage patients to attend them. Most of the time, staff sit behind the glass walls of the nurses' stations, ignoring the patients.

93. Even reading materials — which are afforded to prisoners — are denied to individuals confined in KCHC's inpatient psychiatric wards. Newspapers and magazines are extraordinarily rare, and no library exists.

94. The consequences of Defendants' failure to exercise basic professional judgment with respect to the therapeutic and counseling activities at KCHC are disastrous for patients confined there. Most patients spend their days staring at a television or aimlessly wandering the dirty hallways for hours and hours, never to receive the treatment they need and are legally entitled to.

95. Moreover, the lack of therapeutic and counseling services creates an environment in which patients are more prone to altercations with one another or the staff. The cruel fact is that Defendants' failures redound doubly to the patients at KCHC. Not only are they denied treatment, but — because of such altercations — they are also more likely to receive unnecessary and forced injections of psychotropic medication.

KCHC's Violations of the Americans With Disabilities Act

96. Patients with physical disabilities face additional hurdles to receiving adequate and humane treatment in the G Building. Those with physical disabilities are unable to properly attend to their personal hygiene because of the almost complete lack of accessible bathroom facilities. Amid all the inpatient wards at KCHC, there is only *one* accessible bathroom, located on the G21 ward.

97. Patients with physical disabilities, however, often cannot use this accessible bathroom. First, it is at the far end of a long hallway, and many patients simply do not have the strength or ability to reach the facility. Staff are often unwilling to assist patients in reaching the bathroom, and patients with disabilities have had to rely on more mobile patients for such help. Patients have even gone so far as to reduce their food and liquid intake in order to limit the frequency with which they need to use the bathroom.

98. Second, the sole accessible bathroom is often occupied by non-disabled patients, in direct violation of regulations. Consequently, those with physical disabilities must wait to use that facility (if they are “lucky” enough to be admitted to ward G21 in the first place), or resort to using bathrooms that are not designed to accommodate persons with disabilities.

99. Unable to use KCHC's lone accessible bathroom, patients who use wheelchairs are often forced to use the non-accessible bathrooms without any assistance from staff. Patients must roll their wheelchairs partially into the bathroom and then try and grab anything — the toilet bowl, a stall door — in order to lift themselves onto the seat. Sometimes patients end up on a dirty floor, stained with urine and feces. Other times, this process takes so long that they soil themselves. In either case, the result is a humiliating and dehumanizing experience.

100. Some patients with physical disabilities may eventually receive plastic commodes in their unlocked rooms, into which they may relieve themselves. However, patients must use

the commodes in plain view of others and without the assistance of grab bars — or properly trained staff. That patients and other staff may enter the room at any time makes accomplishing this most basic function a degrading experience. Even worse, because staff often do not empty the commodes on a regular basis, patients may have to sleep in a room with a used commode inches from their heads for days on end.

101. While the lone accessible bathroom does have a shower, the shower curtain is not large enough to cover the shower entryway and thus does not provide privacy. The bathroom also does not have a lock. As a result, many patients with physical disabilities do not feel comfortable using the shower.

102. Moreover, many patients with physical disabilities may lack the strength to hold themselves up in the shower or push the button for water. Because staff are often unwilling to assist them, some patients with disabilities resort to cleaning themselves by sponge-bathing with a cloth in their rooms — after which they still feel dirty — for weeks on end.

103. Patients with physical disabilities who are assigned to wards without the accessible bathroom find that staff ignore their complaints about not being on a ward with an accessible bathroom and their requests to receive the accommodations to which they are entitled.

104. Additionally, HIV positive patients are often refused appropriate medical attention. One such patient, suffering from Kaposi's Sarcoma, was forced to walk barefoot for weeks with open sores all over his feet because he was not given adequate footwear. As a result, his overall medical condition worsened.

The Deterioration of Patients Admitted to KCHC

105. It is a cruel irony that the conditions, as well as the actions and inactions of Defendants and staff described herein, are so egregious that individuals who arrive at KCHC's CPEP can — and do — experience a deterioration of their psychological well-being, coping

skills, and mental capacities so significant that they are in need of greater and/or more extensive mental health care as a direct result of their experience in the CPEP.

106. Consequently, some of the individuals entering the CPEP are referred to the inpatient wards when, absent the conditions in the CPEP and actions and inactions of Defendants and staff described herein, they would not have been confined for days or weeks on KCHC's inpatient wards.

107. Similarly, the conditions, as well as the actions and inactions of Defendants and staff described herein, can — and do — result in individuals who are confined at KCHC's inpatient wards being re-traumatized, experiencing a deterioration of their psychological well-being, coping skills, and mental capacities so significant that they are in need of greater and/or more extensive mental health care as a direct result of their experience in the inpatient wards.

108. The lack of care and the dehumanizing treatment and conditions can leave psychic scars on patients that hinder their ability to recover long after discharge and may last for a lifetime.

109. In particular, patients who enter the psychiatric facility at KCHC suffering from depression are especially prone to experience dehumanization and a rapid worsening of their condition. Rather than humane treatment in a safe and clean environment, they are forced to live in and experience the neglect and indignities described herein. Their fragile state is often exploited by staff and other patients, which delays and perhaps makes impossible any recovery while at KCHC.

110. Additionally, individuals with Traumatic Brain Injury (TBI) have been admitted to the KCHC G Building without receiving a basic neuropsychological evaluation to determine

the kind of post-TBI rehabilitation they require. As a result, their cognitive disabilities, speech impairments and occupational impairments worsen. They are left to languish without any meaningful care, their only hope that one day they will be discharged.

FIRST CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

**VIOLATIONS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION**

111. Plaintiff repeats and realleges the allegations in paragraphs 1 through 110 as if set forth herein.

112. At all relevant times herein, the conduct of all Defendants was subject to 42 U.S.C. § 1983.

113. Defendants' actions and inactions complained of herein, individually and collectively, constitute policies and practices maintained by Defendants.

114. Defendants' actions and inactions violate the rights of Plaintiff's constituents, guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

115. Such violations include, but are not limited to, the denial of all constituents' rights to a safe and humane physical and psychological environment, freedom from undue restraint, an environment in which an individual's basic skills and ability to cope will not be diminished as the result of her confinement, conditions of confinement that comport with the purpose of an individual's commitment, and minimally adequate care and treatment.

116. In addition, Defendants have violated constituents' due process rights by failing to exercise professional judgment in their treatment of constituents.

SECOND CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

**VIOLATIONS OF THE DUE PROCESS CLAUSE OF THE NEW YORK STATE
CONSTITUTION**

117. Plaintiff repeats and realleges the allegations in paragraphs 1 through 116 as if set forth herein.

118. Defendants' actions and inactions complained of herein individually and collectively constitute policies and practices maintained by Defendants.

119. Defendants' actions and inactions violate the rights of all constituents, guaranteed by the Due Process Clause, Article I, Section 6, of the New York State Constitution.

120. Such violations include, but are not limited to, the denial of all constituents' rights to a safe and humane physical and psychological environment, freedom from undue restraint, an environment in which an individual's basic skills and ability to cope will not be diminished as a result of her confinement, conditions of confinement that comport with the purpose of an individual's commitment, and minimally adequate care and treatment in the least restrictive setting possible.

THIRD CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

**VIOLATIONS OF THE CARE AND TREATMENT RIGHTS AFFORDED
INDIVIDUALS WITH MENTAL ILLNESS BY THE NEW YORK STATE
CONSTITUTION**

121. Plaintiff repeats and realleges the allegations in paragraphs 1 through 120 as if set forth herein.

122. Defendants' actions and inactions complained of herein, individually and collectively, constitute policies and practices maintained by Defendants.

123. Article XVII of the New York State Constitution guarantees all constituents a full array of services from the state, including, but not limited to, a safe and humane physical and psychological environment, freedom from undue restraint, an environment in which an individual's basic skills and ability to cope will not be diminished as the result of her confinement, conditions of confinement that comport with the purpose of an individual's commitment, and minimally adequate care and treatment.

124. Defendants' actions and inactions violate all constituents' rights guaranteed by Article XVII, Section 4 of the New York State Constitution.

125. Defendants' actions and inactions violate all constituents' rights guaranteed by Article XVII, Section 1 of the New York State Constitution.

126. Defendants' actions and inactions violate all constituents' rights guaranteed by Article XVII, Section 3 of the New York State Constitution.

FOURTH CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

127. Plaintiff repeats and realleges the allegations in paragraphs 1 through 126 as if set forth herein.

128. Title II of the ADA prohibits discrimination against people with disabilities by "public entities." For the purposes of Title II of the ADA, "the term 'public entity' means (A) any state or local government; [or] (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government" 42 U.S.C. § 12131(1)(A) & (B) (1990).

129. Defendant KCHC is a public entity within the meaning of 42 U.S.C. § 12131(1)(A) & (B).

130. Plaintiff's constituents have a mental disability within the meaning of 42 U.S.C. § 12102(2) and are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

131. Title II of the ADA provides that:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132 (1990); *see also* 28 C.F.R. § 35.101 et seq. (2007).

132. Further, as a public entity, HHC may not:

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided others; [or]

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

28 C.F.R. § 35.130(b)(ii), (iii) & (vii).

133. In addition, to ensure that people with physical disabilities have access to buildings, or parts thereof, the ADA requires the establishment of design criteria for the construction and alteration of facilities covered by the law. The ADA Standards for Accessible Design are located at 28 C.F.R. Pt. 36, App. A. The United States Architectural and Transportation Barriers Compliance Board has also issued accessibility requirements known as the ADA Accessibility Guidelines.

134. Defendants, by their actions and inactions complained of herein, have violated and continue to violate constituents' rights, secured by Title II of the ADA, 42 U.S.C. § 12132,

and the regulations promulgated thereto, 28 C.F.R. Pt. 35, and 28 C.F.R. Pt. 36, App. A, by limiting and continuing to limit such constituents' enjoyment in the rights, privileges, advantages, and opportunities that are enjoyed by other recipients of public programs when receiving aid, benefit, or service.

135. Such violations include, but are not limited to, the failure to provide appropriately accessible bathroom and shower facilities for constituents with physical disabilities.

FIFTH CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

VIOLATIONS OF THE REHABILITATION ACT

136. Plaintiff repeats and realleges the allegations in paragraphs 1 through 135 as if set forth herein.

137. Section 504 of the Rehabilitation Act of 1973 provides, “[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a) (2002).

138. A “program or activity” is defined, in pertinent part as “a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other . . . local government entity) to which the assistance is extended, in the case of assistance to a State or local government; [or] an entire corporation, partnership, or other private organization...which is principally engaged in the business of providing...health care.” 29 U.S.C. §§ 794(b)(1)(A), 794(b)(1)(B), & 794(b)(3)(A)(ii).

139. The KCHC G building is a “program or activity” as defined by 29 U.S.C § 794(b)(1).

140. Plaintiff’s constituents have mental disabilities within the meaning of 29 U.S.C. § 705(20) (1998).

141. Defendants, by their actions and inactions complained of herein, have violated and continue to violate the rights of all constituents secured by the Rehabilitation Act, 29 U.S.C. § 794 and the regulations promulgated thereto, 28 C.F.R. Pt. 41.51 and 45 C.F.R. Pt. 84, by limiting and continuing to limit their enjoyment in the rights, privileges, advantages, and opportunities that are enjoyed by other recipients of public programs when receiving aid, benefit, or service.

142. Such violations include, but are not limited to, the failure to provide appropriately accessible bathroom and shower facilities for constituents with physical disabilities.

SIXTH CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

**VIOLATIONS OF NEW YORK STATE MENTAL HYGIENE LAW AND
CORRESPONDING REGULATIONS**

143. Plaintiff repeats and realleges the allegations in paragraphs 1 through 142 as if set forth herein.

144. New York State’s Mental Hygiene Law establishes legal rights for individuals receiving psychiatric observation, assessment, or treatment, including those confined or retained in a psychiatric hospital.

145. Title 14 of the New York State Code of Rules and Regulations was promulgated to implement the standards established by the Mental Hygiene Law, and to set minimum

standards for patients receiving care and treatment from the Department of Mental Hygiene, including psychiatric facilities licensed by the Commissioner of Mental Health.

146. The rights afforded to individuals under the Mental Hygiene Law and the corresponding regulations include:

- (a) that a person:
 - (i) shall be examined within six hours of entry to the CPEP to determine his need for immediate observation, care and treatment;
 - (ii) shall not be involuntarily retained in a CPEP for more than twenty-four hours unless a second examination by a second doctor within that twenty-four hour period confirms the conclusion from the original examination and the person is admitted to an extended observation bed; and
 - (iii) may not be retained in a CPEP for longer than seventy-two hours.

N.Y. Mental Hyg. Law §§ 9.40(a), (b) & (c) (2006); N.Y. Comp. Code R. & Regs. tit. 14, §§ 590.4, 590.8(b) (2006);

(b) that “[h]ospitals are prohibited from operating extended observation beds above the approved number of beds which appear on the operating certificate of the program. In no case shall a [CPEP] operate more than six extended observation beds.” N.Y. Comp. Code R. & Regs. tit. 14, § 590.7(b)(9);

(c) that “[e]xtended observation beds shall be available twenty-four hours per day, seven days a week to provide extended assessment and evaluation as well as a humane, safe environment which includes appropriate toilet, bath, and dietary facilities.” *Id.* § 590.9(e);

(d) that no person shall be detained without lawful authority, be deprived of their civil rights, or be cared for unsafely or cruelly, including having a safe and sanitary environment, appropriate clothing, freedom from abuse and mistreatment, adequate grooming and personal hygiene supplies, and privacy in sleeping, bathing and toileting. *See* N.Y. Mental Hyg. Law §§ 31.19, 33.01, 33.02, 33.03 (2006); N.Y. Comp. Code R. & Regs. tit. 14, §§ 27, 36.1, 527, 590 (2006);

(e) that a hospital must “develop, approve, periodically review and revise as appropriate all programmatic and administrative policies and procedures [including] . . . written personnel policies which shall prohibit discrimination on the basis of . . . disability” N.Y. Comp. Code R. & Regs. tit. 14, §§ 590.6(c)(3)(i), (iii).

147. Defendants, by their actions and inactions complained of herein, violated and continue to violate numerous provisions of the New York State Mental Hygiene Law and the corresponding and applicable New York State Regulations.

148. Such violations include, but are not limited to: confining constituents in KCHC's CPEP well beyond the statutorily mandated time frames; failing to examine constituents within the statutorily mandated time frames; operating extended observation beds beyond the statutorily prescribed limit and in an unsafe and unhealthy environment; depriving constituents of their liberty and of adequate, skillful, humane, and safe care and supervision; failing to provide care and treatment suited to each constituent's needs; failing to administer such care and treatment skillfully, safely, and humanely with full respect for each constituent's dignity and personal integrity; failing to provide constituents with emergency observation, evaluation, care, and treatment in a safe and sanitary environment; failing to ensure freedom from abuse and mistreatment by employees or other residents of the facility; failing to provide adequate grooming and personal hygiene supplies and a reasonable degree of privacy in sleeping, bathing, and toileting areas; failing to provide appropriate medical care; failing to ensure an adequate and appropriate premise for the safe and effective operation of KCHC'S CPEP; and placing constituents at KCHC's CPEP waiting for or receiving services in a hallway or other area not approved by the Office of Mental Health as a waiting or treatment area.

149. Furthermore, Defendants have limited and continue to limit the applicable rights of constituents as a punishment or for the convenience of staff at KCHC's G Building in violation of N. Y. Mental Hyg. Law § 33.02(b) and N. Y. Comp. Codes R. & Regs. tit. 14, § 527.5(c).

SEVENTH CLAIM FOR RELIEF

(AGAINST ALL DEFENDANTS)

**VIOLATIONS OF NEW YORK STATE PUBLIC HEALTH LAW AND
CORRESPONDING REGULATIONS**

150. Plaintiff repeats and realleges the allegations in paragraphs 1 through 149 as if set forth herein.

151. New York State's Public Health Law, and the corresponding and applicable New York State Regulations, establish minimum standards for a hospital in order to ensure a safe and suitable environment for patients. *See* N.Y. Pub. Health Law §§ 2800, 2803, 2805-1, 3612 (2007); N.Y. Comp. Code R. & Regs. tit. 10, §§ 405.24, 702.5, 712.1 (2006).

152. Such standards include:

(a) that facilities shall be kept clean and in good repair and free from rodents and insects. N.Y. Pub. Health Law §§ 2800, 2803, 2805-1, 3612; N.Y. Comp. Code R. & Regs. tit. 10, §§ 405.24(e)(1)-(2);

(b) that all linens, including blankets, be laundered between use, and that all soiled linens be enclosed in containers within the patient care unit for transportation to the laundry. N.Y. Pub. Health Law §§ 2800, 2803, 2805-1, 3612; N.Y. Comp. Code R. & Regs. tit. 10, §§ 405.24(f)(3)-(4), 702.5;

(c) that all services and equipment be available and accessible to individuals with disabilities. N.Y. Pub. Health Law § 2803; N.Y. Comp. Code R. & Regs. tit. 10, § 712.1(d).

153. There are also minimum requirements with regard to structural, equipment, and safety standards including that "patient beds shall not be spaced closer than three feet from each other; sides of beds shall be at least two feet from the walls." *See* N.Y. Pub. Health Law §§ 2800, 2803; N.Y. Comp. Code R. & Regs. tit. 10, § 711.4.

154. Defendants' actions and inactions violate the rights of Plaintiff's constituents, guaranteed by the Public Health Law and corresponding and applicable New York State Regulations.

155. Such violations include, but are not limited to: failing to ensure that the hospital be clean and in good repair; failing to store soiled linens in containers for transportation to the laundry; failing to launder linens between patient use; failing to keep the hospital free of insects and rodents; and failing to provide hospital services, including bathrooms, which are accessible to people with disabilities.

156. The violations also include a failure to provide proper spacing between beds, which results in dangerous overcrowding and leads to a significantly increased risk of the transmission of communicable diseases, severely compromised fire and emergency evacuation capabilities, and a loss of personal privacy.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief:

1. Adjudge and declare that Defendants' actions and inactions, as described herein, violate Plaintiff's constituents' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

2. Adjudge and declare that Defendants' actions and inactions, as described herein, violate Plaintiff's constituents' rights under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., the Rehabilitation Act, 29 U.S.C. § 794, and the regulations promulgated thereto;

3. Adjudge and declare that Defendants' actions and inactions, as described herein, violate the New York State laws and regulations identified herein;

4. Adjudge and declare that Defendants' actions and inactions, as described herein, violate the New York State Constitutional provisions described herein;

5. Issue a permanent injunction requiring Defendants to provide Plaintiff's constituents receiving services at the KCHC CPEP with a timely evaluation and clinical determination as to whether such individual will be either discharged back into the community or admitted to one of the inpatient psychiatric wards in a manner required by the Due Process Clause of the United States Constitution and the Constitution, laws, and regulations of the State of New York;

6. Issue a permanent injunction requiring Defendants to provide Plaintiff's constituents with a safe and clean physical environment, including adequate, humane, and clean places for purposes of sleeping, eating meals, and attending to matters of personal hygiene and bodily functions, as required under the Due Process Clause of the United States Constitution, Title II of the Americans with Disabilities Act and Title 28 of the Code of Federal Regulations promulgated thereto, Section 504 of the Rehabilitation Act and Titles 28 and 45 of the Code of Federal Regulations promulgated thereto, and the Constitution, laws, and regulations of the State of New York;

7. Issue a permanent injunction requiring Defendants to provide Plaintiff's constituents with the appropriate professional judgment when attending to the psychological and physical impairments of such individuals as required under the Due Process Clause of the United States Constitution, Title II of the Americans with Disabilities Act and Title 28 of the Code of Federal Regulations promulgated thereto, Section 504 of the Rehabilitation Act and Titles 28 and 45 of the Code of Federal Regulations promulgated thereto, and the Constitution, laws, and regulations of the State of New York;

8. Issue a permanent injunction enjoining Defendants from subjecting Plaintiff's constituents to intramuscular injections and/or physical restraints except as permitted under the

Due Process Clause of the United States Constitution and the Constitution, laws, and regulations of the State of New York;

9. Issue a permanent injunction requiring Defendants to comply with the laws and regulations of the State of New York concerning occupancy levels at the KCHC CPEP and inpatient wards;

10. Issue a permanent injunction requiring Defendants, within thirty days of its issuance, to submit to Plaintiff and to this Court for approval, a plan and schedule for ensuring that the KCHC CPEP and inpatient wards are operated in compliance with the Due Process Clause of the United States Constitution, Title II of the Americans with Disabilities Act and Title 28 of the Code of Federal Regulations promulgated thereto, Section 504 of the Rehabilitation Act and Titles 28 and 45 of the Code of Federal Regulations promulgated thereto, and the Constitution, laws, and regulations of the State of New York. Such a plan and schedule shall include, but not be limited to:

- ensuring that all statutory and regulatory time frames regarding patients who enter the KCHC CPEP are adhered to;
- ensuring that all statutory and regulatory limitations on patient populations in the KCHC CPEP and inpatient wards are adhered to;
- ensuring that each individual detained at the KCHC inpatient wards is provided with individualized treatment that complies with all federal and state laws, rules, and regulations;
- training staff at the KCHC CPEP and inpatient wards on the proper and legal use of physical restraints and intramuscular injections;
- training staff at the KCHC CPEP and inpatient wards on how properly to accommodate patients with disabilities;
- ensuring that the KCHC CPEP and inpatient wards are maintained in a clean state with properly functioning, accessible bathrooms, washers and dryers, and showers;

- ensuring that the KCHC CPEP and inpatient wards are stocked with sufficient supplies, such as soap, toothpaste, toothbrushes, and clean clothes, sheets, towels, and beds;
- modifying the existing “accessible bathroom” in order to bring it into complete compliance with the Americans With Disabilities Act;

11. Grant to the Plaintiff his costs, expenses, and, pursuant to 42 U.S.C. § 1988, his reasonable attorney fees;

12. Grant to the Plaintiff any other relief that this Court may deem just and proper.

Dated: Brooklyn, New York
May 1, 2007



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