

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

Civil Action No. 18-cv-02160-CMA-MEH

EUGENE MARTINEZ,

Plaintiff,

v.

THE COLORADO DEPARTMENT OF CORRECTIONS, a statutory entity of the State of Colorado;

ANGELA STEVENS, in official and individual capacities;

WAYNE ISAAC, in official and individual capacities;

GLORIA BARKEY, in official and individual capacities;

REED BERNDT, in official and individual capacities;

GENE TOEWS, in official and individual capacities;

RICKY YATES, in official and individual capacities;

CHRISTOPHER ESTEP, in official and individual capacities;

TRAVIS WATERS, in official and individual capacities;

JOY HART, in official and individual capacities;

BRANDON HAGAN, in official and individual capacities;

JAMES JOHNSON, in official and individual capacities;

MICHELLE TAYLOR, in official and individual capacities;

DEAN WILLIAMS, in official capacity; and

MICHELLE BRODEUR, in official capacity,

Defendants.

THIRD AMENDED COMPLAINT

Plaintiff, Eugene Martinez, by and through his attorneys, respectfully alleges for his Complaint and Jury Demand as follows:

I. INTRODUCTION

1. Mr. Martinez is a 54-year-old man who has spent more than 20 years in custody with the Colorado Department of Corrections (“CDOC”) and will likely spend the rest of his life in prison. Mr. Martinez brings this suit to address years of inhumane treatment at the hands of Defendants and to ensure his basic health needs are met as long as he remains in CDOC custody.

2. Mr. Martinez is severely mentally ill and has been for his entire life. Mr. Martinez experiences hallucinations and hears demonic voices instructing him to hurt himself and others. On many occasions, Mr. Martinez followed these hallucinatory directives, attempting suicide several times, including while in CDOC custody. Throughout his life, he has been diagnosed with a serious mental health disability which has been diagnosed as including schizophrenia, anti-social personality disorder, posttraumatic stress disorder, amnesic disorder, and conversion disorder. Over the years, he has been prescribed different medications to treat his disability.

3. In CDOC custody, Mr. Martinez relies on CDOC to provide necessary medical and mental health treatment. CDOC has access to Mr. Martinez’s lengthy and detailed health records and has a duty to provide Mr. Martinez with services commensurate with his disability.

4. Despite Mr. Martinez’s serious and well-documented mental health disability, CDOC staff have regularly and systematically denied Mr. Martinez the mental health services that he desperately needs and denied him reasonable accommodations for his mental health disability. They also exacerbated his deteriorating mental

condition by punishing instead of treating him when he experienced mental health episodes.

5. This deliberate indifference to Mr. Martinez's obvious medical and psychiatric needs contravenes not only CDOC's own regulations, but also the clearly defined protections mandated by the U.S. Constitution.

6. As set forth below, Defendants each failed and continue to fail to abide by their obligations outlined by CDOC regulations, the Americans with Disabilities Act, 42 U.S.C. § 12132, the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the U.S. Constitution. Defendants were and continue to be deliberately indifferent to Mr. Martinez's obvious psychiatric needs by failing to provide him care and accommodations, and punishing him for his conduct caused by his lack of adequate accommodations for his mental care. Defendants' actions caused and continue to cause Mr. Martinez physical harm and emotional pain.

II. JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States and is brought pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12132, and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

8. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because all of Mr. Martinez's claims arise under federal law and Mr. Martinez seeks damages and equitable relief. Jurisdiction supporting Mr. Martinez's claim for attorneys' fees and costs is conferred by 42 U.S.C. § 1988 and 42 U.S. § 12205.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2). All of the events alleged herein occurred within the State of Colorado, and all of the parties were residents of the State of Colorado at the time of the events giving rise to this litigation.

10. Mr. Martinez further seeks declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201 and 2202, and 42 U.S.C. § 1983.

11. Mr. Martinez has exhausted all required administrative procedures and remedies on the issues addressed herein. There are no other administrative exhaustion requirements that would pose a bar to any of the claims in this case.

III. PARTIES

12. Plaintiff Eugene Martinez is a citizen and resident of the State of Colorado. He currently resides in the Sterling Correctional Facility, a CDOC prison.

13. At all times relevant to the subject matter of this litigation, upon information and belief, the following Defendants were residents of the State of Colorado and acting under color of state law as CDOC employees: Isaac served as a doctor and Barkey served as a Health Service Administrator, both at the Denver Receiving and Diagnostic Center (“DRDC”); Berndt served as a Mental Health Clinician, Toews served as a Social Worker, and Yates served as a correctional officer, all at Limon Correctional Facility (“LCF”); Estep served as Psychiatrist and Waters served as a mental health provider, both at the Centennial Correctional Facility (“CCF”); Stevens was a Mental Health Provider, Defendants Hagan and Johnson were correctional officers, and Taylor was a Mailroom Supervisor, all at Colorado State Penitentiary (“CSP”). Further, Defendant

Estep is currently the mental health program administrator for CDOC, and “review[s] and approve clinical mental health policies” of CDOC. AR 700-03(A)(1).

14. Defendant the Colorado Department of Corrections is a statutory entity of the State of Colorado created pursuant to C.R.S. § 24-1-128.5, and operates, maintains, and controls the operations of all correctional facilities in the State of Colorado. It is a “public entity” as that term is used by the ADA.

15. Defendant Dean Williams (“Williams”) is the current Executive Director of CDOC. Defendant Michelle Brodeur (“Brodeur”) is the current Director of CDOC’s Clinical & Correctional Services, which oversees CDOC’s Behavioral Health Programs, including CDOC’s Mental Health and Sex Offender Programs. Mr. Martinez seeks prospective injunctive relief against Defendants Williams and Brodeur in their official capacity only.

16. At all times relevant to the subject matter of this litigation, upon information and belief, Defendant Joy Hart was a resident of the State of Colorado and acting under color of law as the Chief of Behavioral Health Services at CDOC. As Chief of Behavioral Health Services, Defendant Hart “review[s] and approve clinical mental health policies” of CDOC. AR 700-03(A)(1).

IV. FACTUAL ALLEGATIONS RELEVANT TO ALL DEFENDANTS

A. Mr. Martinez Has a Long, Well-Documented History of Significant Mental Illness Requiring Treatment

17. Mr. Martinez has suffered from a severe mental health disability since childhood, with mental illness and schizophrenia playing a significant part in his family history -- three of his mother’s siblings were committed to a Colorado State Hospital for

their entire adult lives, and his father was an alcoholic who physically and mentally abused Mr. Martinez.

18. Mr. Martinez's mental health disability was obvious even in his early school days when he was held back in first grade and then placed in special education for the remainder of his school years until he left school in the ninth grade. His school records list him as having a severe "emotional behavior disorder."

19. As a teenager, Mr. Martinez began having hallucinations. He could not maintain relationships or a job, he acted out, and was arrested multiple times for stealing and fighting.

B. During His First Incarceration at CDOC Mr. Martinez was Diagnosed with a Serious Mental Health Disability and Provided Accommodations Including Intensive Medical and Mental Health Treatment

20. Mr. Martinez was first incarcerated with CDOC from 1995 to 2010. During this time, Mr. Martinez was diagnosed with, and treated for, serious mental disabilities.

21. CDOC's initial physical and mental evaluations in 1995 reported that Mr. Martinez had "physical symptoms so substantial as to imply somatic delusions, grossly disturbed perceptual and thought patterns, some depressive flavor, moderate agitation, bothersome, recurring thoughts, and marginal paranoid ideation." It was determined that he had "severe mental health issues and should be further evaluated by mental health staff."

22. Mr. Martinez's records demonstrate repeated reports of significant psychiatric symptoms, including hearing voices telling him to harm others and himself, suicidal ideations, and acting out sexually. On at least five occasions, Mr. Martinez's

disability posed a serious threat to his own physical safety, as he harmed himself, including by cutting and biting himself and overdosing on his medications.

23. Mr. Martinez was diagnosed with multiple mental disabilities while incarcerated at CDOC, including, among others (1) borderline personality disorder, which is characterized by unstable moods, behavior and relationships; (2) conversion disorder, which affects the nervous system and usually occurs after a period of emotional or physical distress; (3) exhibitionism, which is characterized by the compulsion to display one's genitals in public; and (4) major depressive disorder, recurrent, severe with psychotic features.

24. CDOC medical providers prescribed him numerous strong psychiatric medications throughout his first incarceration, including (1) Prozac, used to treat depression, obsessive compulsion disorder, and panic disorder, (2) Tegretol, used to treat seizures, nerve pain, and bi-polar disorder, (3) Risperdal, used to treat schizophrenia, bi-polar disorder, and irritability, (4) Sinequan, used to treat depression, anxiety, and sleep disorders, and (5) Cogentin, used to treat side effects.

25. During his first stay in CDOC, CDOC also sent Mr. Martinez to specialized treatment facilities to provide Mr. Martinez the intensive care he needed to function. He was treated four times at San Carlos Correctional Facility ("SCCF"), a facility that houses inmates with special needs, such as severe mental health disabilities, and two times at Colorado Territorial Correctional Facility ("CTCF"), one of CDOC's two medical infirmaries that provided inpatient treatment for psychological disorders.

C. Mr. Martinez's Non-Custodial Treatment Confirmed his Serious Mental Illnesses

26. After Mr. Martinez was released on parole on December 16, 2010, medical care providers outside CDOC confirmed his serious mental health disabilities.

27. On February 14, 2011, Dr. Jose Vega evaluated Mr. Martinez for eligibility in Pueblo County Department of Social Services' Aid to the Needy and Disabled program. Dr. Vega diagnosed Mr. Martinez with major depression that was recurrent, moderate with psychotic features and a history of PTSD and suspect personality disorder, not otherwise specified with antisocial traits.

28. On April 20, 2011, Mr. Martinez was evaluated by Dr. Brett Valette, who diagnosed him with major depression and antisocial personality disorder.

29. After a 2013 arrest, Mr. Martinez was evaluated for purposes of standing trial by Dr. Mirch, who concluded that he suffered from severe mental health disabilities, including schizophrenia, dissociative identity disorder, probable PTSD, and probable Traumatic Brain Injury.

V. ALLEGATIONS REGARDING LACK OF MENTAL HEALTH TREATMENT

30. On January 11, 2017, Mr. Martinez returned to CDOC custody to serve a 364-year to life sentence.

31. CDOC has a stated policy and custom of providing persons in its custody with necessary medical and mental health care. CDOC also has a policy against discrimination against persons with disabilities and has established policies and procedures to identify persons with disabilities and provide necessary accommodations to those individuals. Upon his return to CDOC custody, CDOC employees were

required to review Mr. Martinez's medical and mental health records, including his mental health diagnoses and history of repeated suicide attempts, to develop a treatment plan for him. See AR 700-03(IV)(B)(1). CDOC has a centralized record keeping system to allow providers and relevant staff at each of its facilities to review the records of all persons in its custody. CDOC mandates that its staff review these available records. It would be obvious to any medical provider reviewing these records that Mr. Martinez suffered and continues to suffer from serious mental health disabilities, with symptoms including hearing voices which command him to act out sexually and harm himself or others. They would further know that these disorders cannot be "cured" and will worsen without intense and necessary accommodations and medical interventions including medication, therapy, and appropriate housing.

A. Defendants Isaac and Barkey Were Deliberately Indifferent to Mr. Martinez's Need for Mental Health Care and Accommodations

32. In January 2017, Mr. Martinez met with Defendant Isaac, ostensibly to perform a mental health screening required by AR 700-03(IV)(B)(1).

33. During this meeting, Mr. Martinez reported to Defendant Isaac his history of mental illnesses, including that he harms himself and had two recent suicide attempts. Mr. Martinez told Isaac that he saw faces in the mirror and heard voices telling him to assault and kill prison staff. Mr. Martinez relayed that "my voices are telling me to attack them . . . since I was a little boy."

34. Defendant Isaac told Mr. Martinez that he believed Mr. Martinez suffered from a mental health disability and was a danger to himself such that Mr. Martinez needed emergency mental health treatment. Defendant Isaac therefore said he was

recommending an emergency transfer to SCCF for treatment, and placed Mr. Martinez on suicide watch while awaiting transfer to SCCF.

35. Two days later, Defendant Isaac told Mr. Martinez that the transfer had been rejected by someone “higher up” at CDOC. Isaac further told Mr. Martinez that the rejection was the wrong decision and that he would escalate the issue to his supervisor Defendant Barkey.

36. Defendants Isaac and Barkey met with Mr. Martinez and told him they were in agreement that he had a mental illness that needed treatment at SCCF. Defendant Barkey told Mr. Martinez that she would request Mr. Martinez’s transfer to SCCF.

37. Although both Defendants Isaac and Barkey concluded that Mr. Martinez suffered from a mental health disability and that Mr. Martinez was a danger to himself, they did not perform a comprehensive mental health written evaluation within the required 14 days as required by AR 700-03(IV)(B)(3). Nor did they create Mr. Martinez’s “treatment/management plan,” which needed an “appropriate referral to include transfer to a mental health facility for offenders whose psychiatric needs exceed the treatment capability of the facility.” *Id.*

38. Defendants Isaac and Barkey also never informed Mr. Martinez who made the decision to reject his transfer or provided a reasoned explanation why the transfer was rejected. He was not provided an opportunity to be heard on the transfer rejection or appeal the decision.

39. Notwithstanding that Defendants Isaac and Barkey had explicitly stated that Mr. Martinez needed *additional* medical care and that he should be transferred to SCCF, they proceeded to terminate Mr. Martinez's *existing* accommodations and medical care. Specifically, they ordered and/or permitted Mr. Martinez to be taken off suicide watch, which was a necessary accommodation for his disability, and placed in general population without any accommodations. At this time, they knew that placing Mr. Martinez in general prison population would pose a substantial risk of serious harm to him, both because his convictions as a sex offender made him a target of other inmates and because conditions in the general prison population would exacerbate his mental illnesses. They further took away Mr. Martinez's prescribed medications, directly contradicting their previous statements that Mr. Martinez was in need of mental health treatment.

40. As a result of Defendants Isaac and Barkey taking Mr. Martinez off his medications and placing him in general population, Mr. Martinez suffered a severe psychiatric episode. He heard voices and saw faces in the mirror telling him to harm himself, which caused him to bite himself, and punch and kick the cell walls and door, resulting in bloody knuckles. He was also so fearful for his life in general population that he imposed 24-hour lockdown on himself so that he would not be harmed by other inmates. He also violated rules in order to be transferred to intake and then solitary confinement so that he would not be harmed in general population.

B. Defendants Estep and Waters Were Deliberately Indifferent to Mr. Martinez's Need for Mental Health Care

41. In February 2017, Mr. Martinez was transferred to Limon Correctional Facility ("LCF"), and in March 2017, he was transferred to Centennial Correctional Facility ("CCF") for assessment for a Residential Treatment Program ("RTP"), a program that provides offenders with mental health treatment to promote transition into a conventional prison setting.

42. For transfer to a RTP, CDOC's Administrative Regulations ("AR") require CDOC staff to consider, among other things, whether a prisoner has a serious mental illness, whether the offender is a risk of self-injury, and whether the prisoner has significant impairment in their functioning as shown by incident reports, penal violations, and conflicts with other prisoners. AR 650-04(IV)(B).

43. According to the AR, a "serious mental illness" includes not only specific diagnoses, but "regardless of diagnoses," those prisoners indicating a high level of mental health needs demonstrated by "significant impairment in their ability to function within the correctional environment." AR 650-04(III)(U). A "significant functional impairment" includes evidence of "deliberate self-harming behaviors . . . difficulty maintaining activities of daily living . . . and/or a pervasive patten of dysfunctional, bizarre, or disruptive social interaction as a consequence of an underlying mental disorder. This includes offenders with psychological (P) codes 4 and 5 with any qualifier." AR 650-04(III)(V).

44. Mr. Martinez's assessment included a number of forms he was required to fill out on his own in his cell, and two fifteen-minute meetings with Defendants Estep and Waters.

45. During this second meeting, Defendants Estep and Waters informed Mr. Martinez that he would not be accepted into the RTP. When Mr. Martinez objected, explaining that he needed mental health care as shown by his medications, numerous instances and self-harm, and diagnoses of mental illness, Defendants Estep and Waters ended the meeting without further explanation of their decision.

46. In their written assessment, Estep and Waters labeled Mr. Martinez a malingerer without a serious mental illness, and who should not receive mental health medications. Their evaluation further stated that Mr. Martinez should not be allowed into the RTP and instead should be transferred to a facility "that can hold him accountable for his actions."

47. In writing this assessment, Defendants Estep and Waters knew that malingering and having a serious mental health issue are not mutually exclusive. They further knew that regardless of any desire for favorable treatment, Mr. Martinez did in fact suffer from serious mental health disability requiring accommodations and intensive mental health treatment, and that denial of such accommodations and treatment would cause Mr. Martinez incredible harm.

48. The evaluation was also facially inconsistent with CDOC's administrative regulations. Among other things, Defendants Estep and Waters (1) identified that Mr. Martinez engaged in self-harming and malingering behaviors but did not consider

whether those behaviors indicated a “serious mental illness” as a result of “significant functional impairment,” AR 650-04(IV)(B); (2) did not consider that Mr. Martinez’s P4N code already indicated a “significant functional impairment,” and (3) denied Mr. Martinez entry into the RTP due to his “aggressive behaviors.” However, CDOC’s regulations state that numerous incident reports, penal violations, conflicts with other prisoners, and the need for special supervision were criteria that weighed in favor of admission to an RTP. AR 650-04(IV)(B).

49. Defendants Estep and Waters deliberately chose to ignore Mr. Martinez’s serious mental and medical needs because of his behavior caused by his disability, including his sexual offense crimes and instances of exhibitionism while in custody—which they knew were attributable to his mental health disability. They also knew that their assessment of Mr. Martinez—which purported to be a thorough evaluation to create a baseline of his mental health—would be used by CDOC employees to deny him future mental health care and accommodations, including his placement within CDOC.

50. Mr. Martinez was not provided an opportunity to be heard on the assessment, including being labeled a “malingering” without a serious mental illness. Nor was he provided an opportunity to appeal this assessment.

51. Because CDOC did not provide Mr. Martinez an opportunity to object or appeal, this facially defective assessment would continue to follow Mr. Martinez when transferred to other facilities. By mis-labeling Mr. Martinez a “malingeringer” without a serious mental illness and recommending that he not receive his mental health

medication and accommodations, Estep and Waters purposefully and deliberately denied Mr. Martinez necessary medical and mental health treatment both at CCF and at any later facility that housed him.

52. As a direct result of Defendants Estep and Waters denying Mr. Martinez access to mental health treatment and taking him off medications he had been on for years, Mr. Martinez suffered a severe psychiatric episode where he heard voices and saw faces in the mirror telling him to harm himself. This psychiatric episode continued and worsened during his transfer back to LCF, where he attempted to commit suicide twice, as described in more detail below.

C. Defendants Toews and Berndt Were Deliberately Indifferent to Mr. Martinez's Need for Mental Health Care

53. Defendants Toews and Berndt met with Mr. Martinez when he arrived at LCF.

54. Defendants Toews and Berndt, having previously met with Mr. Martinez when he was at LCF in February 2017, were aware of Mr. Martinez's mental health disability and his need for medical and mental health care, as well as other accommodations including appropriate housing. They were also aware that placing him in general population would pose a substantial risk of serious harm to Mr. Martinez, both because his convictions as a sex offender made him a target of other inmates and because conditions in the general prison population would exacerbate his mental illnesses. During their visit with him, it was also obvious that Mr. Martinez was suffering a serious mental health crisis as Mr. Martinez reported that he was suffering auditory

and visual hallucinations. They nonetheless placed Mr. Martinez in general population with a cell mate, with no medication, and with no substantive mental health care.

55. In his cell, Mr. Martinez followed his hallucinations telling him to kill himself by cutting open his arm. When Mr. Martinez came out of his episode, Mr. Martinez was shocked to see blood everywhere and summoned the guards to get him medical care.

56. After Mr. Martinez's wounds were stitched closed, Defendants Toews and Berndt placed Mr. Martinez on suicide watch.

57. Although the CDOC AR required Defendants Toews and Berndt to create a treatment plan for Mr. Martinez focused on preventing further self-injury, AR 700-03(IV)(E), they not only deliberately failed to create this plan but further ordered that Mr. Martinez be placed back to the general prison population after only a few hours on suicide watch, in deliberate indifference to his serious medical and mental health needs.

58. At the time they took Mr. Martinez off suicide watch, Defendants Toews and Berndt knew that Mr. Martinez needed serious mental health care and that he would harm himself and others without this care.

59. Defendants Toews and Berndt's actions caused Mr. Martinez to harm himself and suffer emotionally. Indeed, due to Defendants Toews and Berndt's deliberate refusal to treat Mr. Martinez, he had yet another severe psychiatric episode during the transfer, where he attempted once again to commit suicide by biting open his wounds.

D. Defendant Stevens was Deliberately Indifferent by Failing to Treat Mr. Martinez's Serious Mental Health Disability and Denying Him Treatment

60. On May 22, 2017, Mr. Martinez was transferred to the Colorado State Penitentiary ("CSP") and placed in general population.

61. Upon his arrival, Mr. Martinez was not provided a mental health screening as required by AR 700-03(IV)(B)(2) and was not given any substantive or meaningful mental health treatment. Although mental health professionals would periodically walk by his cell and Mr. Martinez would ask for treatment, these individuals deliberately ignored his requests. Mr. Martinez therefore filed a series of grievances to Defendant Stevens, who was the mental health supervisor.

62. Defendant Stevens saw Mr. Martinez on January 10, 2018. Mr. Martinez explained his history of mental illnesses, his auditory and visual hallucinations, his history of self-harm and suicide attempts, and his schizophrenia diagnosis in 2017. Despite Mr. Martinez's need for mental health care being obvious, Stevens refused to provide Mr. Martinez any of the necessary medical or mental health care.

63. In March 2018, Mr. Martinez requested a mental health evaluation at CSP. Defendant Stevens denied this request, stating in Mr. Martinez's records that he had already been diagnosed as a malingerer and further testing would not lead to a different result or be necessary.

64. Defendant Stevens made this decision despite knowing that any alleged "malingering" by Mr. Martinez does not exclude that Mr. Martinez is also suffering from serious mental illnesses, and knowing that Mr. Martinez did in fact suffer from serious

mental illnesses as shown by his two suicide attempts since Defendants Estep and Waters' assessment and his long reported record of mental illnesses.

65. Defendant Stevens continued to deny Mr. Martinez mental health treatment for the duration of his stay at CSP. For example, Defendant Stevens ignored his "sick call slips" asking for help, including on January 13, 2018; January 17, 2018; January 21, 2018; February 23, 2018; March 30, 2018; April 3, 2018; April 16, 2018; May 15, 2018; May 29, 2018; October 5, 2018; and October 18, 2018. Defendant Stevens deliberately chose to ignore Mr. Martinez' numerous pleas for necessary medical and mental health treatment.

66. Defendant Stevens also ridiculed Mr. Martinez after he wrote an emergency grievance request to the warden stating that he was a risk to himself, and that he was in danger of choking himself with his hands. In response, Defendant Stevens stated, "It is not possible to choke yourself until you lose consciousness using your own hands. Please contact us when you are ready to be honest about your treatment needs."

67. Upon information and belief, Defendant Stevens chose to ignore Mr. Martinez's serious mental illnesses because Mr. Martinez' exhibited disruptive behavior that was caused by his disability. Rather than providing appropriate medical and mental health treatment for this disability, Defendant Stevens chose to punish the behavior.

68. As a result of Defendant Stevens' refusal to provide Mr. Martinez mental health care, Mr. Martinez's mental health deteriorated. He continued to hear voices and engaged in self-harm, causing Mr. Martinez mental pain, anguish, and physical injuries,

which in the instance of him choking himself resulted in bruises around his left eye and forehead. He also engaged in disruptive behavior and was punished, even though this was a symptom of his mental illnesses.

E. Mr. Martinez Is Repeatedly Placed in Solitary Confinement Despite His Serious Mental Health Disability

69. Mr. Martinez has been placed in solitary confinement on numerous occasions despite C.R.S. § 17-1-113.8, providing that CDOC may not “place a person with a behavioral or serious mental health disorder in long-term isolated confinement except when exigent circumstances are present.”

70. For example, following Mr. Martinez’s two suicide attempts at LCF, Mr. Martinez was placed on “suicide watch” for 24 days. Despite its name, this “suicide watch” was not for medical treatment, but rather to punish Mr. Martinez because of his disability. This “suicide watch” was in the same cell used for solitary confinement, and Mr. Martinez was placed there by himself with no personal belongings or access to any accommodations, services or programs. He did not receive any medical or mental health treatment during this time.

71. CDOC staff placed Mr. Martinez in this cell, not by conducting an independent evaluation of Mr. Martinez’s mental state, but by relying on Defendant Estep’s and Defendant Waters’s earlier statement that Mr. Martinez was not suffering from a serious mental illness. Despite having access to Mr. Martinez’s full medical and mental health records showing that he suffered from a serious mental health disability, Defendant Hart personally reviewed and approved this decision despite knowledge that

placing a person who suffers from a serious mental health disability in solitary confinement can cause significant physical and emotional harm to that person.

72. Beyond this 24-day punishment, Mr. Martinez was repeatedly placed in solitary confinement on numerous occasions despite his serious mental illnesses, including on June 23, 2017; December 7, 2017; March 5, 2018; July 25, 2018; August 10, 2018; September 2, 2018; October 5, 2018; and November 13, 2018. Each of these stays was for multiple days, often for one to two weeks at a time.

F. Defendants Williams, Brodeur, Hart, and Estep Are Continuing to Violate Mr. Martinez's Rights by Maintaining a Custom or Policy of Deficient Medical Services at CDOC

73. Defendants Williams and Brodeur, the Executive Director of CDOC and the Director of CDOC's Clinical Services, are responsible for CDOC's policies relating to Mental Health Services and the continued operation of those policies. Defendant Hart, Chief of Behavioral Health Services, and Defendant Estep, the mental health program administrator, "review and approve clinical mental health policies" of CDOC. AR 700-03(A)(1).

1. CDOC Is Required to Provide Necessary Mental Health Care

74. State laws and the AR outline the procedures that CDOC must follow in evaluating and providing mental health treatment for inmates such as Mr. Martinez. CDOC is required to review an inmate's historical records of psychiatric treatment, medications, and history of suicide and other symptoms in order to identify individual

treatment needs. This review is necessary for determining the inmate's psychological needs level. See C.R.S. § 17-40-103; AR 700 03(IV)(B)(2).

75. If an inmate is referred for mental health treatment, the AR requires that CDOC conduct a written mental health evaluation within fourteen days. This evaluation must include review of the inmate's mental health history in addition to data from interviews and observation to develop a treatment plan, "to include treatment to a mental health facility" if the inmate's needs exceed the treatment capability of the facility. AR 700-03(IV)(B)(3).

76. When an inmate engages in self-harm, the AR requires a mental health clinician to develop and implement a treatment plan. If an inmate already has such a plan, the clinician must update that plan to include treatment specifically addressing prevention of further self-injury. AR 700-03(IV)(E).

2. CDOC's Documented Failure to Provide Necessary Mental Health Care

77. A November 2016 Audit by the Colorado Office of the State Auditor (the "Audit") found that CDOC consistently violated its own regulations regarding providing mental health care to persons in custody. As a threshold matter, the Audit found that CDOC "lacks a number of controls to help ensure that offenders' mental health needs are accurately identified and recorded." See COLORADO OFFICE OF THE STATE AUDITOR, DEPARTMENT OF CORRECTIONS BEHAVIORAL HEALTH PROGRAMS: PERFORMANCE AUDIT 17 (Nov. 2016); available at https://leg.colorado.gov/sites/default/files/documents/audits/1556p_behavioral_health_programs_0.pdf.

78. The Audit specifically identified over 150 inmates who had a “major mental illness” diagnosis who had not been assigned the appropriate psychological needs code (“P code”). *Id.* at 15. Moreover, CDOC had removed a major mental illness code from 80 prisoners even though the prisoner’s diagnoses did not change, and CDOC staff had not even developed a treatment plan pursuant to the AR for 48% of prisoners with moderate to severe mental health needs. *Id.* at 15, 27.

79. The Audit specifically warned that these shortcomings would result in inappropriate and inconsistent mental health treatment, and suggested that inmates may be “placed in facility or cell housing arrangements that are prohibited by statute and the Department’s regulations.” *Id.* at 20.

80. CDOC knew that it was failing to meet acceptable standards of care in providing mental health care to persons in custody and admitted to the auditors that it did not expect to meet its mental health requirements and standards in the future. *Id.* at 123. Despite knowledge that it was providing substantially inadequate mental health care, Defendants did not materially change its policies and practices regarding providing this care to persons with mental health disabilities. Despite knowing for several years that it was not providing appropriate and necessary mental health care, Defendants in this case continued to be blatantly and deliberately indifferent to the necessary medical, mental health, and accommodation needs of Mr. Martinez.

81. It is well-settled that the lack of necessary medical and mental health treatment is likely to exacerbate serious mental health disabilities. As noted in HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 1

(OCT. 21, 2003), “[w]ithout the necessary care, mentally ill prisoners suffer painful symptoms and their conditions can deteriorate. They are afflicted with delusions and hallucinations, debilitating fears, extreme and uncontrollable mood swings. . . . They refuse to obey orders or lash out without apparent provocation. They beat their heads against cell walls, smear themselves with feces, self-mutilate, and commit suicide.”

82. Upon information and belief, Defendants CDOC, Williams, Brodeur, Hart, and Estep have willfully condoned and allowed CDOC’s custom and policy of failing to provide medically necessary mental health care and treatment, including to Mr. Martinez. For example, despite knowing from the Audit about the systemic failures at CDOC to identify the serious mental health needs of people in custody, Williams, and Brodeur knowingly continue to maintain a custom and policy that improperly allows CDOC staff to ignore Mr. Martinez’s serious mental illnesses and deny him necessary medical and mental health treatment and accommodations. Moreover, Defendants Williams and Brodeur have knowingly maintained a custom and policy that permits CDOC providers and staff to ignore its own written mandates on the need to evaluate a person’s serious mental health needs, and this in turn led to the failure to properly evaluate and continue to re-evaluate Mr. Martinez’s serious mental health needs. Upon information and belief, CDOC and the other Defendants are aware and have refused to address the systemic problems with its Mental Health programs, which have been and continues to be chronically understaffed, experience frequent turnover, and fails to provide its staff with adequate training.

83. Defendant Williams, as Executive Director, has the power to transfer an inmate between correctional facilities. C.R.S. § 17-1-105. The Executive Director has the authority to transfer an inmate “who has a behavioral or mental health disorder . . . and who cannot be safely confined in a correctional facility.” C.R.S. § 17-23-101(1)(a); *see also* AR 600-03; *see also* C.R.S. § 17-1-105(1)(a). Moreover, the Executive Director must make any such transfer decision pursuant to a policy “that provides for due process guarantees prior to the transfer of an inmate.” C.R.S. § 17-23-101(1)(b); *see also* AR 600-03.

84. However, Defendant Williams continues to refuse to transfer Mr. Martinez to a facility, such as the San Carlos Correctional Facility, that can treat Mr. Martinez’s serious mental health needs. Moreover, CDOC no longer maintains a contractual arrangement with the Colorado Mental Health Institute at Pueblo (“CMHIP”), despite transferring prisoners to CMHIP for mental health treatment in the past.

85. Upon information and belief, Defendants Williams and Brodeur are also maintaining a policy or custom that permits CDOC staff to deny prisoners transfers without due process guarantees. Despite knowing that transfers must be made while providing due process guarantees, and creating written policies that require due process, Defendants Williams and Brodeur have maintained a policy or custom that permits CDOC staff to deviate from these written policies. For example, as discussed above, Mr. Martinez’s transfers to SCCF were denied by CDOC despite the recommendation of Defendants Isaac and Barkey. Moreover, CDOC refuses to transfer

Mr. Martinez while not providing him the opportunity to rebut his label as a “malinger,” or provide alternative evidence of his serious mental illnesses.

86. Defendants Williams’s, Brodeur’s, Hart’s, and Estep’s maintenance of these customs and policies has caused ongoing violations of Mr. Martinez’s constitutional rights. Mr. Martinez’s treatment by CDOC staff is consistent with the chronic deficiencies identified in CDOC’s provision of mental health services. Upon information and belief, Defendants Williams, Brodeur, Hart, and Estep continue to maintain these customs and policies today. As a result, Mr. Martinez is not presently receiving adequate medical treatment to address his mental illnesses and is not being housed at a facility that is appropriate to treat his mental illnesses. By not adequately treating Mr. Martinez, these decisions are currently causing Mr. Martinez harm, mental anguish, and result in Mr. Martinez’s self-harm.

VI. ADDITIONAL ALLEGATIONS REGARDING CONFINEMENT

A. Defendant Yates Used Excessive Force on Mr. Martinez

87. In February 2017 at LCF, Defendant Yates assisted in transferring Mr. Martinez to general population after his second suicide attempt.

88. At the time of his transfer, Mr. Martinez was still hearing voices instructing him to bite open his wounds, which Martinez attempted to do, despite being handcuffed.

89. In response, Defendant Yates and others kicked Mr. Martinez, forced him to the ground, and then continued to kick Mr. Martinez even after Mr. Martinez no longer posed any threat to himself or others. Rather, Mr. Martinez was prone on the ground and not resisting while Defendant Yates continued to assault him.

90. As a result of Defendant Yates's assault, Mr. Martinez suffered physical injuries including bruising and emotional distress and harm.

B. Defendants Hagan and Johnson Failed to Protect Mr. Martinez from Harm

91. While at CSP, Mr. Martinez was moved into a "soft pod" because there was serious risk that he would be harmed from gang violence and other violent offenders. Soft pods are cells for high risk individuals, such as sex offenders, gang dropouts, and others who need to be separated from general population for their safety.

92. Defendants Hagan and Johnson were responsible for determining placement of inmates and their duties include determining whether placing any particular inmate into a soft pod would likely cause conflict between inmates already in the pod and lead to violence.

93. In the summer of 2017, Defendants Hagan and Johnson were determining whether to place Mr. McCollum (#154078) into the same soft pod in which Mr. Martinez was housed. As part of their investigation, they interviewed each inmate in the pod, including Mr. Martinez.

94. When Defendants Hagan and Johnson met with Mr. Martinez and asked him if he had any issues with Mr. McCollum, Mr. Martinez informed them that just a few months prior and at a previous facility, Mr. McCollum had threatened to kill Mr. Martinez if he ever saw Mr. Martinez given Mr. Martinez's convictions for sexual assault. Mr. Martinez also told them that he had filed two custody statements describing the threat Mr. McCollum posed to Mr. Martinez, including one at CSP just a month earlier. In the custody statement at CSP, Mr. Martinez asked to be held separated from Mr. McCollum

because Mr. Martinez believed that Mr. McCollum would try to kill him if he was given the chance.

95. Defendants Hagan and Johnson knew that Mr. McCollum posed a substantial risk of serious harm to Mr. Martinez given Mr. McCollum was aware that Mr. Martinez was a sex offender, had threatened to kill Mr. Martinez mere months earlier, and had a history of violent attacks against other inmates. Indeed, Defendants Hagan and Johnson told Mr. Martinez that Mr. McCollum “was a problem wherever he went” and had a long history of stabbing other inmates.

96. Despite knowing that Mr. McCollum posed a serious threat of violence to Mr. Martinez, on or about February 2018, Defendants Hagan and Johnson moved Mr. McCollum into Mr. Martinez’s soft pod. Defendants Hagan and Johnson further disregarded this risk by taking no action to coordinate Mr. Martinez’s and Mr. McCollum’s “out time” from their cells so that they would not overlap.

97. Once Mr. McCollum was moved into Mr. Martinez’s soft pod, other inmates told Mr. Martinez that Mr. McCollum said he was “going to get” Mr. Martinez. Upon hearing these threats, Mr. Martinez relayed them to Defendants Hagan and Johnson and requested that they be separated. Despite this further confirmation that Mr. McCollum posed a substantial risk of serious harm to Mr. Martinez, Defendants Hagan and Johnson took no action.

98. On or about March 5, 2018, Mr. McCollum attacked Mr. Martinez in a beating that lasted between ten and twenty minutes. Unable to protect himself, Mr. Martinez curled in a ball while Mr. McCollum punched and kicked him repeatedly.

99. The correctional officers did nothing to stop Mr. McCollum from continuing his assault. Instead, these officers, including Defendants Hagan and Johnson, simply yelled for Mr. McCollum to stop, which Mr. McCollum did not do until he tired out.

100. As a result of Defendants Hagan and Johnson's failure to keep Mr. Martinez separated from Mr. McCollum, Mr. Martinez suffered severe bodily injury including contusions on his face, a chipped tooth, and severe bruising causing both his eyes to swell shut.

C. Defendants Johnson and Hagan Retaliated Against Mr. Martinez for Filing Grievances

101. After receiving medical treatment, Mr. Martinez was placed into solitary confinement, where he wrote grievances regarding Defendants Hagan and Johnson's failure to prevent Mr. McCollum's assault of Mr. Martinez.

102. Upon learning of Mr. Martinez's grievances, Defendants Hagan and Johnson transferred Mr. Martinez from solitary confinement to general population.

103. At the time of the transfer, Defendants Hagan and Johnson knew general population would pose a substantial risk of serious harm to Mr. Martinez, both because his convictions as a sex offender made him a target of other inmates and because conditions in the general prison population would exacerbate his mental illnesses. Indeed, they had initially placed Mr. Martinez in a soft pod to protect him from inmates in general population.

104. Defendants Hagan and Johnson transferred Mr. Martinez to punish Mr. Martinez for filing grievances against them – they would not have transferred him but for

his grievances against them, as shown by them transferring Mr. Martinez to general population within only days of Mr. Martinez's grievances.

105. In general population, Mr. Martinez suffered emotional distress and pain. He was so fearful for his life that he imposed 24-hour lockdown on himself. He also repeatedly violated rules to be transferred to intake and then solitary confinement so that he would not be harmed in general population. He further refrained from filing any grievances for fear that he would never be transferred out of general population.

D. Defendant Taylor Failed to Forward Mr. Martinez's Mail at the Colorado State Penitentiary

106. On or about May 25, 2017, Mr. Martinez was transferred to the Colorado State Penitentiary ("CSP"), and almost immediately had problems getting responses to letters he sent.

107. Mr. Martinez wrote dozens of letters to various individuals, including family, friends, churches, and others. In these letters, he complained about his treatment at CDOC, including that at CSP he was placed in a pod with inmates that would spit and launch urine and feces at him, and that CSP officers did nothing about these conditions.

108. For the entirety of his time at CSP, Defendant Taylor destroyed and/or refused to send Mr. Martinez's letters.

109. Defendant Taylor refused to send his letters because she disagreed with their content complaining about Mr. Martinez's conditions of confinement.

110. Defendants Taylor's refusal to send Mr. Martinez's mail served no governmental interest.

VII. CLAIMS FOR RELIEF

A. 42 U.S.C. § 1983 - Deliberate Indifference to Serious Medical Needs and Failure to Protect in Violation of the Eighth Amendment [Against Defendants Isaac, Barkey, Toews, Berndt, Estep, Waters, and Stevens]

111. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 30-86.

112. Each of Defendants Isaac, Barkey, Toews, Berndt, Estep, Waters and Stevens knew that Mr. Martinez required intensive mental health care and accommodations for his serious mental illnesses, and violated Mr. Martinez's rights provided by the Eighth Amendment of the Constitution through the following acts and/or omissions:

113. As to Defendants Isaac and Barkey, although they determined that Mr. Martinez required mental health treatment and should be transferred to SCCF, they willfully and deliberately removed Mr. Martinez's necessary psychiatric medications, took him off suicide watch, and ultimately released him into general population, knowing that these acts would cause him serious physical and emotional harm.

114. Defendants Isaac and Barkey's deliberate and willful actions caused Mr. Martinez to have a serious psychiatric episode where he bit himself, punched the wall until his knuckles bled, and he suffered physical pain and mental anguish. Further, in general population, Mr. Martinez was so fearful for his life that he imposed 24-hour lockdown on himself so that he would not be harmed by other inmates. The actions of these Defendants placed Mr. Martinez in a position where he had no choice but to violate CDOC rules in order to be transferred to a safe location, solitary confinement, to

protect himself from being harmed, and his serious fear of being harmed, in general population.

115. Defendants Estep and Waters deliberately denied Mr. Martinez access to treatment of his mental disorders by labeling him a malingerer without a mental illness, and recommending that he not be provided mental health care even though they knew he suffered from serious mental illness and required care.

116. Defendants Estep's and Waters' deliberate refusal to provide Mr. Martinez any substantial mental health care and taking him off medications he had been on for years caused Mr. Martinez physical pain and mental anguish, resulting in Mr. Martinez having a psychiatric episode where he attempted to commit suicide twice.

117. Defendants Toews and Berndt deliberately refused to provide Mr. Martinez any mental health care despite knowing Mr. Martinez's critical need, instead placing him in general population, refusing to provide him any psychiatric medications, and denying him any substantial mental health care even after his suicide attempts.

118. Defendants Toews and Berndt's actions caused Mr. Martinez physical pain and mental anguish, including his two suicide attempts.

119. Defendant Stevens repeatedly and deliberately denied Mr. Martinez mental health care, even after his numerous requests for help and reports of self-harm.

120. Defendant Stevens's actions caused Mr. Martinez physical pain and mental anguish, including bruising when he attempted suicide by choking himself.

121. Defendants Isaac, Barkey, Toews, Berndt, Estep, Waters, and Stevens were deliberately indifferent, acted maliciously and wantonly with callous indifference to

Mr. Martinez's serious medical and psychiatric needs, and had no legitimate reason or penological purpose for denying Mr. Martinez adequate medical care and transferring him to general population. That Defendants acted maliciously and wantonly is shown by their refusal to provide Mr. Martinez mental health treatment despite knowing that he both needed the treatment and would deteriorate and engage in self-harm without it.

122. Defendants Isaac, Barkey, Toews, Berndt, Estep, Waters and Stevens violated Mr. Martinez's rights under the Eighth Amendment while acting under the color of law. Defendants' actions proximately caused Mr. Martinez physical pain, injuries, and mental anguish.

B. 42 U.S.C. § 1983 - Deprivation of a Liberty Interest in Violation of the Fourteenth Amendment [Against Defendants Williams, Brodeur, Hart, Isaac, Barkey, Toews, Berndt, Estep, Waters, and Stevens]

123. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 30-86.

124. Mr. Martinez has a liberty interest in avoiding the general prison population or otherwise avoiding being housed in a CDOC facility where he cannot be safely confined due to a behavioral or mental health disorder.

125. A liberty interest arises from Colorado's policies and regulations on prisoner placement as applied to those with mental health disorders, which prohibits long-term isolated confinement absent exigent circumstances for mentally ill patients, C.R.S. § 17-1-113.8(1), requires evaluations and treatment plans for inmates, AR 700-03(IV)(B)(3), AR 700-03(IV)(E), and requires transfer if an inmate cannot be treated at the current facility. C.R.S. § 17-23-101(1)(a); see also AR 650-04(IV)(B). These

regulations further provide that any prisoner under consideration for such a transfer has a right to a hearing on the issue, the right to present evidence, cross-examine witnesses, and appeal the decision. AR 600-03(IV)(A)(5).

126. The release of Mr. Martinez into the general prison population or a CDOC facility where he cannot be safely confined imposes an atypical and significant hardship on Mr. Martinez. In particular, in the general prison population, Mr. Martinez is threatened and experiences physical injuries by CDOC staff and other inmates because he is a known sex offender. Mr. Martinez also experiences physical and mental injuries because of his untreated mental illnesses. Mr. Martinez has also experienced physical and mental injuries due to repeated placements in solitary confinement from behavior tied to his mental health. In contrast, at a facility like SCCF, where Mr. Martinez was previously housed, he did not suffer physical and mental injuries because he received intensive mental health treatment and was stabilized.

127. Failure to transfer Mr. Martinez to a mental health facility where he can receive appropriate treatment violates his liberty interest. Failing to transfer Mr. Martinez does not serve a legitimate penological interest, it results in extreme conditions, and the failure to transfer is indefinite.

128. Each of the following Defendants violated Mr. Martinez's due process rights by failing to give Mr. Martinez any opportunity to challenge or appeal their decisions denying him treatment and placement within CDOC:

129. Defendants Williams, Brodeur, and Hart violated Mr. Martinez's due process rights by failing to give Mr. Martinez any opportunity to challenge or appeal the

denial of his placement to SCCF, and failing to give Mr. Martinez any explanation. Defendant Williams, as CDOC Executive Director, has ultimate authority for prisoner transfers, and was responsible for the denial of Mr. Martinez's transfer. Upon information and belief, Defendants Brodeur and Hart were also responsible for the denial of the transfer based on their authority as the Director of Clinical & Correctional Services, and Chief of Behavioral Health Services.

130. Defendants Isaac and Barkey violated Mr. Martinez's due process rights by failing to provide Mr. Martinez any opportunity to challenge the denial of his placement to SCCF, transfer of Mr. Martinez into general population, and failure to develop a written "treatment/management plan" pursuant to AR 700-03(IV)(B)(3).

131. Defendants Estep and Waters violated Mr. Martinez's due process rights by failing to provide Mr. Martinez an opportunity to respond and appeal their decision to deny him entry into the CCF RTP and/or challenge their assessment that Mr. Martinez was not entitled to mental health treatment.

132. Defendants Toews and Berndt violated Mr. Martinez's due process rights by failing to provide Mr. Martinez an opportunity to challenge or appeal his placement into general population, and failure to independently evaluate Mr. Martinez after his May 2017 suicide attempts and create a treatment plan as required by AR 700-03(IV)(E).

133. Defendant Hart violated Mr. Martinez's due process rights by approving Mr. Martinez's placement in isolated confinement without a reasoned examination of Mr. Martinez's condition following two suicide attempts.

134. Defendants Stevens violated Mr. Martinez's due process rights by denying Mr. Martinez opportunities to be reevaluated for mental health issues and providing him no opportunity to challenge or appeal these decisions, instead finding that further testing would not result in different diagnoses from Dr. Estep's assessment.

135. All Defendants violated Mr. Martinez's procedural due process protected by the Fourteenth Amendment, proximately causing Mr. Martinez physical pain and mental anguish.

C. 42 U.S.C. § 1983 - Deliberate Indifference to Medical Needs Based on Custom and Practice in Violation of the Eighth Amendment Against Defendants Williams, Brodeur, Hart, and Estep

136. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 30-86.

137. By the nature of their positions, Defendants Williams, Brodeur, Hart, and Estep are responsible for CDOC policies and customs regarding medical health care of prisoners.

138. These Defendants were aware that CDOC has a custom or policy of providing deficient mental health services, as was outlined by the November 2016 Audit, and as demonstrated by CDOC's mistreatment of Mr. Martinez.

139. These Defendants have allowed a custom and/or policy allowing CDOC staff to be deliberately indifferent to Mr. Martinez's serious mental health needs by improperly identifying his serious mental health needs as a form of malingering and/or stating that he has no mental health requirements despite his obvious and well-documented mental illnesses. Evidence of this deliberate indifference is shown by

these Defendants allowing a custom and/or policy of refusing to provide necessary medical care and even deviating from the AR by not conducting a proper mental health evaluation of Mr. Martinez, not establishing a proper mental health treatment plan for Mr. Martinez, not conducting proper suicide assessments for Mr. Martinez, placing Mr. Martinez in isolated confinement despite his serious mental health needs, and not placing Mr. Martinez in a proper intensive mental health treatment. Upon information and belief, Defendants Williams, and Brodeur are also maintaining an understaffed mental health program.

140. Defendants Williams, Brodeur, Hart, and Estep knew that a failure to remedy CDOC's deficient mental health care, as identified by the Audit, would create a serious and substantial risk of the failure to provide necessary medical care and result in constitutional violations like the ones Mr. Martinez suffered described above.

141. These Defendants were deliberately indifferent and acted with callous indifference to the risk that CDOC's customs or policy would result in deficient medical care and constitutional violations.

142. Defendants Williams, Brodeur, Hart, and Estep violated Mr. Martinez's rights under the Eighth Amendment, and are continuing to violate Mr. Martinez's rights by maintaining such customs and policies, causing Mr. Martinez physical pain and mental anguish.

D. 42 U.S.C. § 12132 - Violation of Americans with Disabilities Act [Against Defendant CDOC]

143. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 30-86.

144. Under the ADA, CDOC may not discriminate or otherwise exclude prisoners from services, programs, or activities because of their disabilities. 42 U.S.C. § 12132. The ADA further requires prisons to “ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals,” 28 CFR § 35.152(b)(2), and “implement reasonable policies . . . so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.” 28 CFR § 35.152(b)(3).

145. The “programs, services, and activities” that CDOC provides to prisoners include, but are not limited to, the full use and enjoyment of prison socializing areas, sleeping areas, dining halls, vocational and education training, recreational facilities, bathing and restroom facilities, medical clinics, medical and mental health services, employment opportunities, prison safety and security, and other programs, services, and activities.

146. Mr. Martinez is “a qualified individual with a disability” as a person who suffers from a “mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A). Mr. Martinez meets the essential eligibility requirements for participation in CDOC’s programs, services, and activities, and is otherwise qualified to participate and receive the programs, services, and activities provided by CDOC to inmates within the meaning of Title II of the ADA.

147. CDOC has excluded, and continues to exclude, Mr. Martinez from the full use and meaningful participation of CDOC’s programs, services, and activities that are

provided to other prisoners, solely by reason of Mr. Martinez's disability in violation of the ADA. In addition, CDOC has violated the ADA by intentionally failing or refusing to provide reasonable accommodations to Mr. Martinez.

148. CDOC discriminatorily precluded Mr. Martinez from accessing medical treatment, including precluding access to prescription medicine for his mental illness and intensive treatment through a mental health program or at a mental health facility. As a result, Mr. Martinez's serious mental illness remain untreated. CDOC denied Mr. Martinez access to medical treatment based on Mr. Martinez's disability.

149. Mr. Martinez's mental impairment creates a danger to Mr. Martinez while housed in the general prison population, and Mr. Martinez therefore cannot, without accommodation, meaningfully use and participate in CDOC's programs, services, and activities, solely due to his disability, that are otherwise offered to other inmates. CDOC has also failed to "implement reasonable policies" to ensure that Mr. Martinez has "access to safe, appropriate housing." 28 CFR § 35.152(b)(3).

150. CDOC has also repeatedly placed Mr. Martinez in solitary confinement and suicide watch, a form of solitary confinement that is even more restrictive because he is not provided any personal items, due to his disability or on account of behaviors caused by his disability. While in solitary confinement and/or suicide watch, Mr. Martinez is excluded from many of CDOC's programs, services, and activities, solely due to his disability, that are otherwise offered to other inmates. Moreover, Mr. Martinez's placement in solitary confinement also violates the ADA because it is not the

“most integrated setting appropriate to the needs of the individual[.]” 28 CFR § 35.152(b)(2).

151. CDOC is and has been aware that Mr. Martinez suffered from a disability and that Mr. Martinez had a record of such mental impairment. Mr. Martinez’s mental impairment is and was obvious to CDOC based on his auditory hallucinations and his multiple incidents of self-harm and suicide attempts. CDOC is and was also aware of Mr. Martinez’s prior medical records and diagnoses of mental illness that served as a record of such mental impairment.

152. CDOC is and has been aware that Mr. Martinez needed accommodations to participate in CDOC’s programs, services, and activities. Mr. Martinez’s mental impairment and attempts at self-harm and suicide created an obvious need for accommodation. Mr. Martinez repeatedly requested accommodations for his mental health disability while at DRDC, LCF, CSP, and CCF. Moreover, CDOC staff, including Defendants Isaac, Barkey, Toews, Berndt, Estep, Waters, and Stevens actually knew that Mr. Martinez’s mental impairment made him a danger to himself if Mr. Martinez was housed in the general prison population without accommodation.

153. Despite CDOC’s knowledge of Mr. Martinez’s disability and need for accommodation, CDOC refused to make reasonable accommodations and discriminated against Mr. Martinez on the basis of his disability. Among other things, CDOC has failed to modify:

- a. its policies and procedures to provide safe housing for Mr. Martinez in the general prison population that would limit his propensity to self-harm;
- b. its policies and procedures to provide Mr. Martinez meaningful access to CDOC's activities, programs, and services in a safe way that would not lead Mr. Martinez to self-harm and harm by others;
- c. its policies and procedures to provide Mr. Martinez adequate out-of-cell time, social interaction, environmental stimulation, and individualized mental health treatment to prevent worsening mental health symptoms and self-harm and harm by others;
- d. its policies and procedures to ensure Mr. Martinez is provided necessary accommodations, including medical treatment such access to prescription medicine for his disability and intensive treatment at a mental health facility;
- e. its policies and procedures to ensure that individuals with disabilities like Mr. Martinez are not routinely placed in solitary confinement as punishment for conduct caused by his disability, and are provided appropriate housing in the most integrated setting possible to accommodate his disability;
- f. its disciplinary system to reflect that individuals with disabilities like Mr. Martinez are punished when their disability causes them to engage in behavior that does not conform to prison rules, and instead CDOC

responds to disability-related behaviors by charging individuals with infractions and sending them to solitary confinement.

154. As a direct and proximate cause of Defendants' acts and omissions, Mr. Martinez has suffered and continues to suffer from harm and violation of his ADA rights. Those harms include direct physical injury in the form of Mr. Martinez's self-injury and suicide attempts. These harms will continue unless enjoined by this Court.

E. 29 U.S.C. § 794 - Violation of the Rehabilitation Act of 1973 [Against Defendant CDOC]

155. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 30-86.

156. The Rehabilitation Act of 1973 provides, in pertinent part, that "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her 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).

157. The CDOC receives and benefits from federal financial assistance, including through the Prison Rape Elimination Act, State Criminal Alien Assistance Program, the CARES Act, and other sources. As a recipient of federal funds, CDOC is required to not discriminate against prisoners based on their disability and must reasonably accommodate prisoners with disabilities in their facilities, program activities, and services.

158. The "programs, services, and activities" that CDOC provide to prisoners include, but are not limited to, the full use and enjoyment of prison socializing areas,

sleeping areas, dining halls, vocational and education training, recreational facilities, bathing and restroom facilities, medical clinics, medical and mental health services, employment opportunities, prison safety and security, and other programs, services, and activities.

159. Mr. Martinez is otherwise qualified to participate in the services, programs and activities provided to CDOC inmates within the meaning of the Rehabilitation Act of 1973.

160. CDOC has excluded, and continues to exclude, Mr. Martinez from the full use and participation of CDOC's programs, services, and activities that are provided to other prisoners, solely by reason of Mr. Martinez's disability in violation of the Rehabilitation Act of 1973. In addition, CDOC has violated the Act by intentionally failing or refusing to provide reasonable accommodations to Mr. Martinez.

161. As a direct and proximate cause of CDOC's acts and omissions, Mr. Martinez has suffered and continues to suffer from harm and violation of rights under the Rehabilitation Act of 1973. Those harms include direct physical injury in the form of Mr. Martinez's self-injury and suicide attempts. These harms will continue unless enjoined by this Court.

F. 42 U.S.C. § 1983 - Excessive Force in Violation of the Eighth Amendment [Against Defendant Yates]

162. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 87-90.

163. Pursuant to his contractual, professional, official, and statutory duties, Defendant Yates was responsible for the safe and reasonable care of Mr. Martinez.

164. On or about May 2, 2017, Defendant Yates physically assaulted Mr. Martinez while he was securely cuffed and bound.

165. Defendant Yates acted sadistically and maliciously, motivated by an evil motive and intent. There could be no other rationale for Mr. Yates's actions, as there was no legitimate law enforcement or penological purpose for Mr. Yate's conduct.

166. Defendant Yates maliciously violated Mr. Martinez's rights under the Eighth Amendment, causing Mr. Martinez physical pain, bruising, and mental anguish.

G. 42 U.S.C. § 1983 Deliberate Indifference Failure to Protect from Attack in Violation of the Eighth Amendment [Against Defendants Hagan and Johnson]

167. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 91-100.

168. By placing Mr. Martinez in the soft pod under conditions they knew posed a substantial risk of harm, Defendants Hagan and Johnson were deliberately indifferent and acted with callous indifference to Mr. Martinez's safety.

169. As a result of Defendants Hagan's and Johnson's failure to protect Mr. Martinez from a predictable inmate attack, Mr. Martinez suffered substantial physical injuries, pain, and suffering.

170. Defendants Hagan and Johnson were wanton and malicious, violating Mr. Martinez's rights under the Eighth Amendment.

H. 42 U.S.C. § 1983 – Retaliation Claim in Violation of First Amendment [Against Defendants Hagan and Johnson]

171. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 101-105.

172. Mr. Martinez was engaged in a constitutionally protected activity when he filed grievances regarding Defendants Hagan's and Johnson's failure to prevent Mr. McCollum's assault of Mr. Martinez.

173. Defendants Hagan's and Johnson's transfer of Mr. Martinez to the general prison population following these grievances created a substantial risk of serious harm to Mr. Martinez and would chill a person of ordinary firmness from continuing to engage in filing grievances.

174. Defendants Hagan and Johnson transferred Mr. Martinez to punish Mr. Martinez for filing the grievances against them, as shown by the fact that this transfer occurred within days of Mr. Martinez's grievances, and they knew that this transfer posed a serious risk of harm to Mr. Martinez.

175. Defendants Hagan and Johnson violated Mr. Martinez's rights under the First Amendment.

I. 42 U.S.C. § 1983 - Failure to Process Outgoing Mail in Violation of First and Fourteenth Amendments [Against Defendant Taylor]

176. Mr. Martinez incorporates all previous paragraphs of this Complaint as if fully set forth herein, including paragraphs 106-110.

177. Pursuant to her contractual, professional, official, and statutory duties, Defendant Taylor was responsible for the reasonable handling of Mr. Martinez's mail.

178. Mr. Martinez is guaranteed freedom of speech under the First Amendment and a qualified liberty interest under the Fourteenth Amendment in communicating with individuals outside the prison, including via written correspondence.

179. Throughout Mr. Martinez's time at CSP Defendant Taylor destroyed and/or refused to send Mr. Martinez's outgoing mail because she disagreed with its content. In doing so, Defendant Taylor did not have an important or substantial government interest unrelated to suppressing Mr. Martinez's expression.

180. Defendant Taylor violated Mr. Martinez's rights under the First and Fourteenth Amendments.

VIII. PRAYER FOR RELIEF

WHEREFORE, Mr. Martinez respectfully requests that this Court enter judgment in his favor on each Count alleged against Defendants, and award him relief as allowed by law and equity, including, but not limited to the following:

Declaratory relief and injunctive relief, as appropriate, including but not limited to;

1. A declaration that the acts and omissions of each Defendant violated the constitutional rights of the Plaintiff;
2. A preliminary and permanent injunction ordering CDOC to provide Plaintiff with proper medical evaluation, written treatment plan, and medical care, including a referral to the appropriate mental health care facility for treatment and stabilization, as well as other appropriate accommodations for his disability;
3. Compensatory damages, including, but not limited to those for past and future pecuniary and non-pecuniary losses, physical and mental pain, humiliation, discomfort, fear, anxiety, loss of enjoyment of life, loss of liberty, privacy, and sense of security and individual dignity, and other non-pecuniary losses;

4. Punitive damages for all claims as allowed by law in an amount to be determined at trial;
5. Issuance of an Order mandating appropriate equitable relief, including but not limited to:
 - i. Mandatory training designed to avoid future similar misconduct by Defendants;
 - ii. Revisions of CDOC Administrative Regulations, Clinical Standards, requirements and policies to avoid future similar misconduct by Defendants;
6. Pre-judgment and post-judgment interest;
7. Attorneys' fees and costs; and
8. Such further relief as justice requires.

Plaintiff demands a jury trial on all issues so triable.

Dated: July 1, 2020

/s/ Regina M. Rodriguez

Regina M. Rodriguez (Bar No. 17963)

Nora Q.E. Passamaneck (Bar No. 49362)

Matthew J. Worthington (Bar No. 47987)

Michelle L. Keast-Nachtrab (Bar No. 52475)

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Attorney for Eugene Martinez

CERTIFICATE OF SERVICE

I certify that on July 1, 2020, I filed this document with the Clerk of the Court for the United States District Court for the District of Colorado using the CM/ECF system, which will serve this document on all counsel of record.

I hereby certify that the foregoing was placed in the U.S. Mail, postage prepaid, and addressed to the following:

Eugene Martinez
#85357
Sterling Correctional Facility (SCF)
P.O. Box 6000
Sterling, CO 80751

/Tracy Gomez
Tracy Gomez