

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Johnathan Lacy, Kenneth Farris,)
 Marquis Bowers, and Maurice Boston,)
 individually and for all others)
 similarly situated,)
) No. 14-cv-6259
Plaintiffs,)
) *(Judge Gettleman)*
 -vs-)
) *(Magistrate Judge Martin)*
 Thomas Dart, Sheriff of Cook County,)
 Cook County, Illinois, Sgt. Johnson,)
 Correctional Officer Nawara,)
 Correctional Officer Lopez, and)
 Correctional Officer Wilson,)
)
)
)
Defendants.)

AMENDED COMPLAINT

Pursuant to leave of Court, plaintiffs, by counsel, allege as follows:

1. This is a civil action arising under Section 202 of the Americans with Disabilities Act, 42 U.S.C. §12132, Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), and 42 U.S.C. §1983. The jurisdiction of this Court is conferred by 28 U.S.C. §12133, 29 U.S.C. §794a(a)(2), and 28 U.S.C. §1343.
2. Plaintiffs Jonathan Lacy, Kenneth Farris, Marquis Bowers, and Maurice Boston are wheelchair bound disabled residents of the Northern District of Illinois. Each plaintiff is currently confined at the Cook County Jail.
3. Defendant Thomas Dart is the Sheriff of Cook County. Plaintiffs sue Dart in his official capacity only.

4. Defendant Cook County is joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003) and is liable for wrongdoing as more fully described below.

5. Defendants Sgt. Johnson and correctional officers Nawara, Lopez, and Wilson are employees of the Cook County Sheriff. Plaintiff Lacy sues these officers in their individual capacity solely on his excessive force claim under 42 U.S.C. §1983.

ADA VIOLATIONS AT CERMAK INFIRMARY

6. As wheelchair bound persons, each plaintiff requires access to a special sink, toilet, shower, and bed in order to take part in these basic life activities which are available to non-wheelchair bound detainees at the Cook County Jail.

7. More than fifty wheelchair bound persons have entered the Cook County Jail in the two year period preceding the filing of this lawsuit.

8. As the result of a Rule 23(b)(3) damages class action known as *Phipps v. Sheriff*, 07-cv-3889, defendants Sheriff and Cook County became aware that the Cook County Jail was not accommodating the needs of wheelchair bound detainees and did not comply with the standards of the ADA and the Rehabilitation Act.

9. *Phipps* was concerned with conditions of confinement at the Cook County Jail and did not involve any issue about the manner in which wheelchair bound detainees are treated when brought to court.

10. Defendants Sheriff and Cook County are aware that wheelchair bound detainees are deprived of access to toilet and sink facilities before and after court appearances at the main criminal court building and in each of the five suburban Cook County courthouses.

11. Defendants Sheriff and Cook County took a variety of actions in an attempt to bring the Cook County Jail into compliance with the ADA and the Rehabilitation Act in the course of the *Phipps* litigation. Defendants Sheriff and Cook County did not make any material changes to the conditions of confinement before and after court appearances by wheelchair bound detainees.

12. The changes made to the Cook County Jail during the *Phipps* litigation allowed for a small number of wheelchair bound detainees to be confined at the Cook County Jail in facilities compliant with the ADA and the Rehabilitation Act.

13. At all times relevant, defendant Sheriff has had the power and the duty to refuse to accept any person who, as a detainee at the Cook County Jail, would be subjected to unlawful conditions of confinement.

14. At some time after resolving the *Phipps* litigation, and continuing to the present time, defendant Sheriff had been deliberately indifferent to his above

described power by agreeing to accept a greater number of wheelchair bound detainees than could be lawfully accommodated at the Cook County Jail.

15. At all times relevant, defendant Cook County has had the power to make capital improvements to the Cook County Jail.

16. At some time after resolving the *Phipps* litigation, and continuing to the present time, defendant Cook County became aware that Sheriff was seeking to hold a greater number of wheelchair bound detainees than could be lawfully accommodated at the Cook County Jail.

17. Defendant Cook County acted in deliberate indifference to its power to make capital improvements to the Cook County Jail after learning that the Sheriff was seeking to hold a greater number of wheelchair bound detainees than could be lawfully accommodated at the Cook County Jail.

PLAINTIFF JOHNATHAN LACY

18. Plaintiff Johnathan Lacy is wheelchair bound.

19. Lacy entered the Cook County Jail on May 14, 2014. At that time, the Jail did not have sufficient facilities to detain Lacy in compliance with the ADA and the Rehabilitation Act.

20. In June 2014, and for about eight days thereafter, Lacy was assigned to a cell in the Cermak Infirmary at the Cook County Jail which did not have the facilities required to accommodate a wheelchair bound prisoner.

21. While confined in the above referred cell, Lacy was required to sleep on the floor and he did not have access to toilet and sink facilities as defendants Sheriff and Cook County made available to non-wheelchair bound prisoners.

22. Confinement in the above referred cell caused Lacy to experience tremendous hardship in performing activities of daily living.

23. After Lacy had been subjected to about eight days of confinement in the above described unlawful conditions, correctional officers sought to place plaintiff into a different cell in the Cermak Infirmary. This cell likewise failed to provide adequate toilet and sink facilities.

24. Plaintiff Lacy complained about being transferred to another inaccessible cell. Defendants Johnson, Nawara, Lopez, and Wilson then used force to place plaintiff into the inaccessible cell.

LACY'S INDIVIDUAL EXCESSIVE FORCE CLAIM

25. The force used by defendants Johnson, Nawara, Lopez, and Wilson was grossly excessive, inflicted without a legitimate basis, intended to harm plaintiff, caused plaintiff to suffer serious personal injuries, and thereby deprived plaintiff of rights secured by the Fourteenth Amendment to the Constitution of the United States.

ADA VIOLATIONS BEFORE COURT APPEARANCES

26. Plaintiff Lacy, like most pre-trial detainees at the Cook County Jail, attends court once each month.

27. Lacey, like all other detainees at the Cook County Jail, is transported from the Jail to court by correctional officers employed by the Sheriff of Cook County.

28. Lacy's criminal case is assigned to the main Criminal Court Building at 2650 South California Avenue

29. In the early morning hours before each court appearance, correctional officers transport plaintiff Lacy from his living unit to the basement of the main Criminal Court Building.

30. Non-wheelchair bound detainees awaiting court appearances at the main Criminal Court Building are held in cells with unrestricted access to a toilet and a sink; wheelchair bound detainees, like plaintiff Lacy, are required to sit in his (or her) wheelchair in a hallway without access to a toilet and sink.

31. Plaintiff Lacy has complained to numerous members of the medical staff, members of the correctional staff, other employees of defendant Sheriff, and has filed several grievances about the above described wrongdoing, including a request for accessible toilet accommodations when he is required to attend court at the Criminal Court Building.

32. Despite these written and oral requests, plaintiff continues to be deprived of rights secured by the ADA and the Rehabilitation Act and continues to suffer irreparable harm for which there is no adequate remedy at law.

KENNETH FARRIS

33. Plaintiff Kenneth Farris is wheelchair bound.

34. Farris entered the Cook County Jail on April 1, 2014. At that time, the Jail did not have sufficient facilities to detain Lacy in compliance with the ADA and the Rehabilitation Act.

35. For about two weeks after entering the Jail, plaintiff Farris was assigned a cell in the Cermak Infirmary at the Cook County Jail which did not have the facilities required to accommodate a wheelchair bound prisoner.

36. While confined in the above described cell, plaintiff Farris was required to sleep on the floor and he did not have access to toilet and sink facilities as defendants Sheriff and Cook County provide to non-wheelchair bound prisoners. Confinement in this cell caused plaintiff Farris to experience tremendous hardship in performing activities of daily living.

ADA VIOLATIONS IN TRANSPORT TO COURT

37. Plaintiff Farris attends court at the Bridgeview Courthouse located at 10220 South 76th Avenue in Bridgeview, Illinois about once each month.

38. Farris, like all other detainees at the Cook County Jail who attend court outside of the main Criminal Court Building, is transported to court in motorized vehicles operated by employees of the Sheriff of Cook County.

39. The above described vehicles are maintained and furnished by defendant Cook County.

40. The vehicles provided by defendant County for the transport of non-wheelchair bound detainees permit each detainee to be transported in a safe manner.

41. The vehicles provided by defendant County for the transport of wheelchair bound detainees (hereinafter “handicap vans”), permit each detainee to be transported in his (or her) wheelchair and safely secured in the vehicle.

42. At all times relevant, defendant County has failed to provide defendant Sheriff with a sufficient number of “handicap vans.”

43. Notwithstanding the failure of defendant County to provide a sufficient number of “handicap vans,” defendant Sheriff permits his correctional officers to transport wheelchair bound detainees in vehicles which do not permit wheelchair bound detainees to be transported in his (or her) wheelchair and be safely secured in the vehicle.

44. On several occasions while being transported from the Jail to the Bridgeview Courthouse, wheelchair bound prisoners are removed from their wheelchair and required to sit on a bench designed for able bodied persons.

45. In the spring of 2014, plaintiff Farris incurred serious personal injuries while being transported from the Bridgeview Courthouse to the Cook County because of defendants’ above described deliberate indifference to the needs of wheelchair bound detainees.

ADA VIOLATIONS WHILE AWAITING A COURT APPEARANCE

46. On each occasion when plaintiff Farris arrives at the Bridgeview Courthouse, employees of the Sheriff of Cook County, acting in accordance with a long standing and widespread practice, segregate Farris from non-wheelchair bound detainees.

47. The above referred practice places non-wheelchair bound detainees in cells with free access to a toilet and a sink; wheelchair bound detainees, like plaintiff Farris, are required to sit in his (or her) wheelchair in a “coat room” without access to a toilet and sink.

48. On several occasions when plaintiff Farris has been transported to the Bridgeview Courthouse for a scheduled court appearance, he could not be transported to his assigned courtroom because the hallway was not wide enough to permit the passage of Farris’ wheelchair. On each occasion, Farris would be granted a “bullpen continuance,” in which his criminal case would be postponed for a month without his having appeared before the judge.

49. Plaintiff has complained to the medical staff, members of the correctional staff, other employees of the Sheriff of Cook County, and has filed several grievances regarding the above described wrongdoing, including a request for proper toileting accommodations on days when he is required to attend court at the Bridgeview Courthouse. Despite the written and oral requests, plaintiff continues to be deprived of rights secured by the ADA and the Rehabilitation Act

and continues to suffer irreparable harm for which there is no adequate remedy at law.

MARQUIS BOWERS

50. Plaintiff Marquis Bowers, who entered the Cook County Jail in November of 2011, became paralyzed on or around January 1, 2013 and is now permanently confined to a wheelchair.

51. Since around January 2013, plaintiff Bowers has been assigned to various inaccessible living units in the Cermak Infirmary.

52. While confined in these inaccessible living units, plaintiff does not have access to toilet, sink, and shower facilities required for a wheelchair bound person. Confinement in these conditions caused plaintiff to experience tremendous hardship in performing activities of daily living and to sustain serious personal injuries.

ADA VIOLATIONS WHILE AWAITING A COURT APPEARANCE

53. About once each month plaintiff Bowers attends court at the Maywood Courthouse located at 1500 Maybrook Avenue in Maywood Illinois.

54. In the early morning hours before each scheduled court appearance, plaintiff Bowers is transported from his living unit to the Maybrook Courthouse.

55. As a result of the transportation policy described above, plaintiff Bowers has fallen and sustained personal injuries while being transported to and from the Maybrook Courthouse.

ADA VIOLATIONS WHILE AWAITING A COURT APPEARANCE

56. When plaintiff Bowers arrives at the Maybrook Courthouse, he is segregated from non-wheelchair bound prisoners in the basement of the courthouse.

57. Unlike non-wheelchair bound prisoners who have access to a sink and toilet at the Maybrook Courthouse, plaintiff is frequently held in a cell without a toilet and sink.

58. The doorway designated for a prisoner to access the courtroom at Maybrook is not wide enough for a wheelchair bound prisoner, like plaintiff, therefore causing extreme hardship and humiliation for plaintiff to enter and exit his assigned courtroom.

59. Plaintiff Bowers has complained to the medical staff, members of the correctional staff, other employees of defendant Sheriff, and has filed several grievances about the above described wrongdoing, including a request for proper accommodations on days when he is required to attend court at the Maybrook Courthouse. Despite the written and oral requests, plaintiff continues to be deprived of rights secured by the ADA and the Rehabilitation Act and continues to suffer irreparable harm for which there is no adequate remedy at law.

MAURICE BOSTON

60. Plaintiff Maurice Boston is wheelchair bound and entered the Cook County Jail on July 4, 2012.

61. Plaintiff Boston previously settled an individual lawsuit regarding the alleged inaccessible features of Division 2, Dorm 2, Tier M in a case known as *Boston v. Sheriff*, 13-cv-798. Pursuant to the settlement agreement, plaintiff Boston released all claims against defendants Sheriff and Cook County arising prior to about April of 2014.

62. Plaintiff Boston brings this action only for prospective relief relating to the inaccessible conditions of confinement when attending court and for damages resulting from acts undertaken after those he released in his previous lawsuit.

63. Plaintiff Boston attends court at the Bridgeview Courthouse located at 10220 South 76th Avenue in Bridgeview, Illinois about once each month

64. Boston has been subjected to the same unlawful transportation policy described above.

65. Plaintiff Boston has complained to the medical staff, members of the correctional staff, other employees of defendant Sheriff, and has filed several grievances regarding the above described wrongdoing, including a request for proper toileting accommodations on days when he is required to attend court at the Bridgeview Courthouse. Despite the written and oral requests, plaintiff Boston continues to be deprived of rights secured by the ADA and the Rehabilitation Act and continues to suffer irreparable harm for which there is no adequate remedy at law.

66. The above described violations of the ADA and the Rehabilitation Act are applied to all wheelchair bound detainees confined at the Cook County Jail when they attend court.

67. There is no adequate remedy at law for the refusal of the Sheriff of Cook County and Cook County to provide accessible features for prisoners when attending court.

68. Plaintiffs, who continue to be subjected to the above described policy, bring this action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure to obtain prospective injunctive relief for all wheelchair bound detainees presently confined at the Cook County Jail.

69. Plaintiffs also seek damages individually and for all others similarly situated, and requested that the Court allow this to proceed as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, for all wheelchair bound persons who were detained at the Cook County Jail after August 18, 2012.

70. Plaintiffs hereby request trial by jury on their claim for damages.

WHEREFORE, the Plaintiffs request that appropriate injunctive relief be granted for the class of persons presently confined at the Jail who are wheelchair bound, and that appropriate damages be awarded to plaintiffs and to each member of the putative class. Plaintiff Lacy also requests that appropriate compensatory and punitive damages be awarded against defendants Johnson, Nawara, Lopez, and Wilson. In addition, plaintiffs request that the Court grant whatsoever other relief as may be appropriate, including an award of attorney's fees and costs.

/s/ Patrick W. Morrissey
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2014, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record. I hereby certify that I have mailed by United States Postal Service and email the document to the following non CM/ECF participants: Maureen Hannon, ASA, 69 W. Washington St. Suite 2030, Chicago, Illinois 60602, maureen.hannon@cookcountyil.gov, Michael Gallagher, ASA, 500 Richard J. Daley Center, Chicago, IL 60602, michael.gallagher@cookcountyil.gov and Michael Sorich, ASA 500 Richard J. Daley Center, Chicago, IL 60602, michael.sorich@cookcountyil.gov.

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