STATE OF SOUTH CAROLINA	)	IN THE FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2005-CP-40-02925
T.R., P.R., K.W., and A.M. on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc.,	)	
Plaintiffs,	)	**FIFTH AMENDED COMPLAINT**
v.	)	
South Carolina Department of Corrections; and William R. Byars, Jr., as Agency Director of the South Carolina Department of Corrections,	)	
Defendants.	)	

Plaintiffs allege as follows:

INTRODUCTION

1. Over the course of many years and through different administrations, the Defendants have failed to provide reasonably adequate medical treatment to inmates suffering from serious mental illness in the custody of the South Carolina Department of Corrections ("SCDC" or the "Department"). This class action seeks declaratory and injunctive relief on behalf of such inmates. For years the Defendants have known their system of providing medical treatment for mentally ill inmates was in a state of crisis, a state exacerbated in recent years by inadequate funding for the Department. Despite this knowledge, the Defendants have failed to take adequate steps to remedy the situation. The Defendants' deliberate indifference to the mental health needs of inmates has resulted and continues to result in the infliction of cruel and unusual punishment and the needless infliction of pain and suffering, in violation of Article 1, § 15 of the South Carolina Constitution.

JURISDICTION

2. The adequacy of medical treatment of inmates under SCDC custody, including treatment for mental health care, is a condition subject to judicial scrutiny under the Constitution of South Carolina.

3. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.*, by ordering Defendants to provide reasonably adequate mental health care to persons incarcerated in the South Carolina Department of Corrections who suffer from mental illness.

VENUE

4. Venue is properly set before this Court because many of the acts and omissions giving rise to Plaintiffs' claims occurred in Richland County.

PARTIES

Representative Plaintiffs

5. The representative plaintiffs are inmates who suffer from serious mental illness and who are confined in facilities maintained and operated by the Defendants. Due to the highly private and personal nature of the facts surrounding their claims and in order to protect their dignity and privacy, the representative plaintiffs will be identified in this Complaint only by initials.

6. T.R. suffers from paranoid schizophrenia. He has a history of bizarre behavior, including drinking his own urine. His illogical thought processes make it difficult for him to converse in a meaningful way. Like most persons with schizophrenia, he suffers from hallucinations and delusions. For example, he believes that at night, while he is sleeping, doctors come into his cell and perform surgery on him. He complains of loud, banging noises

from the adjacent cell, even when it is empty. In 1993, an SCDC mental health administrator concluded that the only SCDC facility capable of providing T.R. the level of care he needed was Gilliam Psychiatric Hospital. Instead of being placed in Gilliam, however, T.R. has lived for most of the last sixteen years in an SCDC lock-up unit, in which he was isolated in a small cell 23-24 hours a day. His clothes, blanket, sheets, and mattress are often filthy. Although he is scheduled to receive injections of an antipsychotic medication every three-four weeks, these often are administered several weeks late and, on one occasion, nine weeks late. While in lock-up, T.R. sees a mental health counselor approximately once a month, but takes part in no structured therapeutic activities.

7. A.M. suffers from schizoaffective disorder, panic attacks, and agoraphobia. He wears ear plugs to decrease the auditory stimuli that exacerbate his panic attacks and other symptoms. For the reasons set forth herein, the Defendants have failed to provide A.M. with reasonably adequate medical care, just as they have failed to provide such care to T.R. and other inmates with serious mental illness. During one period of fifteen months, A.M. reported hearing voices, threatened to harm himself, cut himself on his arm and foot with a razor, and attempted to drown himself in his toilet. Although he twice requested counseling, neither request was granted. During the entire fifteen month period, he saw a psychiatrist only three times. During a later period of twelve months, despite experiencing similar problems, he saw a psychiatrist only once. During a period of three years, A.M. was placed in crisis intervention on sixteen occasions, for periods ranging from two to nine days. On thirteen of these occasions he did not see a psychiatrist. A.M. has made repeated requests to be put back on certain psychotropic medications that better manage his mental illness. These requests have been denied by SCDC, in part because they have been removed from the SCDC formulary due

to cost. As a result, A.M. filed a grievance pursuant to SCDC's grievance policy and, after his grievance was denied, he appealed to the South Carolina Administrative Law Court ("ALC"). In his ALC appeal A.M. asked that SCDC be required to provide him with the psychotropic medications he needed to better manage his mental illness. In October 2004 SCDC moved to dismiss the appeal, arguing that A.M.'s claim was not a claim over which the ALC had jurisdiction. The ALC agreed and dismissed A.M.'s appeal. A.M. was recently eligible for parole. Without the medications he needed A.M. was so debilitated by feelings of paranoia, panic, and agoraphobia that he was unable to wait in the room with the other parole applicants, forcing him to abandon his opportunity to appear before the parole board.

8. Plaintiff Protection and Advocacy for People with Disabilities, Inc., ("P&A") is a private, not for profit South Carolina corporation established as the protection and advocacy system for the State of South Carolina and charged by state and federal law to protect and advocate for the rights of people with disabilities in South Carolina.

Defendants

9. SCDC is the agency of the State of South Carolina that is charged with administering State penal institutions.

10. William r. Byars, Jr. is named as a defendant in his official capacity as Director of SCDC.

CLASS ACTION ALLEGATIONS

11. The named plaintiffs bring this action on behalf of themselves and all others who are similarly situated, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.

12. The class is so numerous that joinder of all members is impracticable. The class consists of all individuals at any time since June 20, 2005 (the date that Plaintiffs filed their initial Complaint), have been or will be confined in an institution or facility maintained or operated by the South Carolina Department of Corrections and who, at any time since June 20, 2005, have been or will be:

1) Assigned to an SCDC Intermediate Care Services ("ICS") unit; or

2) Hospitalized as an inpatient at Gilliam Psychiatric Hospital ("GPH") or Columbia Care Center ("CCC"); or

3) Diagnosed by a psychiatrist with any of the following mental illnesses:

   a) Cognitive disorders (e.g., traumatic brain injuries, Cognitive Disorder Not Otherwise Specified);

   b) Schizophrenia (all subtypes);

   c) Schizoaffective Disorder (all subtypes);

   d) Paranoid Disorder (e.g., Delusional Disorders);

   e) Major Depressive Disorder (all subtypes);

   f) Bipolar Disorder (all subtypes);

   g) Other Psychotic Disorders (e.g., Schizophreniform, Psychotic Disorder Not Otherwise Specified); or

4) Diagnosed by a psychiatrist with another mental disorder, not listed above, that has resulted in significant functional impairment, defined as:

a) the inability to attend to and effectively perform the usual or necessary activities of daily living;

b) an extreme impairment of coping skills, rendering the patient exceptionally vulnerable to unintentional or intentional victimization and possible mismanagement; or

c) behaviors that are bizarre and/or dangerous to self or others.

13. There are questions of law and fact that are common to the class. These questions include the nature and constitutionality of the conditions, practices, and policies affecting the mentally ill inmates in the custody of SCDC.

14. The conditions, practices, and policies challenged in this action apply in substantially the same manner to the named plaintiffs and all members of the class so that the claims of the named plaintiffs are typical of those of the class.

15. The named plaintiffs will fairly and adequately represent the interests of the class. They possess a personal interest in the subject matter of this suit. They are represented by counsel who are experienced in class action and prisoner rights litigation.

16. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

BACKGROUND ALLEGATIONS

I. Overview of the SCDC Mental Health System

17. SCDC has become a repository for a significant number of South Carolina's mentally ill citizens. As of January 31, 2007, 2,362 SCDC inmates had been diagnosed by the Department as mentally ill. However, studies conducted to determine the prevalence of mental disorders among prison inmates in the United States have found that between eight and

nineteen percent of a total prison population have significant psychiatric or functional disabilities. See Metzner, Guidelines for Psychiatric Services in Prisons, Criminal Behavior and Mental Health 3, 252-267 (Winter 1993). Thus, given SCDC's population of approximately 23,294 inmates, over 4,400 inmates in SCDC custody may suffer from serious mental illness.

18. In 2004, SCDC released over 9,500 inmates back into society. Given the studies referenced above, it is reasonable to conclude that between 750 - 1,800 of these inmates may suffer from significant psychiatric or functional disabilities.

19. From 2001-2006, SCDC's overall inmate population increased 9%, one of the highest percentage increases among sixteen southern states surveyed in a Southern Legislative Conference (SLC) report.

20. SCDC's prison population is projected to increase 32% between 2003-2008. During that same period the projected percentage increase in the Southeast is only 19.6%.

21. From fiscal year 2000 to fiscal year 2005, South Carolina ***decreased*** its total expenditures on prisons by 8.6%, while other southern states surveyed by the SLC ***increased*** correctional spending by an average of 12.2%.

22. South Carolina spends less money per inmate than any other state in the nation. Between 2001 and 2006 annual average per inmate cost based on State funds decreased by 18%. In fiscal year 2005, SCDC's daily per inmate cost was 42% less than the average for other southern states surveyed by the SLC.

23. South Carolina is the only state in the nation which failed to restore prison funding back to the level before the economic downturn in 2000-2002.

24. Between fiscal years 2000 and 2005, while all other southern states increased their prison budgets, South Carolina appropriated 8.6% less to its adult correctional system, despite a 9% increase in inmate population.

25. The SLC compares per inmate institutional operating costs without administrative and centralized expenses. Data shows South Carolina's state funded per inmate cost of $27.39 per day is only 58% of the average state funded cost for all southern states.

26. Studies show that the prevalence of schizophrenia and other psychotic disorders is 3-5 times greater in prison populations than in the general population of the United States.

27. Persons suffering from mental illness are vulnerable under the best of circumstances. In a prison setting, however, inmates with mental illness are particularly vulnerable to physical, sexual, mental, and emotional abuse.

II. The Three Reports

28. For years the Defendants have been aware that the SCDC mental health care system is in a state of crisis, necessitating immediate efforts to remedy a systemic failure to provide adequate medical services to inmates suffering from mental illness. In 1999, at SCDC's request, Raymond F. Patterson, M.D., a nationally prominent psychiatrist and expert on mental health services for prisoners, conducted an investigation of SCDC's mental health care system. Funded by the Prisons Division of the National Institute of Corrections, Dr. Patterson provided an on-site assessment of the SCDC mental health care system and, in 2000, issued to SCDC a technical assistance report. See National Institute of Corrections Technical Assistance Report, TA # 00P1052 ("Patterson Report"), attached as Exhibit A to the original Complaint and incorporated by reference herein.

29. Dr. Patterson's technical assistance activities included reviewing policies and procedures in effect throughout the SCDC mental health system, as well as meeting with key participants and stakeholders in the system. Id. Following his observation, analysis, and assessment, Dr. Patterson concluded that **"the system is currently in crisis and immediate efforts to rectify the inadequate resource provision to the mental health system must be undertaken."** See Patterson Report at 2 (Exhibit A) (emphasis added).

30. The Patterson Report set forth five general considerations and actions required "to establish and maintain an adequate mental health system" at SCDC. Id. Included among the actions Dr. Patterson deemed necessary were the further development of policies and procedures, the provision of adequate staffing of mental health professionals, and the development and provision of programmatic activities. The Defendants have substantially failed to implement the recommendations set forth in the Patterson Report.

31. As a result of the findings set forth in the Patterson Report, the South Carolina General Assembly convened a Joint Legislative Proviso Committee ("Legislative Committee") for the purpose of investigating and reporting on the state of mental health care for prison inmates in South Carolina. The Legislative Committee published its report in October 2000. The Legislative Committee Report is attached as Exhibit B to the original Complaint and incorporated by reference herein.

32. The Legislative Committee Report noted numerous and substantial deficiencies in the provision of mental health care services and resources provided to inmates in the SCDC system. To address and remedy these deficiencies, the Legislative Committee Report made a series of recommendations, divided into immediate, short-term, and long-term action items.

33. The Legislative Committee concluded in October 2000 that **"steps must be taken immediately to address the current crisis."** Legislative Committee Report at 6 (Exhibit B) (emphasis added). Among the Committee's observations and recommendations for immediate action were the following:

a) SCDC should "immediately" hire specialized staff to address shortages in all professional positions, "from social workers and nurses to psychologists and psychiatrists."

b) Special attention should be given to the needs of female inmates with mental illness, given that more than 40 percent of the female inmates at SCDC have some form of mental illness and are "particularly vulnerable to sexual and physical abuse." A more suitable facility is needed "to alleviate the current staff of overcrowding and lack of adequate services and security." The Report expressed serious concern that SCDC had only four acute female beds – not enough "to adequately treat this population."

c) Conditions at Gilliam Psychiatric Hospital, SCDC's inpatient mental health facility for male inmates, "are essentially deplorable." Gilliam's "critical staff shortages make it difficult to adequately observe and treat patients."

d) Newer and more effective medications should be added to existing formularies. Medications needed to treat potentially "life-threatening" side effects are unavailable due to lack of funds.

e) SCDC should develop a "unified mental health services delivery system that coordinates all behavioral health services," including the aggressive treatment of inmate addictions.

See Legislative Committee Report at 6-10 (Exhibit B). The Defendants have substantially failed to implement the recommendations set forth in the Legislative Committee Report.

34. Evidence of the continued deterioration of the Department's mental health system was provided in May 2003, when the South Carolina Department of Mental Health ("DMH"), at the request of SCDC, concluded a study of the mental health care system in place at SCDC. Diane Cavenaugh, the DMH program manager assigned to conduct the study, set

forth her observations and conclusions in two memoranda dated May 23, 2003 and July 11, 2003. Copies of these two memoranda are attached as Exhibit C to the original Complaint and incorporated by reference herein (collectively, the "DMH Report").

35. The DMH Report, which was submitted to SCDC, confirmed that the crisis identified by Dr. Patterson and the Legislative Committee in 2000 had not abated. Included among the DMH findings were the following:

a. Psychiatric and psychiatric nursing services are in disarray due to the shortage of psychiatrists and lack of psychiatric oversight of prescription, administration and monitoring of psychotropic medications. The lack of psychiatric coverage has resulted in a critical situation, with extremes of poor care, inhumane treatment and dangerousness for staff and inmates. (Exhibit C, 5/23/03 Report at 1-2).

b. Medication has been abruptly discontinued by medical staff without approval of psychiatrists or other clinical staff, a breach of SCDC policy. This practice is clinically counterproductive and medically contraindicated. (Id. at 3).

c. Medications that best treat some intractable illnesses are not available or must be approved by a committee; staff's perceptions are that physician requests for medication, even with considerable justification, are more often denied than approved. The shortage of psychiatrists prevents the follow-up care that is necessary with these medications, resulting in inmates having serious side effects with no treatment. (Id. at 4).

d. Almost all mental health programs are understaffed, resulting in inadequate care for inmates. Approximately 50% of the mental health positions on the organizational charts are vacant. (Id. at 3).

e. The current programming at Gilliam Psychiatric Hospital and at the Intermediate Care Services sites do not meet the needs of mentally ill inmates. (Id. at 5).

f. Numerous mentally ill inmates with severe behavioral problems have been placed in lock-up and receive little or no mental health treatment. (Id. at 5).

g. The level of care is more dependent upon the number of mental health staff at a given facility than on inmates' needs. (Id. at 6).

h. There is a general sense of "catch as catch can" to the provision of mental health services: groups are often delayed or cancelled; one-to-one contacts are very brief and focus on inmates' day-to-day living requests; the caseloads are too high for most staff, so there is inadequate contact with all inmates; and structured programming is minimal. (Id. at 7).

i. There is no formal Quality Assurance/Improvement Program that evaluates the effectiveness of clinical care. (Id. at 8).

36. The DMH Report set forth a number of detailed recommendations for improving the SCDC mental health care system, which the Defendants have substantially failed to implement.

37. By virtue of the Patterson Report, the Legislative Committee Report, the DMH Report, and other sources of information, the Defendants are charged with both actual and constructive knowledge of the severe deficiencies existing in SCDC's mental health services program that pose a daily threat to the health and well being of mentally ill persons in the custody of the Department. Despite this knowledge, the Defendants have failed to take any meaningful steps to rectify the crisis identified by Dr. Patterson over seven years ago.

III. Access to Mental Health Services

38. According to a November 2004 study by the University of South Carolina ("USC"), twenty of SCDC's twenty-nine facilities are currently accredited by the American Correctional Association ("ACA"). As the accreditations for these facilities expire, however, SCDC has not been seeking to re-accredit them. The USC study concludes that it is "unlikely" that any SCDC health services "currently meet ACA accreditation requirements." The USC study further concludes that, relative to other states, SCDC's health services are "significantly underfunded."

39. Under standards recommended by the American Psychiatric Association, SCDC should have a minimum of 14.3 FTE psychiatrists to treat its population of over 23,000

inmates. Instead, as of June 2005, SCDC had fewer than 3 FTE psychiatrists, and today still has far fewer than 14.3. As a direct result of the shortage of psychiatrists, many inmates who are mentally ill see a psychiatrist infrequently, seldom receive needed psychiatric therapy, and are prescribed mental health medications by general physicians, rather than psychiatrists. The system-wide shortage of psychiatrists has resulted and continues to result in delays in diagnosis and treatment of mental illness. The shortage of psychiatrists also prevents SCDC from appropriately managing necessary medications for mentally ill inmates and from adequately monitoring the patient's response to the medications, including oftentimes serious side effects resulting from psychotropic medications.

40. SCDC also is grossly understaffed in psychologists, mental health counselors, nurses, and other clinical staff, as well as administrative support for clinical staff. As of 2003, approximately 50 percent of the mental health staff positions on the SCDC organizational chart were vacant. For over two years, the position of Division Director of Mental Health Services at SCDC was vacant. As a result of staff shortages in other areas, clinical staff must spend time performing non-clinical duties, reducing the time available for the delivery of treatment. Moreover, mental health staff are required to evaluate and provide crisis services to all SCDC inmates, not just those diagnosed as mentally ill.

41. SCDC staff shortages have had and continue to have a significant adverse effect on SCDC's ability to provide and administer both treatment plans and treatment programs designed for mentally ill patients, including programs for suicide prevention, substance abuse, quality assurance, and discharge planning.

42. Staff shortages result in missed medication dosages and the failure to provide adequate rehabilitation and therapeutic services.

43. Staff shortages prevent SCDC from maintaining accurate and reliable records on mentally ill inmates.

44. SCDC is not only understaffed, its counselors are undertrained. In 2000 the South Carolina Legislative Audit Council concluded SCDC's counseling staff "did not meet minimum qualifications for their positions."

45. SCDC fails to provide adequate screening and evaluation of mentally ill inmates. When inmates are initially placed in SCDC custody, there is often a significant delay before they receive an initial mental health assessment.

46. As of January 2007, despite recent pay increases, 14% of SCDC's correctional officer ("CO") positions were unfilled. The American Correctional Association recommends that prison systems operate with no more than a 10% vacancy rate for COs. The shortage of COs results in an inmate-to-CO ratio in South Carolina of 9.6, 74% higher than the 5.5 average for other southern states.

47. COs are not only underpaid and understaffed, they are also undertrained in the management of mentally ill inmates. SCDC provides grossly insufficient training to COs with respect to the nature, symptoms, manifestation, and treatment of mental illness. COs also receive grossly insufficient training with respect to addressing and managing aggressive or unusual behavior by inmates resulting from mental illness.

48. As a result of their lack of proper training, COs often misinterpret the behavior of mentally ill inmates as malingering or as willful misconduct and punish such inmates with unnecessary and inappropriate physical force, sometimes in violation of SCDC policies and State regulations and often without adequate input or supervision by mental health professionals.

49. COs use tear gas and pepper spray disproportionately more often on mentally ill inmates than on other inmates.

50. Due to their lack of training, some COs exacerbate the condition of mentally ill inmates by taunting, disparaging, or taking advantage of them.

51. The actions by COs described in the preceding three paragraphs contribute to inmate aggression, exposing the mentally ill inmates, other inmates, and staff to unnecessary risks and increasing the degree of disruption within the facility.

52. Due to the lack of trained COs, clinical staff are often required to take on non-clinical duties, allowing them less time to provide clinical services for mentally ill inmates.

53. SCDC does not have sufficient physical facilities or services to provide for acute psychiatric illnesses.

54. As noted in the 2000 Legislative Committee Report, conditions at Gilliam Psychiatric Hospital, the acute facility for men, are "essentially deplorable." Exh. B at 8.

55. Even though over 350 of SCDC's women inmates are diagnosed as mentally ill, SCDC has no acute inpatient psychiatric hospital for women. Instead, SCDC contracts with a facility called Columbia Care Center for the use of four or fewer beds, which is insufficient to meet the needs of female inmates suffering from mental illness.

56. Because of the insufficient space and services, inmates in lock-up who are transferred to one of SCDC's acute facilities do not receive long-term psychiatric care. Instead, SCDC generally reassigns such patients to lock-up units after discharge from Gilliam or Columbia Care Center. Once returned to lock-up, these inmates are not provided reasonably adequate medial treatment.

IV. SCDC's Disciplinary Process and Lock-up Conditions

57. Although SCDC's Intermediate Care Services ("ICS") program is designed for inmates who suffer from chronic and serious mental illness, many such inmates are not eligible for ICS because of disciplinary infractions attributable to their illness.

58. Because the Defendants fail to provide adequate mental health treatment, many mentally ill inmates find it difficult to comply with institutional rules and regulations. Inmates charged with breaking prison rules typically receive a hearing before hearing officers employed by SCDC. Hearing officers sometimes fail to acknowledge the role that mental illness has played in the conduct at issue or take the mental health status of the inmate into account in determining either guilt or the appropriate sanctions.

59. As a result of SCDC's disciplinary practices and procedures, mentally ill inmates are often punished for displaying symptoms of their disorders. Such punishment includes being placed in administratively segregated, non-clinical "lock-up" units.

60. The conditions of SCDC's lock-up units exacerbate the mental illnesses of inmates sentenced to administrative segregation. As a result, such inmates find it even more difficult to comply with prison rules, leading to further disciplinary sanctions, including additional time in lock-up, and a resultant further deterioration of the inmates' mental condition.

61. The accrual of disciplinary sanctions often delays the parole eligibility dates of mentally ill inmates, causing them to spend proportionately more time in prison than inmates who do not suffer from mental illness.

62. Inmates in SCDC lock-up units are confined in solitary cells for 23-24 hours a day. Contact with other human beings is minimal. Lock-up inmates are not allowed to work

at normal prison jobs, and are rarely allowed to attend rehabilitative or vocational programs or activities. Lock-up inmates have extremely limited library access and eat all meals alone in their cell. Lock-up units are noisy, foul-smelling, and unsanitary. Mentally ill inmates often remain in lock-up for weeks, months, and even years. They rarely engage in structured therapeutic activities and receive grossly inadequate psychiatric therapy.

63. Cells on lock-up units are small, with solid walls and doors. A typical cell holds a concrete slab bed, a mattress, sink, and toilet. Inmates are allowed showers three times per week, though shower privileges are often revoked by COs. "Recreation" consists of being allowed to visit for one hour per day a "dog run" – an enclosed yard area approximately the same size as a cell. Dog runs contain no equipment, so that inmates can do little more for recreation other than pace. Due to their mental disorders, some inmates rarely or never leave their cells.

64. Sanitation and hygiene in some SCDC lock-up units are deplorable. At times the stench of urine and feces is pervasive. When sinks fail to work properly, some inmates drink from toilets. Often cells are not properly cleaned. Some inmates have reported to a lock-up cell to find it covered with the blood, urine, or feces of its previous inhabitant.

65. Inmates placed in lock-up often do not receive a mental health screening until 30 days after placement. Thereafter, mental health screenings are often conducted no more than every 90 days. Counseling sessions for inmates in lock-up are infrequent, brief, impersonal, and non-therapeutic. Lock-up units at SCDC contain no enhanced clinical features for mentally ill inmates and such inmates rarely have access to any structured therapeutic activities.

66. Inmates in lock-up units who exhibit suicidal or self-destructive behavior are not always given immediate clinical attention, as required by SCDC policy, but instead may be beaten, gassed, and placed in restraint chairs for extended periods of time.

67. Inmates who decompensate mentally or who pose a risk of physical harm to themselves or others are sometimes placed by SCDC in a form of lock-up called "crisis intervention," often without any medical input into the decision.

68. Inmates in crisis intervention are placed in non-clinical lock-up units with a paper gown, a suicide blanket, or nothing, sometimes for a week or longer.

69. Inmates on crisis intervention often receive little or no consultation or therapy from psychiatrists during this time.

70. SCDC does not have adequate treatment space or staff to adequately monitor or evaluate mentally ill inmates on lock-up units.

71. Typically, the only treatment SCDC provides to mentally ill inmates in lock-up is medication, and medication is often delayed, not provided, or provided on an irregular basis.

72. When mental health staff do speak with prisoners in lock-up, it is frequently done within earshot of other prisoners and staff. Many prisoners refuse to speak with mental health staff under these conditions because they fear harassment and victimization. In many cases, these cell-door mental health consultations cause more harm than good; because of the complete lack of confidentiality, a prisoner may minimize the description of his or her symptoms.

73. In some lock-up units the acoustics make it difficult to hear and impossible to communicate in any therapeutically effective manner. The noise of the unit contributes to inmates' considerable stress levels and exacerbates the condition of mentally ill inmates.

74. The restrictive settings, social isolation, sensory deprivation, and general conditions of the SCDC lock-up units are clinically inappropriate. Confinement in the lock-up units exacerbates the condition of inmates already suffering from mental illness and causes psychological harm to those who previously had not suffered from mental illness.

V. Inadequate Provision and Administration of Medications

75. Prescribed medications are an extremely important part of a clinically effective treatment program for many persons suffering from mental illness. Unfortunately, certain medications can cause serious, painful, and potentially fatal side effects. Great strides have been made in recent years, however, particularly in the development of new anti-psychotic medications more effective in treating psychosis, yet with less severe side effects.

76. Medications that SCDC ordinarily provides to inmates in its custody are listed in the SCDC formulary (the "Formulary"). Despite their proven effectiveness and reduced side effects, some of the newer, more effective mental illness medications are not listed in the Formulary and, therefore, are seldom available for SCDC inmates.

77. Inmates with mental illness who have a proven history of successful treatment with non-Formulary medications are often denied access to these medications, even when access is requested by the inmate's physician and/or even when the inmate has private means to purchase the medication.

78. From time to time SCDC removes medications from the Formulary, usually for non-clinical reasons. Due to clinical staff shortages, inmates often are unable to see a psychiatrist before a prescribed medication is removed from the Formulary. Moreover, such inmates may not see a psychiatrist until weeks or months after the prescribed medication is removed from the Formulary. As a result, once an inmate's medication is removed from the

Formulary, he or she may not receive any medications for a period of time or may receive one that either fails to treat his condition effectively or causes adverse side effects. Moreover, the decision to discontinue an inmate's medication is sometimes not conveyed to other clinical staff. The lack of continuity in medications is a serious impediment to the effective treatment of mentally ill inmates at SCDC.

79. At times, SCDC staff has discontinued prescribed medications for mentally ill inmates, without the consultation or approval of any psychiatrist, which is clinically inappropriate and violates SCDC policy.

80. Due to the adverse side effects caused by many antipsychotic medications, and due to the lack of insight and delusional thinking of many psychotic persons, mentally ill patients often are non-compliant in taking prescribed medications. The Defendants have failed to adequately monitor the administration of medications to ensure that mentally ill inmates are correctly taking their prescribed medications and that the medications are having their intended effect. Because of the lack of an adequate quality assurance program, as well as insufficient staffing, the problems that mentally ill inmates experience in taking medications frequently go undetected and uncorrected.

81. The failure to adequately supervise the administration of medications for mentally ill inmates has led to numerous instances of "pill hoarding", whereby inmates do not ingest a prescribed medication but secretly retain it, increasing the potential for abuse and suicide.

COUNT I

Violation of South Carolina Constitution Article 1, § 15

82. Article 1, Section 15 of the South Carolina Constitution prohibits the Defendants from inflicting cruel and unusual punishment upon inmates. The Defendants' failure to provide reasonably adequate medical treatment to mentally ill inmates under the circumstances set forth above evidences a deliberate indifference to the mental health needs of inmates and a needless infliction of pain and suffering, constituting cruel and unusual punishment for which the Plaintiffs are entitled to declaratory and injunctive relief.

WHEREFORE, Plaintiffs pray that this Court enter an order declaring the Defendants to be in violation of the representative Plaintiffs' rights under the South Carolina Constitution, requiring the Defendants to design, maintain, fund, and provide resources for a reasonable and adequate system for the mental health care of inmates suffering from mental illness, and entering all other relief the Court deems appropriate.

Respectfully submitted,

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October 6, 2011

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for T.R., P.R., K.W., and A.M. on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **FIFTH AMENDED COMPLAINT**

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October 6, 2011