COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Suffolk Superior Court
Trial Court Department
Docket No. ~~22-1667D~~
2284CV01667

EMMITT PERRY, CARLOS BASTOS, and SOKSOURSDEY ROEUNG, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CAROL MICI, COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF CORRECTION IN HER OFFICIAL CAPACITY; and SERGIO SERVELLO, SUPERINTENDENT OF MASSACHUSETTS CORRECTIONAL INSTITUTION - CEDAR JUNCTION IN HIS OFFICIAL CAPACITY

Defendants.

CLASS ACTION COMPLAINT

INTRODUCTION

1. This is a class action for declaratory and injunctive relief brought by Massachusetts prisoners who are being held in solitary confinement in the Department Disciplinary Unit ("DDU") of the Massachusetts Department of Corrections ("DOC"). Emmitt Perry ("Mr. Perry"), Carlos Bastos ("Mr. Bastos") and Soksoursdey Roeung ("Mr. Roeung"), on behalf of themselves and all others similarly situated (each a "Plaintiff" and, collectively, the "Plaintiffs"), have been held for years in solitary confinement in the DDU. In the DDU, Plaintiffs are regularly confined to their individual cells for 23 hours a day for 5 days of the week, and 24 hours a day for the other 2 days of the week. Each of their cells is approximately 10 feet long by 8 feet wide—the size of an average

parking space. Such conditions could reasonably be characterized as torture under the United Nations' 2015 Mandela Rules, which state that the confinement of a prisoner for 22 hours or more a day without meaningful human contact for a period longer than 15 consecutive days is regarded as a form of torture.

2. In 2018, the Massachusetts legislature enacted the Criminal Justice Reform Act ("CJRA"), which explicitly defines and protects the rights of prisoners like Plaintiffs, who are subjected to prolonged solitary confinement in what the law refers to as "restrictive housing." In recognition of the psychological harm from which individuals in such conditions suffer, the CJRA established minimum procedural protections and conditions to govern the conditions of confinement in restrictive housing. The CJRA passed unanimously in the Senate (38 - 0) and nearly unanimously in the House (137 - 5).

3. The CJRA defines "restrictive housing" as a housing placement where a prisoner is confined to a cell for more than 22 hours per day.

4. In particular, the CJRA limits the extent to which restrictive housing may be used for disciplinary purposes. It specifically mandates that prisoners may be placed in restrictive housing *for purposes of discipline* for only up to 6 months. Thereafter, ongoing discipline is not an authorized basis for continued retention in restrictive housing. Rather, a prisoner may continue to be retained in restrictive housing *only* if, based on periodic "placement review" proceedings every 90 days, the prisoner is found to pose an unacceptable risk to the safety of others, to property, or to the operation of the correctional facility.

5. The Defendants (collectively referred to herein as "DOC") have failed to implement the requirements set forth in the CJRA, and upon information and belief, have continued to follow

regulations established before the passage of the CJRA that are inconsistent with the mandates set forth in the CJRA.

6. For example, DOC regularly sanctions prisoners to restrictive housing for the purpose of discipline, for periods that well exceed the maximum 6-month period. Plaintiff Roeung, for instance, was sanctioned to 10 years in restrictive housing. Bastos was sanctioned to 7 years, and Perry was sanctioned to 6 years. Such disciplinary sanctions are typical.

7. Further, at the Plaintiffs' 90-day placement reviews, DOC improperly relies upon the length of the initial DDU disciplinary sanction (already unlawfully longer than 6 months) and the alleged events that formed the basis for the initial sanction, as the sole or primary ground for refusing to release the Plaintiffs into the general prison population. Those refusals are made regardless of whether the Plaintiffs' behavior during the preceding 90-day period reflects a current unacceptable risk, or whether the Plaintiffs followed DOC's recommendations from their prior placement review to "increase [their] chances of a less restrictive placement upon next review."

8. DOC has also refused to allow the Plaintiffs to participate in their placement review proceedings in person, if they elect to do so, in violation of the CJRA.

9. Upon information and belief, DOC also does not meaningfully utilize a multi-disciplinary panel and examination for placement reviews as required by the CJRA.

10. DOC's placement reviews rarely result in release prior to the completion or near completion of the original restrictive housing sanction, regardless of whether Plaintiffs continue to present a current unacceptable safety risk.

11. Plaintiffs' continued solitary confinement in DDU after DOC's failure to release them at each placement review hearing has led to physical and mental harm including discomfort

around other people, loss of social and communication skills, along with strong feelings of anxiety, depression, helplessness, and loneliness.

12. The "placement review" process, as practiced by DOC violates the CJRA, pertinent regulations, and the due process and equal protection clauses of the Massachusetts Constitution.

13. The CJRA also provides that prisoners in restrictive housing must have the same access to canteen purchases as prisoners in the general population at the same facility, provided that such access may be diminished for the enforcement of discipline for a period not to exceed 15 days or where inconsistent with the security of the unit. The canteen is where prisoners can typically purchase a variety of items including food, hygiene, and health products.

14. DOC is not providing the Plaintiffs with the same access to canteen purchases as prisoners in the general population at the same facility, including many food and hygiene items, even though doing so would not be inconsistent with the security of the unit. Moreover, DOC is unlawfully taking away Plaintiffs' canteen access for periods that exceed the 15-day maximum limit for enforcement of discipline. These practices, coupled with the small portions of food that Plaintiffs receive for meals and their inability to otherwise receive certain basic hygiene products from the medical staff, have physically and mentally harmed the Plaintiffs, leading to for example, loss of weight and/or muscle mass, weakening and itchy and dry skin, scalp, and hair.

15. Furthermore, the CJRA requires that prisoners in restrictive housing, except for those whose visitation and communication rights have been suspended for no more than 15 days for enforcement of discipline, must receive the same opportunities for visits and telephone calls as the general population, and at least 2 opportunities for in-person visitation during any 7-day period. In the general population, prisoners can receive up to 4 visits per week, but in the DDU, Plaintiffs receive only up to 4 visits per month, or an average of 1 visit per week. Moreover, Plaintiffs are

given a maximum of 6 phone calls per month with a 30-minute time limit each, while prisoners in general population have the ability to make many more phone calls, and for more time. Upon information and belief, prisoners in certain non-disciplinary restrictive housing units including the RHU also have greater access to visits and telephone calls than Plaintiffs.

16. Given Plaintiffs' prolonged time in solitary confinement, their ability to see and speak with their loved ones is a lifeline that directly helps them maintain their mental health and prepares them for reintegration into society. DOC's unlawful limitation of Plaintiffs' telephone access and opportunities for visitation are causing damage to Plaintiffs' mental and emotional health.

17. Lastly, DOC is limiting Plaintiffs' ability to communicate with civil rights counsel, including the undersigned, and certain criminal defense counsel, by refusing to provide supplemental phone slips to Plaintiffs for the purpose of calling these kinds of attorneys. This, despite providing Plaintiffs with at least 6 additional phone call slips per criminal defense attorney if the attorney is representing Plaintiffs in an open criminal case with an assigned docket number, not including post-conviction relief. This distinction is arbitrary and capricious.

18. The Plaintiffs bring this action seeking declaratory judgment and injunctive relief in connection with numerous policies, practices and regulations that violate the CJRA, and the equal protection and due process clauses of the Massachusetts Constitution. *See* Massachusetts Declaratory Judgment Act, Mass. Gen. Laws ch. 231A, §§ 1 et seq.; Massachusetts Declaration of Rights, Art. I, X, & XII.

PARTIES

19. Plaintiff Emmitt Perry began serving a 72-month disciplinary sanction with 64 months to-be-served ("TBS") in the DDU in July 2021. He is scheduled to be released back into the general population prison on September 3, 2026.

20. Plaintiff Carlos Bastos began serving an 84-month disciplinary sanction with 75 months TBS in the DDU in December of 2020. He is scheduled to be released back into the general population prison on November 22, 2026.

21. Plaintiff Soksoursdey Roeung began serving a 120-month disciplinary sanction with 110 months TBS in the DDU on August 27, 2013. He is scheduled to be released on September 2, 2022 and has recently been notified that he will be released on August 3, 2022.

22. Defendant Massachusetts Department of Correction ("DOC") is an agency of the Commonwealth responsible for overseeing the Massachusetts prison system. It oversees the management of 15 institutions across the state.

23. Defendant Carol Mici ("Commissioner") is the Commissioner of DOC and responsible for the administration of all state correctional facilities, including overseeing operations and personnel of DOC statewide, including in Suffolk County. *See* G.L. c. 124, §1. The Plaintiffs sue Defendant Mici in her official capacity.

24. Defendant Sergio Servello ("Superintendent") is the Superintendent of Massachusetts Correctional Institution at Cedar Junction ("MCI-CJ"), which includes the DDU. By statute, he is "responsible for the custody and control of all prisoners" at MCI-CJ, including overseeing day-to-day operations at MCI-CJ, and for creating and/or enforcing the various policies, practices and laws at issue in this case. *See* G.L. c. 125, § 14. The Plaintiffs sue Defendant Servello in his official capacity.

25. This Court has subject-matter jurisdiction over this case pursuant to its general jurisdiction under G.L. c. 212, § 4.

Class Action Allegations

26. This is a class action under Rule 23(a) and (b) of the Massachusetts Rules of Civil Procedure.

27. The Plaintiffs are representatives of a class composed of all prisoners who are now, or may be in the future, confined to the DDU of the DOC.

28. Membership in the class is so numerous that joinder of all members is impracticable.

29. The Plaintiffs' claims involve common questions of law and fact. Since all the class members are subject to similarly restrictive conditions and the same policies and practices, these named Plaintiffs' claims are typical to the class as a whole.

30. These common questions predominate over any questions affecting only individual class members. The Defendants have acted and refused to act on grounds generally applicable to the class so that final declaratory and injunctive relief would be appropriate to the class as a whole.

31. The Plaintiffs have a strong personal liberty interest in the outcome of this litigation, are represented by competent counsel, and will adequately and fairly protect the interests of this class.

32. A class action is superior to any other available method for a fair and efficient adjudication of this controversy. Separate actions by individual members of the class would create a risk of inconsistent or differing adjudications and delay the ultimate resolution of the issues at stake.

FACTS

A. Applicability of the CJRA to the DDU

33. In 2018, the CJRA repealed preexisting statutory provisions regarding "isolation units" and "segregated units," and replaced them with new ones regarding "restrictive housing."

34. The CJRA defines "restrictive housing" as "a housing placement where a prisoner is confined to a cell for more than 22 hours per day," but not for purposes of observation for mental health evaluation. G.L. c. 127, § 1.

35. The CJRA "authorize[s] the confinement of a prisoner in a restrictive housing unit" on strictly limited grounds—specifically, only "to discipline the prisoner or if the prisoner's retention in general population poses an unacceptable risk: (i) to the safety of others; (ii) of damage or destruction of property; or (iii) to the operation of a correctional facility." G.L. c. 127, § 39(a).

36. The CJRA also defines a subcategory of restrictive housing, namely, "disciplinary restrictive housing," which is defined as "a placement in *restrictive housing* in a state correctional facility for disciplinary purposes after a finding has been made that the prisoner has committed a breach of discipline." G.L. c. 127, § 1.

37. Plaintiffs are held in disciplinary restrictive housing, a subcategory of restrictive housing, and are entitled to the protections afforded in the CJRA.

B. DOC Regulations Regarding Restrictive Housing and the DDU

38. DOC has promulgated regulations specific to restrictive housing under 103 CMR 423.00 et seq.

39. Under that Section, "Restrictive Housing" is defined, in part, as "[a] placement that requires an inmate to be confined to a cell for at least 22 hours per day for the safe and secure operation of the facility." *Id.* 423.06.

40. Similarly, a "Restrictive Housing Unit" is defined, in part, as "[a] separate housing area from general population ... in which inmates may be confined to a cell for more than 22 hours per day where ... the inmate is serving a disciplinary detention sanction." *Id.*

41. DOC regulations further define "Disciplinary Restrictive Housing" as "[a] placement in Restrictive Housing in a state correctional facility for disciplinary purposes after a finding has been made that the inmate has committed a breach of discipline." *Id.* (defining "DDU" and stating that "[t]he DDU is disciplinary Restrictive Housing...").

42. The foregoing definitional statements are, on their face, consistent with the statutory definitions of "restrictive housing" and "disciplinary restrictive housing," as well as the (limited) authorized uses for restrictive housing. *See* G.L. c. 127, §§ 1, 39(a).

43. Nonetheless, DOC purports to exclude the DDU from the meaning of "Restrictive Housing Unit" and "Restrictive Housing." 103 CMR 423.06 ("For purposes of 103 CMR 423.00, the DDU is not a Restrictive Housing Unit."); *id.* ("[f]or purposes of 103 CMR 423.00, Restrictive Housing shall not include [*inter alia*] any placement in a DDU as the result of a sanction imposed in accordance with 103 CMR 430.00").

44. DOC applies a separate set of regulations to the DDU under 103 CMR 430.00, titled "Inmate Discipline."

45. DOC's regulations and practices excluding the DDU from the definitions and rights associated with "Restrictive Housing" and "Restrictive Housing Unit" are contrary to and violate the CJRA.

C. Placement Reviews

i. Legal Framework for Disciplinary Restrictive Housing Sanctions and Placement Reviews

46. The CJRA sets forth specific rules governing "restrictive housing," including disciplinary restrictive housing. G.L. c. 127, § 1.

47. The CJRA requires that all prisoners held in disciplinary restrictive housing, including the DDU, receive periodic "placement reviews," which are defined, in pertinent part, as a "multidisciplinary examination to determine whether restrictive housing continues to be necessary to reasonably manage risks of harm, notwithstanding any previous finding of a disciplinary breach, exigent circumstances or other circumstances supporting a placement in restrictive housing[.]" G.L. c. 127, § 1.

48. For prisoners who have been sanctioned to disciplinary restrictive housing, the multidisciplinary team conducting a placement review pursuant to G.L. c. 127, § 39B(a)(iv) must include, at a minimum, 1 member of the security staff, 1 member of the programming staff and 1 member of the mental health staff. G.L. c. 127, § 1; *see also id.* § 39B(a)(iv); 103 CMR 430.05.

49. Such a placement review must be held no later than 6 months after a prisoner is sanctioned to the restrictive housing unit, and must be held every 90 days thereafter so long as the prisoner is retained in the restrictive housing unit. G.L. c. 127, §39B(a)(iv); *see also* 103 CMR 430.30(1) ("[a]n inmate who has been sanctioned to disciplinary Restrictive Housing in the DDU shall be reviewed by the Placement Review Committee 180 days after the effective date of the DDU sanction … and every 90 days thereafter").

50. The CJRA requires that, in these multidisciplinary reviews, prisoners "shall have the opportunity to participate in reviews in person or in writing." G.L. c. 127 § 39B(c)(ii). Under DOC regulations, however, while prisoners held in non-disciplinary restrictive housing are

allowed to participate in their reviews in person, those in the DDU are only allowed to do so in writing. *See* 103 CMR 430.30(2)(b).

51. At the placement reviews, the only criteria that the multidisciplinary team may consider in deciding whether to continue to hold a prisoner in such housing is whether that prisoner "poses an unacceptable risk (i) to the safety of others; (ii) of damage or destruction of property; or (iii) to the operation of a correctional facility." G.L. c. 127, 39B(b) (referring to G.L. c. 127, § 39(a)).

52. If, after a placement review, no placement change is ordered, the prisoner shall "be provided with a written statement as to the evidence relied on and the reasons for the placement decision," and "be advised as to behavior standards and program participation goals that will increase the prisoner's chances of a less restrictive placement upon next placement review." G.L. c. 127, § 39B(c)(iii)-(iv); *see also* 103 CMR 430.30(2)(c)-(d).

53. The CJRA requires that after 6 months, prisoners in the DDU are no longer subject to punishment, but must be treated the same as prisoners in non-disciplinary restrictive housing, who may only be held as long as is necessary to manage unacceptable risks of harm. G.L. c. 127, § 39B(a)(iv), (b). The placement reviews are meant to ensure such prisoners are released from the DDU once they no longer pose a current risk, without regard to the length of their DDU sanction.

54. Thus, for any given individual serving a disciplinary sanction, the DDU constitutes disciplinary restrictive housing only during the first 6 months of the individual's sanction. *Id.*

55. The underlying disciplinary breach that led to a prisoner's placement in restrictive housing is not, in and of itself, a valid reason to retain that prisoner in restrictive housing beyond 6 months. *Id.*

56. The length of the original disciplinary sanction is not a valid piece of "evidence" for purposes of a placement review. *Id.*

57. Pursuant to 103 CMR 430.28(6),

> "the Superintendent may recommend that the Deputy Commissioner of the Prison Division approve an inmate(s) for release from the DDU prior to the expiration of the DDU sanction. The factors to be considered in making such a request to the Deputy Commissioner include, but shall not be limited to: the medical or mental health needs of an individual inmate, the need to prepare an inmate for release from custody, whether the inmate has made a positive institutional adjustment, or the operational needs of the DDU, e.g.: (a) number of DDU placements; (b) nature of the disciplinary report resulting in the current DDU placement; (c) length of time to release from custody."

58. Pursuant to 430.28(7), if a prisoner is released from DDU prior the completion of their initial sanction, the remainder of the initial sanction is held in abeyance and the prisoner can be returned to the DDU if he commits another disciplinary infraction.

59. Pursuant to 103 CMR 430.25(1)(f), a prisoner who is found to have committed a Category 1 offense (as defined elsewhere in the code) may be sanctioned to the DDU for up to 10 years.

60. Pursuant to 103 CMR 430.25(2)(f), a prisoner who is found to have committed a Category 2 offense (as defined elsewhere in the code) may be sanctioned to the DDU for up to 5 years.

61. DOC regulations at 103 CMR 430.28(6) and (7), and at 430.25(1)(f) and (2)(f), all were promulgated prior to the CJRA.

62. DOC regulations at 103 CMR 430.28(6) and (7), and at 430.25(1)(f) and (2)(f) are inconsistent with the statute insofar as they are silent about the requirement under the CJRA, after an initial 6-month period, prisoners may only be retained in the DDU if they are determined to pose an unacceptable risk.

63. In addition, 103 CMR 430.28(6) and (7) are inconsistent with the statute insofar as they improperly permit DOC to consider length of time to release from custody as a factor in determining whether to release someone from DDU, and they treat the full DDU sanction as discipline even beyond 6 months, by permitting the return of someone to DDU for the remainder of an initial sanction for subsequent (lesser) disciplinary infractions without requiring a finding that the prisoner poses an unacceptable risk.

ii. Plaintiffs' Experiences with Disciplinary Restrictive Housing Sanctions and Placement Reviews

64. As noted above, the CJRA mandates that a prisoner can only be referred to the DDU for disciplinary reasons for 6 months and must be discharged from the DDU thereafter if he is found to no longer pose an unacceptable risk at his placement review. In practice, however, DOC violates this requirement on a systemic basis.

65. Specifically, when Plaintiffs were assigned to the DDU, they were given an initial sanction of up to 10 years for disciplinary reasons. The placement reviews are a sham, as DOC fails to take into account the prisoner's then-current risk to the safety or operation of the facility, and instead routinely concludes that the Plaintiffs pose an "unacceptable risk" merely on the basis of their original disciplinary breach and length of initial (unlawfully lengthy) disciplinary sanction to the DDU.

66. DOC's initial sanction against Mr. Perry was 6 years in the DDU for discipline. Mr. Perry had a placement review on December 29, 2021, where the DOC's written decision noted that Perry had not received any disciplinary reports since arriving in the DDU but would nevertheless be continued in the DDU placement. DOC failed to provide Mr. Perry with a placement review in late March 2022, as required. His most recent placement review took place on June 22, 2022, where DOC noted that he had only received 1 D-report during the duration of

his entire DDU placement, on March 16, 2022, for refusing to remove his boxers while being strip searched, and had received no D-reports in the past 90 days. Nevertheless, DOC continued to hold him in the DDU.

67. DOC's initial sanction against Mr. Bastos was 7 years in the DDU for discipline. After his January 28, 2022 review, DOC's written decision noted that Bastos had not received any D-reports in the past 90 days, but nevertheless continued his DDU placement. His most recent placement review took place approximately April 2022. In the 90-day period preceding this review and for approximately one year prior to the review, he had not been issued any disciplinary tickets. Nevertheless, DOC continued to hold him in the DDU.

68. DOC's initial sanction against Mr. Roeung was 10 years in DDU for discipline. Mr. Roeung had his most recent placement review on March 16, 2022. DOC's written decision noted that, throughout his approximately 9 years in the DDU, Roeung had incurred just 2 disciplinary reports. Both were for minor infractions not related to public safety but related to allegedly having graffiti in his cell in 2014 and possessing synthetic cannabinoids in March 2021 respectively, and no disciplinary reports in nearly 1 year. Nevertheless, DOC continued his DDU placement.

69. Plaintiffs have been allowed to submit written statements in connection with their placement reviews, but have not been allowed to participate in-person (either *pro se* or through the participation of counsel). When the Plaintiffs have requested the ability to attend their placement reviews in-person and/or have counsel present, their requests have been denied.

70. Plaintiffs have never been provided with any advance notice about the evidence that will be presented against them at a placement review and no meaningful opportunity to rebut it.

71. Within approximately 5 days after a placement review, Plaintiffs receive a report reflecting DOC's determination (the "Placement Review Report").

72. This report consistently begins with a statement of the alleged disciplinary violation that led to prisoner's placement in DDU and the length of the DDU sanction originally imposed.

73. Upon information and belief, all of Plaintiffs' Placement Review Reports follow a nearly identical format for each placement review.

74. Upon information and belief, in every Placement Review Report, the first paragraph states that Plaintiff "received a DDU sanction of [x] months;" the box is checked for continued DDU placement, and the first sentence in the single paragraph that describes the entirety of the evidence supporting the continued DDU placement is that Plaintiff "received a DDU sanction of [x] months."

75. At each of the Plaintiffs' 90-day placement reviews over the years, DOC relied on the length of initial DDU sanction and the alleged events that precipitated that initial sanction as the sole or primary basis to retain the Plaintiffs in disciplinary restrictive housing. This practice has remained to be the case regardless of whether and to what extent the Plaintiffs had, in the 90-day period since their previous placement review, been accused of any disciplinary infractions, or followed DOC's recommendations to "increase [their] chances of a less restrictive placement upon next review," as outlined in their prior placement review report.

76. Where the Plaintiffs have had no disciplinary reports in the preceding 90-day period, the "evidence" set forth in the report provides no specific reasons as to why the prisoner is still deemed to be a risk to others, property or the operation of the facility.

77. The Placement Review Report simply identifies which risks have previously been determined to exist based on events that often transpired years prior to that, without drawing any connection between the evidence provided and an assessment made as to current risk.

78. Even the information provided by the prisoner in writing, when submitted, is not included or addressed in the Placement Review Report.

79. The "DDU Behavior Standards and Program Goals" section of the Placement Review Report identifies the actions that DOC says the prisoner can take to increase their chances of a less restrictive placement upon their next review.

80. These include: (a) refraining from disciplinary/behavior reports; (b) complying with all unit rules and regulations; (c) complying with all DDU program recommendations; and (d) participating in all interviews and assessments. This section also shows the programs in which the prisoner is currently enrolled or has completed.

81. This section of the Placement Review Report does not include information as to the previous recommended goals, nor does it assess the prisoner's progress with respect to those recommendations.

82. Moreover, Plaintiffs, even when they perform the actions recommended, and behave in accordance with the recommended guidelines, are not released from the DDU as a consequence of their placement review.

83. The CJRA requires placement reviews to be performed by a multi-disciplinary committee that includes, at a minimum: (a) a member of the security staff; (b) a member of the programming staff; and (c) a member of the mental health staff; however, the placement review reports do not reflect meaningful input or participation by these members.

84. Mr. Roeung, had no programs to participate in at various times during his nearly ten years in the DDU, either because none were available during certain periods or because he was not allowed to participate in programs that he already participated in. As such, during such a time period, a member of the programming staff may not be able to make meaningful contributions to placement reviews.

85. The Placement Review Reports do not provide any specific information about the evaluation of Plaintiffs' security risk, programming, and mental health. The only aspect covered at all is security, and that aspect is still devoid of detail or explanation.

86. Moreover, Plaintiffs report that sometimes, mental health professionals have not evaluated them in the review period and so would be unable to meaningfully participate in a panel review process, even if they were present for the review.

87. DOC's placement reviews rarely result in release from disciplinary restrictive housing prior to the near completion of the initial TBS sanction amount, regardless of Plaintiffs' behavior during the 90-day review period.

88. Overall, it is clear that the placement reviews in the DDU do not consider the Plaintiffs' suitability for release in a meaningful way, give the Plaintiffs an opportunity for meaningful participation, or offer the Plaintiffs a meaningful chance to reduce their time in the DDU through program participation and good conduct.

89. DOC's refusal to release Plaintiffs from the DDU after many 90-day placement reviews has led the Plaintiffs to suffer physical and mental harm. Due to their prolonged time in solitary confinement in the DDU, Plaintiffs report that they have developed severe anxiety and discomfort around other people, have lost many communication and social interaction skills, and suffer from strong feelings of anxiety, depression, helplessness, and loneliness. Physically, due to

the length of their confinement in their small cells, Plaintiffs have lost so much physical strength that they find it difficult to exercise in the yard even in their limited opportunities to do so.

D. Meals in Restrictive Housing

i. Legal Framework for Meals in Restrictive Housing

90. The CJRA requires that prisoners in restrictive housing shall be provided "meals that meet the same standards established by the commissioner for general population prisoners." G.L. c. 127, § 39(b)(i).

91. DOC regulations also provide that DDU prisoners shall be provided with "meals that meet the same standards established by the commissioner for general population inmates." 103 CMR 430.33(1)(a).

92. In addition, DOC has issued a DDU Inmate Orientation Manual ("DDU Manual") that provides that "[a]ll inmates shall receive the same meals as those served to the general population, including any necessary medical diets or religious diets." DDU Manual § 5(A).

ii. The Plaintiffs' Experiences with Meals in Disciplinary Restrictive Housing

93. Plaintiffs receive different meals than those in general population at MCI-CJ, who have access to a much larger variety of food options in the chow hall and can control the size of their portions based on their hunger.

94. Mr. Roeung's meals are small in terms of portion size, do not reflect the same items that general population was served on any given day, and do not carry the same nutritional value as the meals served to the general population.

95. Mr. Perry and Mr. Bastos receive a kosher meal that DOC has claimed is the same size as the kosher meal that the general population receives; however, the meal is approximately a

7-inch child-sized pre-packaged tray that does not provide the same nutritional value as the non-kosher general population meal.

96. Plaintiffs have experienced hunger headaches, weight loss or muscle mass loss, weakness, and depression due to the small portions of the meals with insufficient nutrients.

E. Access to Canteen in Restrictive Housing

i. Legal Framework for Canteen Access in Restrictive Housing

97. The CJRA states that DOC shall provide those in restrictive housing with the "same access to canteen purchases and privileges to retain property in a prisoner's cell as prisoners in the general population at the same facility; provided, however, that such access and privileges may be diminished for the enforcement of discipline for a period not to exceed 15 days in a state correctional facility...or where inconsistent with the security of the unit." G.L. c. 127 § 39(b)(viii).

ii. Plaintiffs' Canteen Access in Disciplinary Restrictive Housing

98. Plaintiffs do not have the same access to purchase food items and hygienic products as the general population at the same facility.

99. In particular, as compared to general population prisoners at MCI-CJ, those in the DDU have access to a much more limited selection of food and basic hygiene items through canteen. Further, they are only allowed to purchase those items in more limited quantities, and are subject to a lower spending cap than the general population.

100. Until January 2022, Plaintiffs and others in the DDU were unable to purchase any type of food or drink from the canteen at all, despite years of pleading for access to such items in large part to supplement the inadequate meals that they receive.

101. In January 2022, coffee was added to the canteen list for the DDU. In April 2022, certain food items, including chips, cookies, protein shakes, peanuts and cocoa butter sticks, were added to a so-called "incentive canteen" list for the DDU.

102. However, the canteen list for the DDU is still not equal to the canteen list for general population. It is significantly smaller and does not include various items that are available through canteen in general population, including substantive sources of nutrition, including but not limited to soup, bread, peanut butter, fish, chicken, chili and rice.

103. It also omits basic hygiene products like non-medical grade shampoo and conditioner, hair grease, scalp moisturizer or skin lotion. The omission of such products is particularly harmful to Mr. Perry and Mr. Bastos, who are Black and need such items to keep their hair and skin healthy and hygienic.

104. Moreover, a significant percentage of canteen items for DDU prisoners are reported to be out of stock at any given time, further exacerbating the disparity between the canteen access in the DDU vs. general population. Mr. Bastos reports that he recently tried to purchase $25 worth of canteen items and due to reported out of stock items, was only given approximately $5 worth of items. Additionally, upon information and belief, DOC has reported certain items as out of stock to named Plaintiffs and others in the wings of the DDU that they are in, while those items are in stock for prisoners in other wings of the DDU and other units at MCI-CJ.

105. In the past, in denying the Plaintiffs' requests that certain items be made available through canteen in the DDU, DOC has stated that the packaging presented a security threat. Many of the items missing from the DDU canteen list, however, are packed in much the same way as other items that *can* be purchased through canteen in the DDU.

106. Further, Plaintiffs are allowed to purchase only a limited amount of any given product available through the canteen, whereas general population either has no limitations or higher limits.

107. There also is a $25 per week cap on how much money Plaintiffs can spend on purchasing items from the canteen, whereas there is an $85 per week cap on how much a prisoner in the general population can spend on canteen purchases.

108. In addition, under the April 14, 2022 "incentive canteen" policy, currently in place for the DDU, DOC diminishes canteen access for disciplinary reasons for periods that extend beyond the 15 days permitted by the CJRA. G.L. c. 127, § 39(b)(viii). In fact, the policy states that DDU prisoners must wait *30* days from entrance in DDU to even be afforded the opportunity to purchase incentive canteen items.

109. Additionally, while in the DDU, Mr. Roeung was given a disciplinary sanction resulting in a 90-day loss of canteen privileges, 15 days of which was to be served in the DDU and the rest to be served upon his release from the DDU into the general population. Mr. Bastos has also received disciplinary sanctions beyond 15 days resulting in the extended loss of canteen and other privileges, 15 days of which were to be served in the DDU and the rest upon his release from the DDU into the general population.

F. Access to Visitations and Telephone in Restrictive Housing

i. Legal Framework for Visits and Telephone Access in Restrictive Housing

110. The CJRA provides that restrictive housing units shall have "rights of visitation and communication by those properly authorized; provided, however, that the authorization may be diminished for the enforcement of discipline for a period not to exceed 15 days in a state correctional facility . . . for each offense." G.L. c. 127, § 39(b)(iii); *see also* 103 CMR 430.33(f).

111. The CJRA further specifies that "a correctional institution, jail or house of correction shall not: (i) prohibit, eliminate or unreasonably limit in-person visitation of inmates; or (ii) coerce, compel or otherwise pressure an inmate to forego or limit in-person visitation. For the purposes of this section, to unreasonably limit in-person visitation of inmates shall include, but not be limited to, providing an eligible inmate fewer than 2 opportunities for in-person visitation during any 7-day period." G.L. c. 127, § 36C.

112. DOC regulations and policies on telephone and visitation access in DDU are inconsistent with the statute.

113. The DDU Manual states that prisoners in the DDU can acquire, at most, "4 visiting periods [per month] after serving 120 consecutive days in the DDU." DDU Manual § 16(C)(1)(d).

114. DOC regulations state that individuals housed in the DDU "shall have telephone privileges as authorized by the Superintendent," *see* 103 CMR 482.08(4), and that "Superintendents may set limits on the permitted number of telephone calls." 103 CMR 430.33(m). According to the DDU Manual, at maximum, prisoners in the DDU can acquire "6 telephone calls . . . after serving 120 consecutive days in the DDU." DDU Manual § 16(D)(1)(e). Each phone call lasts 30 minutes. DDU Manual § 16(D)(4)(c).

115. The DDU Manual does not make any distinction between personal calls and attorney telephone calls, except that it states that "telephone call slips are required" for both. DDU Manual § 16(D)(4)(a).

116. As a matter of policy, DOC provides at least 6 additional telephone call slips per month to prisoners in the DDU for each criminal defense attorney representing them in an open criminal matter not including post-conviction relief, but does not extend this policy to prisoners with respect to any other attorneys, including civil rights attorneys such as undersigned counsel.

ii. Plaintiffs' Experiences with Visitation and Telephone Access in Disciplinary Restrictive Housing

117. With regard to visitations, Plaintiffs are allowed only 4 one-hour in-person visits *per month*, whereas those in the general population are allowed 4 visits *per week*.

118. Plaintiffs can opt to substitute a Zoom visit for an in-person visit. Each Zoom visit is limited to a duration of 20 minutes, but nonetheless counts as a full in-person visitation against the monthly allocation.

119. With regard to telephone calls, Plaintiffs are only allowed 6 thirty-minute telephone calls *per month*, whereas prisoners in the general population are allowed telephone access for approximately 3 hours *per day*.

120. Over a period of multiple months, the Plaintiffs and undersigned counsel attempted to obtain call slips for the Plaintiffs to use for purposes of attorney-client communications in connection with this matter. As part of that effort, it was explained to DOC that undersigned counsel are the Plaintiffs' civil rights counsel and need telephone access in order to help the Plaintiffs access the courts regarding conditions of confinement. The DOC rebuffed those efforts on the basis that undersigned counsel is not representing the Plaintiffs in an open criminal matter with a criminal docket number.

121. DOC told undersigned counsel that, if a DDU prisoner "has an open criminal matter," the criminal attorney needs to contact the Superintendent's Office in writing requesting approval with a docket number. Once the representation in that criminal matter was verified, the DDU prisoner would receive "an additional six (6) phone slips per month per attorney/per docket." This DOC policy does not appear in any statute or regulation.

122. Thus, DOC refuses to provide supplemental phone slips to the Plaintiffs for purposes of communicating with their civil rights counsel, including undersigned counsel. As a

result, the Plaintiffs must sacrifice their extremely scant allotment of personal calls in order to communicate with counsel.

123. Prisoners in general population do not have call slips limiting their access to attorney calls; additionally prisoners in non-disciplinary restrictive housing have greater access to attorney call slips and no distinction made between types of attorneys.

G. Plaintiffs Are Not Required to Exhaust Administrative Remedies But Have Nonetheless Exhausted Administrative Remedies

124. Pursuant to G.L. c. 127 § 38F, regardless of whether the Plaintiffs have exhausted administrative remedies, the court may consider the Plaintiffs' claims since this is an action seeking only equitable relief. *See Grady v. Comm'r of Correction*, 83 Mass. App. Ct. 126, 137 n. 9, 981 N.E.2d 730, 739 n.9 (2013); *Braley v. Bates*, 93 Mass. App. Ct. 1117, 104 N.E.3d 686 (2018)(unpublished); *Johnson v. Ryan*, 89 Mass. App. Ct. 1121, 49 N.E.3d 697 (2016)(unpublished).

125. Nevertheless, the Plaintiffs have exhausted their administrative remedies as related to issues in this Complaint.

CAUSES OF ACTION

COUNT 1

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – DOC Regulations Violate Plaintiffs' Statutory Rights as Applicable to Restrictive Housing)

126. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

127. Under G.L. c. 127, § 1, "restrictive housing" is defined as "a housing placement where a prisoner is confined to a cell for more than 22 hours per day."

128. DDU prisoners are confined to a cell for more than 22 hours per day.

129. DOC regulations 103 CMR 423.06 and 430.05 exclude the DDU from the definitions of "restrictive housing" and "restrictive housing unit."

130. As further detailed herein, DDU prisoners have been and presently are denied certain rights and privileges that DOC is statutorily required to provide to all prisoners in restrictive housing and restrictive housing units, including as related to placement reviews (G.L. c. 127, 39B), meals (G.L. c. 127 § 39(b)(i)), canteen access (G.L. c. 127 § 39(b)(viii)), and opportunities for telephone calls and visits (G.L. c. 127, § 39(b)(iii); § 36C)).

131. Upon information and belief, DOC has been and presently is relying upon their regulatory exclusion of the DDU from the definitions of "restrictive housing" and "restrictive housing unit" as a basis to deny DDU prisoners such rights and privileges.

132. The exclusion of the DDU from the definition of restrictive housing and restrictive housing units in DOC regulations, and the resulting denial of rights directly contradicts G.L. c. 127, §§ 1 and the controlling statutes in the CJRA related to restrictive housing. Accordingly, 103 CMR 423.06 and 430.05 are invalid in that regard.

133. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127, § 1, by excluding the DDU from their definition of restrictive housing in their regulations and practice, and denying the Plaintiffs the rights entitled to those in restrictive housing.

COUNT 2

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – Placement Reviews)

134. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

135. G.L. c. 231A § 2 gives this Superior Court the power to make a determination on the legality of state agency's administrative practices and policies.

136. The following DOC practices and procedures violate the CJRA:

a) DOC imposes DDU sanctions exceeding 6 months for disciplinary purposes and enforces those sanctions on that same basis.

b) DOC engages in sham placement reviews that do not fairly consider whether Plaintiffs *presently* poses an unacceptable risk to the safety of others, of damage or destruction of property, or to the operation of a correctional facility.

c) Upon information and belief, placement reviews are not meaningfully conducted by a multidisciplinary panel that includes substantive input by a member of the security, programming, and mental health staff.

d) Plaintiffs' only means of participating in the placement review process is in writing and they are not allowed to participate in-person.

e) DOC does not provide advance notice to Plaintiffs of the information or evidence that will be used against them in the placement review and does not provide Plaintiffs with a meaningful opportunity to rebut that evidence.

f) Upon information and belief, DOC does not actually consider or rely upon Plaintiffs' written statements in reaching a placement review decision nor address the Plaintiffs' statements in their placement review decision.

g) DOC does not rely on sufficient evidence for its placement review decisions. Placement Review Reports typically only recite the underlying alleged offense that led to the DDU sanction and the length of that sanction, list any other alleged disciplinary offenses of any nature (often from many years in the past), and then

summarily conclude that the prisoner continues to pose an "unacceptable risk," with no explanation as to how the past alleged infractions or the length of the original sanction support such a conclusion.

h) DOC does not provide any meaningful guidance "as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review." While the written results of a placement review generally advise participation in "programming" and avoidance of "tickets" for new disciplinary infractions, Plaintiffs' adherence to such guidance does not impact the results of future placement reviews.

137. DOC's practices and procedures, as described above, are its customary and usual method of conducting placement reviews in the DDU, and are consistently repeated.

138. DOC's practices and procedures in connection with DDU placement reviews, as described above, are illegal because they consistently and repeatedly violate the controlling statute, including the provisions at G.L. c. 127, §§ 1 and 39B.

139. DOC's practices and procedures in connection with DDU placement reviews, as described above, are also illegal because they consistently and repeatedly violate DOC regulations, including 103 CMR 430.05 and 430.30.

140. DOC's regulation at 103 CMR 430.30(2)(b), limiting Plaintiffs to participating in their placement reviews in writing only and not affording them the opportunity to appear in-person at the placement review is inconsistent with G.L. c. 127 § 39B(c)(ii).

141. DOC regulations at 103 CMR 430.28(6) and (7), and at 430.25(1)(f) and (2)(f) are inconsistent with the statute, and thus invalid, insofar as they are silent about the requirement under

the CJRA that, at least after an initial 6-month period, Plaintiffs may only be retained in the DDU if they are determined to pose an unacceptable risk.

142. In addition, 103 CMR 430.28(6) and (7) are inconsistent with the statute, and thus invalid, insofar as they improperly permit DOC to consider length of time to release from custody as a factor in determining whether to release Plaintiffs from DDU, and they treat the full DDU sanction as discipline even beyond 6 months, by permitting the return of Plaintiffs to DDU for the remainder of an initial sanction for subsequent (lesser) disciplinary infractions without requiring a finding that the Plaintiffs poses an unacceptable risk.

143. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127 §§ 1 and 39B by denying the Plaintiffs placement reviews that satisfy the statutory requirements; and whether 103 CMR 430.30(2)(b), 430.28(6) and (7), 430.25(1)(f) and (2)(f) are invalid insofar as they are inconsistent with the CJRA.

COUNT 3

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – Access to Visits and Phone Calls)

144. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

145. Under G.L. c. 127, § 39(b)(iii), Plaintiffs' rights of visitation and communication can only be diminished for a 15-day period for the enforcement of discipline and otherwise must be the same as general population.

146. Under G.L. c. 127 § 36C, the Plaintiffs are entitled, at a minimum, to 2 opportunities for in-person visits during any 7-day period.

147. Plaintiffs have only been granted 4 visits per month, and their requests for visits beyond those amounts have been denied, despite the fact that the general population receives 16 visits per month.

148. DOC is violating G.L. c. 127 § 39(b)(iii) and 36C by denying Plaintiffs the same number of visits as general population after the first 15 days in the DDU and for denying Plaintiffs, at a minimum, 2 visits per week after the first 15 days in the DDU.

149. DOC is violating the violating G.L. c. 127 § 39(b)(iii) by denying Plaintiffs the same access to telephone calls as general population after the first 15 days in the DDU and only permitting the Plaintiffs to have a maximum of 6 phone calls per month.

150. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127 § 39(b)(iii) and 36C by denying the Plaintiffs' the same access to visits and phone calls as general population after their first 15 days in DDU.

COUNT 4

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – Access to Attorney Phone Call Slips)

151. The Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

152. DOC refuses to provide Plaintiffs, after their first 15 days in DDU, with the same access to making attorney phone calls as prisoners in general population and non-disciplinary restrictive housing, where there is more access to making attorney phone calls and no distinction between type of attorney for purposes of getting an attorney call slip.

153. DOC refuses to provide Plaintiffs with at least 6 additional call slips to telephone undersigned counsel.

154. DOC's policy of providing Plaintiffs with at least 6 extra call slips per attorney only if the attorney is representing them in an open criminal case with an assigned docket number, not including post-conviction relief or civil rights attorneys, is arbitrary and capricious.

155. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127, § 39(b)(iii); by denying the Plaintiffs the same access to calling their attorneys, regardless of attorney type, as general population and non-restrictive disciplinary housing and whether DOC's policy for attorney slips in the DDU is arbitrary and capricious.

COUNT 5

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – Access to Canteen)

156. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

157. The CJRA states that restrictive housing units shall provide those in restrictive housing with the "same access to canteen purchases and privileges to retain property in a prisoner's cell as prisoners in the general population at the same facility; provided, however, that such access and privileges may be diminished for the enforcement of discipline for a period not to exceed 15 days in a state correctional facility . . .or where inconsistent with the security of the unit." G.L. c. 127 § 39(b)(viii).

158. DOC is violating G.L. c. 127 § 39(b)(viii) because the Plaintiffs do not have the same access to canteen purchases and privileges as prisoners in the general population at MCI-CJ after their first 15 days in DDU. They are disciplined with removal of canteen privileges for a period of time beyond the permissible 15 days including that their access to "incentive canteen" is diminished for the first 30 days in DDU, and they are subject to a $25 monthly spending cap on

canteen purchases, which is lower than the spending cap on canteen purchases for the general population.

159. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127 § 39(b)(viii) by denying the Plaintiffs the same access to canteen purchases and privileges as general population, after their first 15 days in the DDU.

COUNT 6

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, §§ 1-2 – Access to Meals)

160. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

161. The CJRA requires that DDU inmates "shall be provided . . . (a) meals that meet the same standards established by the commissioner for general population inmates." G.L. c. 127 § 39(b)(i).

162. DOC regulations similarly require that inmates in the DDU shall be provided "meals that meet the same standards established by the commissioner for general population inmates." 103 CMR 430.33(1)(a).

163. Section 5(a) of the DDU Manual further requires that "[a]ll inmates shall receive the same meals as those served to the general population, including any necessary medical diets or religious diets."

164. DOC is violating the controlling statute and regulation by failing to provide the Plaintiffs with meals that meet the same standards as established by the Commissioner for general population.

165. A real and active controversy exists between the parties as to whether the Defendants have violated G.L. c. 127 § 39(b)(i) by denying meals to Plaintiffs that meet the same standards established by the commissioner for general population inmates.

COUNT 7

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, § 1 – Due Process Claim Related to Placement Reviews)

166. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

167. Massachusetts Constitution, Decl. of Rights, Art. I, X, XII provides that the Plaintiffs are entitled to due process before they can be deprived of a liberty interest.

168. Plaintiffs have a liberty interest in remaining free from prolonged solitary confinement in restrictive housing, giving rise to protection under the due process clause. *See LaChance v. Commissioner of Correction*, 463 Mass. 767 (2012) (holding that in no circumstances may an inmate be held in segregated confinement on awaiting action status for longer than ninety days without a hearing).

169. Plaintiffs who remain in the DDU beyond the initial 6-month period are to be held not for discipline, but only if they pose an unacceptable risk; thus, the same due process rights applicable to prisoners in non-disciplinary restrictive housing apply to Plaintiffs at that point.

170. At each 90-day review period beyond the initial 6-month period in the DDU, the Plaintiffs are entitled to, as a matter of due process, to "notice of the basis on which he is so detained; a hearing at which he may contest the asserted rationale for his confinement; and a posthearing written notice explaining the reviewing authority's classification decision." *Id.* at 776-777.

171. DOC is violating the Plaintiffs' due process rights by (1) prohibiting Plaintiffs from participating in their placement reviews in person; (2) failing to provide prisoners with a multidisciplinary committee that meaningfully evaluates and addresses discuss specific security, mental health or programming related aspects of the Plaintiffs' experience and how that relates to their assessment of Plaintiffs' current risk; (3) failing to provide advance notice to Plaintiffs of the evidence to be used against them in their placement review as to their risk to themselves, others, property, or the operation of the prison and denying the Plaintiffs any meaningful way to rebut that any such evidence; (4) improperly taking into account during the placement review the initial DDU sanction and length of sanction separate and apart from its relevance to current assessment of risk; (5) failing to meaningfully address the Plaintiffs' written submission in the placement review, (6) failing to provide the Plaintiffs with meaningful guidance as to the conduct they can engage in to increase their chance of release from the DDU (7) solely or primarily relying on basis for and length of disciplinary sanction in and of itself during their placement review regardless of whether Plaintiffs followed the recommendations from the prior placement review and their behavior in the 90-day review period, and (8) failing to consider relevant evidence, and provide specific reasons for an assessment that Plaintiffs continue to be an unacceptable risk, violates Plaintiffs' due process rights.

172. A real and active controversy exists between the parties as to whether the Defendants' placement review process violates Plaintiffs' due process rights under the MA constitution.

COUNT 8

(Claim for Declaratory Judgment Pursuant to Mass. Gen. Laws c. 231A, § 1 – Equal Protection Claim)

173. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

174. Massachusetts Constitution, Decl. of Rights, Art. I, X, XII provides that the Plaintiffs are entitled to equal protection of the law.

175. After a 6-month period in the DDU, Plaintiffs who remain there should not be there for discipline purposes, so are similarly situated to prisoners in general population at MCI-CJ and at least prisoners in non-disciplinary restrictive housing. Nevertheless, Plaintiffs are discriminated against and not provided the same rights as the general population or those in non-disciplinary restrictive housing with respect to placement reviews, canteen access, visits, telephone calls, and meals.

176. The Defendants have no rational basis or compelling interest in discriminating between Plaintiffs, who are in the DDU and prisoners in general population or non-disciplinary restrictive housing.

177. Accordingly, the Defendants are violating Plaintiffs constitutional rights to equal protection of the law under the Massachusetts Constitution.

178. A real and active controversy exists between the parties as to whether the Defendants' differing policies for Plaintiffs after the first 6-month period in DDU in comparison to general population and/or non-disciplinary restrictive housing, in the context of placement reviews, canteen access, and access to telephone calls and visits, including attorney calls, violates the equal protection clause of the MA constitution.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter a judgment against the Defendants and award the following relief:

a. Certify this case as a class action pursuant to Mass. R. Civ. P. 23.

b. Declare that disciplinary restrictive housing in the DDU and any other similar disciplinary restrictive housing placement constitutes "restrictive housing" within the meaning of the CJRA and DOC regulations excluding such housing from the definition of "restrictive housing unit" are invalid.

c. Declare that disciplinary restrictive housing in the DDU and any other similar disciplinary restrictive housing placement constitutes a "restrictive housing unit" within the meaning of the CJRA and DOC regulations excluding such housing from the definition of a "restrictive housing unit" are invalid.

d. Declare that Defendants violated Plaintiffs' rights by failing to provide meals that meet the same standards established by the Commissioner for general population inmates.

e. Permanently and preliminary enjoin the Defendants from depriving the Plaintiffs with meals that meet the same standards established by the Commissioner for general population inmates.

f. Declare that the Defendants violated the Plaintiffs' rights, after the first 15 days in DDU, to the same access and privileges related to canteen purchases as the general population.

g. Permanently and preliminarily enjoin the Defendants from depriving the Plaintiffs, after the first 15 days in DDU, the right to the same access and privileges related to canteen purchases as the general population.

h. Declare that the Defendants violated the Plaintiffs' rights, after the first 15 days in DDU, to the same access and privileges related to visits as the general population, including but not limited to their right to have a minimum of 2 visits per week.

i. Permanently and preliminarily enjoin the Defendants from depriving the Plaintiffs, after the first 15 days in DDU, the same right to visits as general population and at least 2 visits per week.

j. Declare that the Defendants violated the Plaintiffs' rights after the first 15 days in DDU, to the same access and privileges related to telephone calls as the general population.

k. Permanently and preliminarily enjoin the Defendants from depriving the Plaintiffs the same access and privileges related to telephone calls as the general population.

l. Declare that the Defendants' policy of refusing to give the Plaintiffs, at least 6 additional call slips per attorney who represents them in *any* capacity violates Plaintiffs' rights and is arbitrary and capricious.

m. Permanently and preliminarily enjoin the Defendants from depriving the Plaintiffs at least 6 additional call slips per attorney who represents them in *any* capacity.

n. Declare that the Defendants' policy of refusing to permit the Plaintiffs to participate in their DDU placement review hearings in-person violates their rights and DOC's regulation limiting the Plaintiffs to written participation is invalid.

o. Permanently and preliminarily enjoin the Defendants from depriving the Plaintiffs the opportunity to participate in their DDU placement review hearings in-person.

p. Declare that the Defendants' practice of issuing initial disciplinary sanctions to the DDU for purpose of discipline beyond a 6-month period violates the CJRA and that 103 CMR 430.28(6) and (7), and 103 CMR 430.25(1)(f) and (2)(f) are invalid insofar as they are inconsistent with the CJRA.

q. Permanently and preliminarily enjoin the Defendants from issuing initial disciplinary sanctions to the DDU for the purpose of discipline beyond a 6-month period.

r. Declare that the Defendants' placement review process, wherein they rely on the Plaintiffs' initial DDU sanction and length of sanction as the sole or primary basis to refuse release instead of relying on evidence related to whether Plaintiffs currently pose an unacceptable risk to the safety of others, of damage or destruction of property, or to the operation of a correctional facility, violates the CJRA.

s. Declare that the Defendants' placement review process in (1) prohibiting the Plaintiffs from participating in their placement reviews in person; (2) failing to provide prisoners with a multidisciplinary committee that meaningfully evaluates and addresses discuss specific security, mental health or programming related aspects of the Plaintiffs' experience and how that relates to their assessment of Plaintiffs' current

risk; (3) failing to provide advance notice to Plaintiffs of the evidence to be used against them in their placement review as to their risk to themselves, others, property, or the operation of the prison and denying the Plaintiffs any meaningful way to rebut that any such evidence; (4) improperly taking into account during the placement review the initial DDU sanction and length of sanction separate and apart from its relevance to current assessment of risk; (5) failing to meaningfully address the Plaintiffs' written submission in the placement review, (6) failing to provide the Plaintiffs with meaningful guidance as to the conduct they can engage in to increase their chance of release from the DDU (7) solely or primarily relying on basis for and length of disciplinary sanction in and of itself during their placement review regardless of whether Plaintiffs followed the recommendations from the prior placement review and their behavior in the 90-day review period, and (8) failing to consider relevant evidence, and provide specific reasons for an assessment that Plaintiffs continue to be an unacceptable risk, violates Plaintiffs' statutory rights under the CJRA and Plaintiffs' due process rights under the MA Constitution.

t. Permanently and preliminarily enjoin the Defendants from using their current placement review process and require them to create a process compliant with CJRA and the due process clause.

u. Declare that the Defendants' treatment of the Plaintiffs who are in the DDU beyond a 6-month period differently from those in general

population and/or non-disciplinary restrictive housing in the context of placement reviews, canteen access, and access to telephone calls and visits, including attorney calls violates the equal protection clause.

v. Award attorney's fees and litigation costs to the Plaintiffs' attorneys.

w. Grant any and all further relief that the Court deems just and proper.

Dated: July 22, 2022

Respectfully Submitted,
For the Plaintiffs,

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