

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INMATES OF THE BUCKS COUNTY : CIVIL ACTION NO.
CORRECTIONAL FACILITY; : 02-cv-7377
CHERYL ST. JOHN, TIMOTHY SPROUL, : CLASS ACTION
and ELLEN BOKA SMITH, individually and
on behalf of all other inmates similarly situated,
PLAINTIFFS :

VS. :

COUNTY OF BUCKS, and MICHAEL G. :
FITZPATRICK; CHARLES MARTIN, and :
SANDRA MILLER, individually and as members :
of the Bucks County Board of Commissioners; :
GORDIAN EHRLACHER, individually and as : JURY TRIAL DEMANDED
Director, Bucks County DEPT. of HEALTH; :
LEWIS POLK, M.D., Medical Director, Bucks :
County Health Dept., individually and as Director :
of Correctional Health Services (CHS); JOAN :
CROWE, R.N. ,individually and as CHS director :
at BCCF; HARRIS GUBERNICK, individually :
and as Director, Bucks Co. Dept. of Corrections; :
WILLIS MORTON, individually and as Warden, :
Bucks County Correctional Facility; LENAPE :
VALLEY FOUNDATION t/a Correctional Mental :
Health Services :
DEFENDANTS

AMENDED CLASS ACTION COMPLAINT

I. JURISDICTION

1. Jurisdiction is premised upon 28 U.S.C. § 1331 and 28 U. S.C. §1343, and presents claims for violation of the First, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution pursuant to 42 U.S.C. § 1983, and under § 504 of the Rehabilitation Act of 1973, 29 U. S. C. §794. Female inmates also assert claims under the Pennsylvania Equal Rights Amendment, Article I § 28 of the State Constitution. Redress in the nature of monetary and

equitable relief is sought for denial of necessary medical care and retaliating against sick inmates who seek care; for lack of a policy for prevention, diagnosis and treatment of communicable disease; for lack of ventilation and basic sanitation; for failure to provide medical isolation facilities for inmates with communicable disease; and for deliberate indifference to inmates' serious medical needs.

II. PARTIES

2. Plaintiff Cheryl St. John is currently incarcerated at Bucks County Correctional Facility. St. John is Bipolar and has been diagnosed with Hepatitis C. She became ill in BCCF during December 2001 after the death of inmate Virginia Brejak, who was infected with methicillin resistant staphylococcus aureus (MRSA) and with whom St. John had daily contact. St. John first experienced flu-like symptoms, with swelling on the right side of her face and pussy nasal drainage. She developed a hole in her septum, and vesicular and pustular lesions intermittently on various areas of her body. In April 2002 she was diagnosed with MRSA. In July 2002 she was seen by a local physician who said the hole in her septum cannot be repaired. He recommended St. John see an infectious disease (ID) specialist immediately but CHS (Correctional Health Services) refused. Despite filing grievance forms, she was not seen by an ID physician until a Federal court Order was obtained, on August 30, 2002. She has been held in "medical isolation" i.e. punitive solitary confinement¹ for MRSA infection. She brings this action on her own behalf and as a class representative on behalf of others similarly situated.

3. Plaintiff Timothy Sproul is currently incarcerated at Bucks County Correctional Facility. Several months ago pus filled boils appeared on his hands. He was diagnosed with MRSA and was given antibiotics by the prison nurse, without being seen by a physician. He was

¹ There is no medical ward for isolation of women inmates with infectious diseases. They remain in general population until their condition becomes so acute they must be kept in punitive solitary confinement conditions.

housed in the male Mental Health Unit (MHU) under care of Correctional Mental Health Services (CMHS) and is currently in general population. He brings this action on his own behalf and as a class representative on behalf of others similarly situated.

4. Plaintiff Ellen Boka Smith is a BCCF inmate repeatedly held in solitary confinement for medical isolation. She is a mental health patient under care of CMHS and has recurrent staph boils from MRSA since early 2002, when she had daily contact with Virginia Brejack before her death in December 2001. On September 3, 2002 counsel spoke with her. She was getting no treatment and her attorneys were told she had no MRSA. On September 9 counsel obtained her medical records, which stated she suffered from "folliculitis," infected hair follicles. There was no report of testing for staph or MRSA in her file and no explanation for isolating her in solitary confinement. Counsel obtained laboratory reports via subpoena and identified Ms. Boka Smith's test as positive for MRSA. It was removed from her CHS file. After Plaintiff obtained counsel she was subject to retaliation, which continues. She has written numerous grievances requesting medical care. Prison authorities and CHS obtained a signed "release" from her, stating she refused medical care, to protect themselves from liability. She brings this action individually and as a representative of others similarly situated.

5. Defendant County of Bucks is a municipal governmental entity maintaining offices at the Bucks County Courthouse, 55 East Court Street, Doylestown PA 18901. The County is governed by a three-member Board of Commissioners, responsible to manage, supervise and operate the Bucks County Dept. of Corrections and the Correctional Facility (BCCF).

6. Defendant Michael Fitzpatrick is Chairman of the County Board of Commissioners, and Defendants Charles Martin and Sandra Miller are members of the Board of Commissioners.

All are elected governmental officials and are sued both individually and in their official capacity. Fitzpatrick, Martin and Miller maintain offices at 55 E. Court St., Doylestown PA.

7. Defendant Gordian Ehrlacher is Director of the Bucks County Dept. of Health and maintains offices at Neshaminy Manor Center, Doylestown PA 18901. He is responsible for supervision of Defendant Lewis Polk, M.D. Dr. Polk is Medical Director for the Dept. of Health and for Correctional Health Services, (CHS) and maintains offices at Neshaminy Manor Center, Doylestown PA 18901. The Health Dept. and CHS provide medical care at BCCF and employ Defendant Joan Crowe. Defendants Ehrlacher, Polk and Crowe are sued individually and in their official capacity.

8. Defendant Commissioners, Ehrlacher and Polk are responsible for the County's official unwritten policy and practice to house inmates with communicable disease in general population, to arbitrarily confine sick inmates in solitary cells for "medical isolation" but without treatment, to deny medical care to inmates regardless of need, to refuse medical testing without an Order of Court, to deny existence of infectious disease in the prison, and to cover up outbreak of infectious disease. Crowe implements this policy as a gatekeeper, denying inmates access to physicians at will and punishing inmates who repeatedly seek care. She has charged inmates with misconduct for complaining about denial of necessary medical care, thereby prolonging incarceration and placing them in solitary confinement.

9. Defendant Harris Gubernick is Director of the Bucks County Dept. of Corrections and also deputy warden for inmate work release centers. He maintains offices at 1730 South Easton Road, Doylestown PA 18901. Mr. Gubernick reports to the BCCF Warden as his deputy, but as Director of Corrections he also supervises and evaluates performance of the Warden, Willis Morton. This effectively insulates Morton from direct supervision, as intended by

Defendants Fitzpatrick, Martin and Miller. Defendants Gubernick and Morton are sued both individually and in their official capacities.

10. Defendant Lenape Valley Foundation is a private entity contracting with Bucks County Health Dept. to provide mental health services to inmates at the county jail, trading as CMHS, Correctional Mental Health Services. Lenape Valley reports to the county Health Dept.

11. At all times relevant to this action Lenape Valley Foundation has acted under color of state law and in accordance with official but unwritten policies, patterns and practices, with deliberate indifference to the serious mental health needs of BCCF inmates. Plaintiffs Boka Smith, St. John, and Sproul are patients of Lenape Valley Foundation, t/a CMHS.

III. CLASS ACTION ALLEGATIONS

12. The official policies and practices of the County of Bucks and Commissioners Fitzpatrick, Martin and Miller complained of by all Plaintiffs in this action are:

(a) failure to provide medical isolation housing for inmates with communicable diseases, and failure to provide any mental health or medical housing for women inmates;

(b) failure to repair multiple roof leaks causing water to run down cell walls when it rains, and failure to properly maintain inmate showers and ventilation to provide basic sanitation;

(c) covering up, distorting, and withholding information of communicable disease among inmates at BCCF, as more fully set forth below;

(d) Failure to promulgate, publish, implement or enforce a policy for prevention, diagnosis and treatment of communicable disease among inmates including but not limited to tuberculosis, hepatitis C and Staph or MRSA at BCCF;

(e) utilizing prolonged punitive solitary confinement without treatment for sick inmates, especially women;

(f) refusal to provide oversight and supervision to the Warden by having him report to his subordinate, and failing to evaluate his performance.² The warden supports CHS policies³ to deny inmates necessary medical care, and the Commissioners ratify his actions.

(g) Failure to repair roof leaks causing dampness, moisture, mold, fungus and bacterial growth on all surfaces in the prison, providing nutrients for harmful bacteria. Leaks prevent remediation of unsanitary inmate showers, cells and food preparation areas.

(h) Routine falsification and/or destruction of inmate complaints and medical records, to cover up known infections, including Hepatitis C, tuberculosis, Staph, MRSA, because there is no treatment and infections spread among inmates and guards.

(i) Refusal to test for infectious disease, e.g. Staph and MRSA unless ordered by Court. Interpreting a Court Order for testing sick inmates to not test them unless they request testing, thus eliminating testing inmates unaware of the Court Order, or too sick to request testing, too mentally ill to understand, or too afraid of retaliation to ask for testing.

(j) Routine retaliation against inmates who request medical care, by denying them treatment and falsely charging them with misconduct, putting them in punitive solitary confinement and prolonging imprisonment.

(k) Ignoring minimal sanitation standards for county jails despite state citations requiring ventilation and fresh air, cleaning ducts of dirt and mold, cleaning walls, floors and

² For years prior to Warden Morton's hire, the Commissioners also appointed the warden to be Director of Corrections, preventing any accountability. Warden Nesbitt resigned in February 2002 following a Grand Jury investigation of an inmate death from drug overdose and disclosure of sexual abuse of women inmates by male corrections officers. Defendant Commissioners promised to appoint a separate Director of Corrections to supervise the Warden. Instead, the Commissioners appointed the deputy warden Director of Corrections. Harris Gubernick is subordinate and superior of Warden Morton, maintaining the practice of having the warden report to himself.

³ The U. S. District Court ordered Bucks County to establish a County Prison Oversight Board, including citizen members, to make policy and provide oversight.

ceilings, replacing filthy inmate showers with stainless steel inserts. Failure to maintain reasonable sanitation fosters repeated infections. Inmates are denied basic personal hygiene.

(l) Preventing communication outside BCCF by inmates and prison workers by threats, disseminating false information, denying truth, withholding information, sanitizing records, personal harassment of inmates and their counsel, disconnecting Plaintiffs' phone calls.

13. The Plaintiff class consists of all persons who are or will be incarcerated in the Bucks County Correctional Facility. Plaintiffs bring the claims herein on their own behalf, and, pursuant to F.R.C.P. 23 (a) and (b) (2), on behalf of similarly situated inmates.

14. The Plaintiff subclass consists of all women who are or will be incarcerated in the Bucks County Correctional Facility under conditions less favorable than conditions of male inmates. The subclass also brings the claims herein pursuant to F. R.C.P. 23 (a) and (b) (2).

15. The size of the class and subclass is not specifically known to named Plaintiffs, are believed to exceed 700 persons, the average size of the BCCF population.

16. The requirements of F.R.C.P. 23 are met in that:

(a) The members of the class and subclass are so numerous that joinder of all members is impracticable;

(b) There are questions of law and fact common to the members of the class and sub-class;

(c) The claims of the representative parties are typical of the claims of the class and sub-class;

(d) The representative parties will fairly and adequately protect the interests of the class;

(e) Defendants have acted on grounds generally applicable to the members of the class and subclass, thereby making appropriate injunctive and declaratory relief for the class as a whole.

IV. FACTUAL ALLEGATIONS

17. On Friday August 23, 2002, U.S. Magistrate Judge Diane M. Welsh entered an Order requiring, *inter alia*, immediate production of medical records for Plaintiff Cheryl St. John and two other women inmates and requiring Defendants to have them seen by a physician certified in infectious diseases or epidemiology "forthwith." The Order is attached hereto as Ex. A and states, "Any inmate exhibiting symptoms of MRSA and who requests to be tested shall promptly be tested."

18. On August 25, 2002 Defendant Polk's public statement to the press was printed in the local newspaper of general circulation. He said that under the Court Order, two things had to happen before anyone is tested for MRSA: only inmates who had visible MRSA symptoms, and who also formally requested testing, after the date of the order, had to be tested.

19. Defendant Polk's statement reflected the official policy of Bucks County, its Commissioners and Warden, that the County would do nothing to prevent infectious disease at BCCF unless specifically ordered to take precautions by a Federal Judge.

20. On Tuesday August 27, 2002 two more inmates and a prison guard were exhibiting symptoms consistent with MRSA, and no report of infectious disease outbreak at BCCF had been made to the Pennsylvania Dept. of Corrections as required by state law. None of the three sick women had been seen by an infectious disease physician as Judge Welsh ordered.

21. The County allegedly had a contract with an infectious disease physician in Bethlehem, but this doctor refused to see the sick women because there was "litigation," i.e., a Court Order.⁴

22. On August 27, 2002 U.S. Magistrate Judge Welsh issued a second Order, because Defendants had not complied with the prior Order. A true and correct copy of said Order is attached hereto as Ex. B, and provides:

". . . In order to prevent the further outbreak of MRSA at the BCCF, the court hereby ORDERS that:

(1) All inmates in the BCCF and all BCCF staff who are on duty in the BCCF are to be tested for MRSA infection by midnight tonight.

(2) Any BCCF staff members who are not on duty today are to be tested as soon as they return to duty at the BCCF.

(3) BCCF nursing staff shall administer the required tests and, if necessary to comply with the court's deadline, the BCCF shall use outside medical professionals to administer the required tests.

(4) Dr. Lewis Polk of the Bucks County Department of Health is to insure compliance with the Order for testing.

Title 37, section 95.242, subsection (2)(xii) of the Pennsylvania Code provides that the BCCF shall advise the Division of County Correctional Services of the state Department of Corrections within 48 hours of the outbreak of infectious diseases. Counsel has informed the court that this notification had not been sent as of this morning. Accordingly, it is hereby ORDERED that Harris Gubernick, the Director of the Bucks County Department of Corrections, shall inform the state Department of Corrections forthwith about the outbreak of MRSA at the BCCF."

23. Testing took several days. It is believed all inmates were tested but not all guards. CHS nurses administered the nasal swab tests.

24. Dr. Polk ordered screening tests for MRSA processed by a local hospital. He did not order reports of all positive staph infections, only for MRSA infections, though MSSA

⁴ No effort was made to require this doctor to perform his contractual obligations. He was allowed to refuse his services and is believed to still have the prison contract. The three women were then taken to Abington Hospital Emergency Room, but the certified infectious disease physician there refused to see them without a prior appointment for an office visit.

(methicillin susceptible staphylococcus aureus)⁵ is just as dangerous as MRSA. Thus, only MRSA not MSSA infections were reported. People testing positive for MSSA would have negative MRSA results, and were not told they had MSSA. No MSSA infected inmates⁶ would be treated, under the County policy to deny medical care to inmates. Dr. Polk, CHS and Deft. Ehlacher evaded the Order, which sought to protect inmates from dangerous infection.

25. Of approximately 1,100 individuals tested, Dr. Polk announced only that 34 tested positive for MRSA. No other results were disclosed.

26. Undersigned counsel subpoenaed testing information from the hospital laboratory which processed the prison specimens. Of the nasal swab specimens, 376 individuals tested positive for MSSA but only 34 were positive for MRSA. There were also 3 wound cultures, positive for MRSA in addition. This clearly demonstrates defendants' withholding of vital information, and their deliberate indifference to public health and inmates' medical care. None of the 376 people with MSSA were informed or treated. All remained in general population. Inmates are released carrying infections to their families and neighbors.

27. It is believed a report on the BCCF outbreak was prepared by state health officials,⁷ which was withheld from the public. Polk claims it is "confidential," ignoring the public health implications and the taxpayer funds which paid for it.

28. Some guards tested negative in the BCCF test, but distrusted CHS. They were tested by private doctors, with positive MRSA results. When a guard confronted Nurse Crowe about this, she said, "well, you didn't get it here," or words to that effect.

⁵ MSSA is cheaper to treat, but causes the same damage as untreated MRSA infection, and is equally contagious.

⁶ There were actually 376 test results positive for staphylococcus aureus. See paragraph 26.

⁷ There was a "Chart Review" of 22 BCCF inmate charts done by a state health official, showing that between October 2001 and August 28, 2002, 20 inmates were infected with MRSA. Three came into prison with the infection; source of infection for the other 17 was not determined, and could have been contracted during incarceration. It is not known whether any MRSA inmates were treated or what became of them. There is no indication that inmates with MRSA were tested, although sick.

29. Serious MSSA or MRSA infections in families of prison employees are known. These employees have been threatened with job loss if they identify themselves. Family members have lost jobs and required hospitalization. Children with MSSA or MRSA attend Bucks County schools.

30. Sheriffs, public defenders and constables who work daily with BCCF inmates, transporting them, supervising them in holding cells for hearings, and representing them in court, were refused staph tests by CHS. These workers were told that tests done privately would not be covered by workmen's compensation, to cover up the source of infection.

31. Between the August 23 court order and the August 27 court order, undersigned counsel visited the prison. Defendants denied MRSA was present but guards kicked doors open to avoid touching doorknobs.

32. On or about September 3 a male inmate was hospitalized with MRSA abscess wound of the groin. Defendants would not identify him, or comment on his condition.

33. On September 14 inmate Mindy Hallak had a painful swelling near her lower left jaw. Next day it was the size of a golf ball. Other inmates recognized it MRSA. Hallak was given antibiotics and told she had "an infected pimple." She remained in general population, a source of infection to others.

34. The ID physicians who saw the three sick women inmates said their infections could be successfully treated but would continue to recur unless ongoing hygiene and sanitation problems are resolved. This is not being done. Filthy showers, food preparation and cafeteria areas, remain at BCCF. Sick inmates are transferred between cells without cleaning.

35. Because all women inmates are housed together including mental patients, razors are not permitted for womens' personal grooming. One woman will obtain a razor from a male inmate,⁸ and share it, potentially spreading infection.

36. Skin lesions caused by MRSA or MSSA are called "pimples, "acne," "herpes" or "infected hair follicles" or "folliculitis" by CHS, and not treated. At a meeting of county officials on August 20, 2002 Defendant Gubernick said there was no staph in the prison, "just two women with a rash."⁹

37. After the August 27 Court Order for MRSA testing, state health officials visited BCCF and ordered the laundry of infected inmates be washed separately from other inmate laundry. Infected inmates' laundry was placed in special bags, which disintegrate in hot water. These bags were placed in the same washing machine with other laundry, all washed together.

38. After the August 27 Court Order for MRSA testing, male inmates on one cell block were given disposable razors, which were discarded after use, to prevent spread of infection by shared shaving implements. This was not done for women until months later.

39. The physician who examined Cheryl St. John on August 30, 2002 prescribed antibiotics, but stated if general hygiene conditions are not improved, the infection will recur. He instructed she shower daily, in a clean shower, and once a week shower head to toe with disinfectant. This was not done.

40. BCCF has been cited by the Pennsylvania Dept. of Corrections for roof leaks, discolored ceilings, dampness, vents clogged with dirt, peeling paint, rusted vents, mold and filthy inmate showers for years. There are few windows. It is an incubator for infectious disease. In 2000 an attempt was made to install stainless steel showers but had to be stopped due

⁸ A common method of obtaining a razor blade is to have a male inmate put one in a library book then a female inmate borrows the book. Recently, undersigned counsel was informed that the inmate librarian has staph infection.

⁹ It is believed he referred to the inmates in the first Federal Court Order.

to roof leaks. In August 2002 after the Court ordered MRSA tests, state health officials toured the women's module and were shown a newly painted, clean "show" shower, not the others.

Infected inmates use the dirty showers. Inmates cannot maintain basic personal hygiene.

41. Cleaners and disinfectants, even bleach, are not permitted in the women's module because of risk to mental patients. Women cannot clean the furniture in their day area, or disinfect their cells when moved from one cell to another, even cells used by an infected inmate.

42. Defendants do not regularly clean and disinfect walls ceilings, doors, floors, food or laundry areas, ventilation systems or furniture. Insects in the furniture are killed with furniture polish. Upholstered surfaces are not disinfected when inmates bleed, vomit or defecate on them.

43. Plaintiffs have substantially complied with available administrative remedies.

COUNT I

PLAINTIFFS' CONSTITUTIONAL CLAIMS UNDER 42 U.S.C. § 1983

44. Allegations contained in paragraphs 1 through 43 above are incorporated herein as if set forth in full.

45. The unhealthy, filthy conditions described above not only violate minimum state standards for county jails, but also violate U. S. Constitutional prohibition of cruel and unusual punishment in the Eighth Amendment by failure to provide medical isolation for inmates carrying communicable disease and failure to provide adequate sanitation and ventilation.

46. Failure to provide medical care for illness including hepatitis C, tuberculosis, MSSA, MRSA and other diseases, spread by contact, body fluids, or lack of ventilation also violates the Eighth Amendment by causing needless pain and suffering through deliberate indifference to serious medical needs.

47. Defendants' refusal to inform inmates infected with MSSA after testing¹⁰, and refusal to acknowledge these infections, violate inmates' First Amendment guarantees by depriving them of vital medical knowledge and causing them to carry disease to families and neighbors.

48. The June 2002 inspection report found BCCF noncompliant with basic housing and sanitation requirements:

Housing: Title 37 Chapter 95¹¹ requires written local policy. . .to handle the segregation, removal, or transfer of inmates requiring medical attention. It is also required that a mentally ill inmate or one known to have a contagious disease shall be separated from the general population. The female housing area (A Block) cannot handle this segregation and separation requirement as all women are confined in the same living space. This non-compliance was reported as a *Recommendation* in the 2001 annual inspection. Warning language as to this non-compliance . . .escalating to a *Citation* status is being held in abeyance due to this matter being currently under federal court litigation.¹²

Housing: Title 37 Chapter 95 requires housing adequacy, based upon such factors as climatic conditions and ventilation. It is also required that all parts of the prison shall be properly maintained and kept clean at all times. Numerous areas of the prison do not meet this adequacy and maintenance requirement. This non-compliance was reported . . .in the 2001 annual inspection. Review of . . .county commissioners meeting notes indicates a good faith effort . . .in approving budget money for the numerous repairs needed . . .¹³

49. Women receive tests for tuberculosis as required by law, but since there are no segregated facilities, nothing can be done to prevent spreading of this airborne bacteria.

Plaintiffs are aware of two women who had positive TB tests on A Module this year.

50. The recurring, dangerous and extremely painful boils, wounds, sores, headaches, diseases and permanent injuries caused by infection, suffered during incarceration upon named plaintiffs and others similarly situated constitute cruel and unusual punishment in violation of the

¹⁰ The lack of testing or treatment of hepatitis C and other diseases is also included. TB tests are given but positive reactions are ignored and, again, there is no medical isolation or clean air circulation. TB is airborne.

¹¹ These are state law provisions. They are the same as requirements for compliance with U. S. Constitutional guarantees, which provide a floor beneath which state law provisions may not go.

¹² The county has moved for termination of a pending Contempt proceeding in this Court at the same time it seeks postponement of citations from the state because of the pending federal litigation preexisting the instant case.

¹³ This report predated formation of the Prison Oversight Board. Financial reports given to the new Oversight Board in November 2002 show that money budgeted for prison repairs is unspent. New appropriations for construction of partitions to prevent inmate contact with visitors was approved, however. A 2003 budget proposal for a new women's module with medical and mental health housing was struck off in December 2002.

Eighth Amendment as to convicted inmates, and constitute violation of equal protection guarantees of the Fourteenth Amendment as to pretrial detainees and inmates held beyond their maximum sentences. All are subject to the same inhumane conditions.

51. These painful afflictions and injuries, some of which are permanent and disfiguring, are directly caused by:

(a) Defendant County and Commissioners' ongoing refusal to provide independent supervision and oversight of the jail, the warden, and inmate living conditions.

(b) All Defendants' failure and refusal to develop, promulgate, implement or enforce a policy for testing, diagnosis, isolation and treatment of inmates with contagious disease, and policies for the mentally ill who refuse treatment, endanger themselves and infect others.

(c) Defendants' refusal to acknowledge that the inmate population includes many individuals with compromised immune systems, especially susceptible to infections living in a closed, damp, dirty prison lacking ventilation and with disease-laden showers.

(d) Defendants' practice of treating inmates complaining of pain, fevers, chills, boils, sores, sickness and injury as malingerers undeserving of medical care or personal hygiene.

(e) Defendants' deliberate indifference to inmates' serious medical and psychological needs based on presumption of malingering, unless defendants fear liability for death.

(f) A universal belief of correctional health care personnel, that women inmates are less deserving of clean cells and medical attention.

(g) Persistent official refusal to acknowledge that all inmates, especially women, require adequate housing with medical isolation for contagious disease such as TB, hepatitis C and MRSA, and a mental health unit for treatment, not just restraint, of the mentally ill.

(h) Failure to clean vents, walls, floors and all surfaces in the jail, including the kitchen, cafeteria, inmate showers, furniture, and cells, causing bacterial growth throughout the prison.

(i) Failure to repair roof leaks so that mold and dirt filled vents and showers could be repaired or replaced and painted, disinfected and kept clean.

(j) Failure to maintain humane conditions of incarceration as required by the Eighth and Fourteenth Amendments of the U.S. Constitution.

(k) Failure to disclose medical test results to inmates, failure to test for serious infection unless ordered by a court.

(l) Use of degradation, humiliation and unnecessary force via drugs (chemical restraints) for inmates who misbehave.

(m) Use of arbitrary punitive refusal to treat injuries and disease to discipline inmates, and use of misconduct charges to avoid treating sick and injured inmates.

52. At all times relevant to this action all Defendants, including Lenape Valley Foundation, acted against Plaintiffs under color of state law and in symbiotic concert with government officials and agents for imposition of liability for Eighth and Fourteenth Amendment violations under 42 U.S.C. § 1983.

53. As a direct and proximate result of Defendants' ongoing deliberate indifference to Plaintiffs' serious medical and mental health needs, sentenced inmates' Eighth Amendment rights to be free of cruel and unusual punishment have been violated. Pretrial detainees' due process and equal protection rights under the Fourteenth Amendment have been violated. Inmates have been prevented from seeking redress for lack of medical care and punishment for filing grievances, lockdown for "misconduct," and denial of necessary medical care.

54. Plaintiffs seek both injunctive and monetary relief for these constitutional violations.

Injunctive relief is sought by mandatory repairs, cleaning, sanitation, ventilation, clean showers, disinfection and maintenance of the prison, segregated housing for inmates with communicable disease, free communication of medical information, and adoption and enforcement of policies to test, diagnose, treat and prevent infectious diseases including but not limited to TB, MSA and MRSA. Monetary relief is sought for unnecessary suffering, pain, physical injuries, agony, fevers, disfigurement, surgeries, medical care, and possible death.

WHEREFORE, Plaintiffs inmates demand judgment in their favor and against all defendants for violation of their First, Eighth and Fourteenth Amendment rights under and pursuant to 42 U.S.C. § 1983 in an amount in excess of the jurisdictional threshold (\$150,000.00) each, and such equitable and injunctive relief as the Court deems proper and appropriate in this case.

COUNT II

PLAINTIFFS' CLAIMS UNDER § 504 OF THE REHABILITATION ACT OF 1973

55. Allegations contained in paragraphs 1 through 54 above are incorporated herein as if set forth in full.

56. Defendant County receives federal funding for provision of BCCF inmate health services by CHS and mental health services through Lenape Valley Foundation t/a CMHS.

57. Named Plaintiff Representatives and the Plaintiff Class are qualified individuals with disabilities as defined by the Rehabilitation Act of 1973, 29 U.S. C. 701 et. seq. Section 504 of the Act, 29 U.S.C. 794, prohibits discrimination and retaliation against persons with disabilities including correctional institution programs of state or local governments.

58. The discriminatory treatment described above against Plaintiff Representatives and other class members violates § 504 of the Rehabilitation Act of 1973 by failure to provide housing for inmates with contagious disease, failure to enact and enforce policies for diagnosis and treatment of persons with infection and disease, failure to provide basic sanitation and necessary medical care for persons with contagious disease, failure to properly maintain and repair prison facilities for food service, showers and ventilation systems to prevent harmful bacteria, punitive retaliation against sick and disabled inmates who file complaints for denial of treatment, and misstating or withholding information and medical records from inmates.

59. As a direct and proximate result of defendants' violation of § 504 of the Rehabilitation Act of 1973, Plaintiffs are and will be prevented from participating in rehabilitative programs, drug and alcohol programs, employment training and work release programs to improve their situation in life, due to deliberate denial of necessary medical care. Defendants are therefore liable in money damages to plaintiffs, for cruel, unnecessary pain and suffering, mental and emotional distress, for additional jail time beyond the sentence to be served, and/or serious permanent injury and possibly fatal illness.

WHEREFORE, Plaintiffs, individually, and on behalf of others similarly situated demand entry of judgment in their favor and against all defendants in excess of the \$150,000 jurisdictional amount, plus counsel fees and costs of this action, and such prospective equitable relief as the court deems appropriate in the circumstances of this case.

COUNT III

CLAIMS UNDER ARTICLE I § 28 OF THE PENNSYLVANIA CONSTITUTION

60. Allegations contained in paragraphs 1 through 59 above are incorporated herein as if set forth in full.

61. Article I § 28 of the Pennsylvania Constitution prohibits denial or abridgement of individual rights under law because of the sex of the individual. Article I § 26 prohibits discrimination and denial of civil rights by the Commonwealth or any municipality.

62. Although violations complained of in this action apply to BCCF regardless of gender, it is clearly apparent that Defendants' longstanding refusal to provide any facilities for segregation of mentally ill or mentally disabled female inmates violates the Equal Rights Amendment of the state Constitution. Defendants do provide a Mental Health Unit and a Restricted Housing Unit for segregation of mentally ill male inmates and disruptive male inmates in disciplinary isolation. There is also a cell block for male inmates with medical problems.

63. There are no intake facilities (or even showers) for female inmates, who are admitted directly from the street and are not seen by health care providers for more than a week or so after placement in A Module. Housing sick or contagious inmates, and the mentally ill, in general population is prohibited by state and federal law. There is settled ongoing deliberate indifference to basic rights of women inmates to humane conditions of incarceration. As a direct and proximate result, proportionately more women than men have become infected with MSSA and MRSA. The women are generally sicker than the men because they are denied treatment more frequently than men, and because their living conditions are worse due to being housed with mental patients, contagious inmates, and have no disinfectant.

64. Conditions for women in Bucks County Prison have always been inferior to conditions for men. In 1979 a class action was filed by Inmates of Bucks County Prison against Andrew Warren, et. al., i.e. County Commissioners, Warden, and others # 79-1785. A subclass

of women inmates was certified. A Consent Decree was entered in June 1983 requiring women inmates be afforded equal facilities, opportunities for work release, educational programs and training as provided male inmates. Defendants are in contempt of that Consent Decree at the time of filing this action. A Motion for Contempt is pending. Defendant County and Commissioners agreed to build a medical and mental health units for women, exercise yards and intake facilities, but have not done so as of time of filing this action.

65. As a direct and proximate result of denial of equal rights under Article I § 28 of the Pennsylvania Constitution, female plaintiffs, individually and as class representatives, suffer severe and unnecessary pain, infection, physical and mental illness, humiliation, degradation, anxiety, fear, and retaliation , and seek damages and equitable relief.

WHEREFORE, Plaintiffs Cheryl St. John, Ellen Boka Smith and others similarly situated, demand entry of Judgment in their favor and against all Defendants for mandatory appropriate equitable relief and money damages plus costs of this action and counsel fees, for violation of Article I § 28 of the Pennsylvania Constitution.

Respectfully submitted,

Respectfully submitted,

Respectfully submitted,

Martha Sperling Esq.
Co-counsel for Plaintiffs
Silver and Sperling
107 North Broad Street
Doylestown PA 18901

Angus Love Esquire
Co-counsel for Plaintiffs
Institutional Law Project
924 Cherry St. Suite 523
Philadelphia PA 19107

Anita F. Alberts Esquire
Co-counsel for Plaintiffs
The Atrium Suite 2 West
301 South Main Street
Doylestown PA 18901

