

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARK E. OSTERBACK, FREDERICK CLARK,)
DANNY L. ELDRIDGE, ALVIN M. FEW,)
LAVICTOR FLOURNOY, FRANK S. LOWRY,)
BRIAN D. MESSENGER, ROBERT PERI,)
SALVATORE J. RICCI, HECTOR M.)
RIVAS, CARLOS RUIZ, LAWRENCE J.)
SARGENT, ANTONIO L. WARD, WILLIE)
J. WATSON, NEBUCHADNEZZAR WRISPER,)
individually, and on behalf of a)
Class of all others similarly)
situated,)

Plaintiffs,)

v.)

MICHAEL W. MOORE, in his)
official capacity as Secretary,)
Florida Department of Corrections;)
PAUL C. DECKER, in his official)
capacity as Warden of Baker)
Correctional Institution; WARREN)
W. CORNELL, in his official)
capacity as Warden of Charlotte)
Correctional Institution, DAVID L.)
PRIDGEN, in his official capacity)
as Warden of Columbia Correctional)
Institution; LONNIE E. HOLMES, in)
his official capacity as Warden of)
Everglades Correctional Institu-)
tion; JAMES V. CROSBY, JR., in his)
official capacity as Warden of)
Florida State Prison; CHESTER)
LAMB DIN, in his official capacity)
as Warden of Martin Correctional)
Institution; JOSEPH S. PETROVESKY,)
in his official capacity as Warden)
of Santa Rosa Correctional Insti-)
tution; CLARK J. MOODY, in his)
official capacity as Warden of)
Taylor Correctional Institution;)
CHARLES E. GERMANY, in his official)
capacity as Warden of Washington)
Correctional Institution,)

Defendants.)

Case No. 97-2806-CIV-MORENO
MAGISTRATE JUDGE SORRENTINO

SECOND AMENDED COMPLAINT

CLASS ACTION

Plaintiffs, individually, and as representatives of a class of persons similarly situated, sue defendants and allege:

PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief alleging that the defendants house inmates assigned to Close Management under conditions so harsh, atypical and punitive as to amount to Cruel and Unusual Punishment in violation of the Eighth Amendment to the United States Constitution.

2. The conditions under which Close Management inmates are housed result in serious mental and physical deterioration.

3. The conditions under which Close Management inmates are housed poses a danger to the public since a large, although unknown number of inmates complete their sentence while on Close Management and are released directly from Close Management to the street.

JURISDICTION

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

5. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the plaintiffs by the Eighth and Fourteenth Amendments to the Constitution of the United States of America.

6. The plaintiffs' claims for relief are predicated on upon 42 U.S.C. § 1983, which authorizes actions to redress the

deprivation, under color of state law, of rights, privileges and immunities secured to plaintiff by the Constitution and laws of the United States.

7. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

8. Injunctive relief is sought pursuant to Rule 65, Federal Rules of Civil Procedure.

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because at least one of the defendants resides in this District and a substantial part of the events and omissions giving rise to plaintiffs' claims occurred in this District.

10. Plaintiffs' claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

PARTIES

11. Plaintiff, MARK E. OSTERBACK, is a prisoner currently incarcerated at Walton Correctional Institution, located in Walton County, Florida. He was incarcerated at Everglades Correctional Institution, located in Miami-Dade County at the time this case arose.

12. Plaintiff, FREDERICK CLARK, is a prisoner currently incarcerated at Everglades Correctional Institution, located in Miami-Dade County, Florida.

13. Plaintiff, DANNY L. ELDRIDGE, is a prisoner currently incarcerated at Taylor Correctional Institution, located in Taylor County, Florida.

14. Plaintiff, ALVIN M. FEW, is a prisoner currently incarcerated at Washington Correctional Institution, located in Washington County, Florida.

15. Plaintiff, LAVICTOR FLOURNOY, is a prisoner currently incarcerated at Taylor Correctional Institution, located in Taylor County, Florida.

16. Plaintiff, FRANK S. LOWRY, is a prisoner currently incarcerated at Santa Rosa Correctional Institution, located in Santa Rosa County, Florida.

17. Plaintiff, BRIAN D. MESSENGER, is a prisoner currently incarcerated at Washington Correctional Institution, located in Washington County, Florida.

18. Plaintiff, ROBERT PERI, is a prisoner currently incarcerated at Columbia Correctional Institution, located in Lake County, Florida.

19. Plaintiff, SALVATORE J. RICCI, is a prisoner currently incarcerated at Columbia Correctional Institution, located in Lake County, Florida.

20. Plaintiff, HECTOR M. RIVAS, is a prisoner currently incarcerated at Florida State Prison, located in Bradford County, Florida.

21. Plaintiff, CARLOS RUIZ, is a prisoner currently incarcerated at Charlotte Correctional Institution, located in Charlotte County, Florida.

22. Plaintiff, LAWRENCE J. SARGENT, is a prisoner currently incarcerated at Martin Correctional Institution, located in Martin County, Florida.

23. Plaintiff, ANTONIO L. WARD, is a prisoner currently incarcerated at Baker Correctional Institution, located in Baker County, Florida.

24. Plaintiff, WILLIE J. WATSON, is a prisoner currently incarcerated at Santa Rosa Correctional Institution, located in Santa Rosa County, Florida.

25. Plaintiff, NEBUCHADNEZZAR WRISPER, is a prisoner currently incarcerated at Florida State Prison, located in Bradford County, Florida.

26. Defendant, MICHAEL W. MOORE, is the Secretary of the Florida Department of Corrections. As such, he bears overall responsibility for the operation of all prisons under the supervision and control of the Florida Department of Corrections. He is sued in his official capacity.

27. Defendant, PAUL C. DECKER, is the Warden of Baker Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

28. Defendant, WARREN W. CORNELL, is the Warden of Charlotte Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

29. Defendant, DAVID L. PRIDGEN, is the Warden of Columbia Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

30. Defendant, LONNIE E. HOLMES, is the Warden of Everglades Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

31. Defendant, JAMES V. CROSBY, JR., is the Warden of Florida State Prison. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

32. Defendant, CHESTER LAMBDIN, is the Warden of Martin Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

33. Defendant, JOSEPH S. PETROVESKY, is the Warden of Santa Rosa Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

34. Defendant, CLARK J. MOODY, is the Warden of Taylor Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

35. Defendant, CHARLES E. GERMANY, is the Warden of Washington Correctional Institution. As such, he bears overall responsibility for the operation of that prison, including operation of the Close Management Unit at that prison. He is sued in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

36. This action challenges the restrictions placed on Close Management inmates as authorized by Chapter 33-601.801-813, Florida Administrative Code.

37. The plaintiffs have no available administrative remedies which can serve to end the practices herein challenged. Therefor the exhaustion requirement of the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e(a), is not applicable to this matter.

38. There are no available administrative remedies because according to the express terms of Rule 33-103.001(4)(b), Florida

Administrative Code, inmates cannot file grievances regarding the substance of state regulations. Each of the practices challenged in this action is specifically authorized by state regulations, to wit: Rule 33-601.801-813.

39. Despite the ban on grievances regarding the substance of state regulations, plaintiffs and the plaintiff Class have attempted to utilize the grievance process to challenge the harsh and punitive restrictions of Rule 33-601.801-813. Each and every grievance making such a challenge has been denied.

40. Plaintiff Mark Osterback grieved without success the following issues:

- A. Limitations on purchases of pens. See Plaintiffs' Appendix of Exhibits to original Complaint, Exhibit 31.
- B. Limitations on purchase of stamps. See Plaintiffs' Appendix of Exhibits to original Complaint, Exhibit 34.
- C. Lack of adequate furnishings in Close Management cells. See Plaintiffs' Appendix of Exhibits to original Complaint, Exhibit 45.
- D. Restricted access to reading materials, periodicals, programs, canteen purchases, telephone, visitation, correspondence, association with other inmates, law library access, ability to seek protective management, personal property and outdoor exercise. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 124.
- E. Insufficient cell size and double celling of CMII and CMIII inmates. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 126.
- F. Visitation. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 136.
- G. Magazine subscriptions. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 138.

- H. Frequency of canteen purchases. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 140.
- I. Limitation on canteen items which can be purchased. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 142.
- J. Barring of Radios. See Plaintiffs' Appendix Supplement to First Amended Complaint, Exhibit 144.

41. Plaintiff Frederick Clark used the grievance process without success on the following issues:

- A. To complain about lack of educational opportunities, job opportunities, gaintime, and drug treatment programs while in Close Management. His grievances were rejected by the Florida Department of Corrections on October 22, 1998 and July 7, 1999.
- B. To complain about lack of safety in the Close Management Unit. His grievance was rejected by the Florida Department of Corrections on November 6, 1998.
- C. To complain about lack of access to legal materials while assigned to Close Management. His grievance was rejected by the Florida Department of Corrections on July 22, 1998.

42. Plaintiff Danny L. Eldridge used the grievance process without success on the following issues:

- A. The refusal of the Correctional Officers on duty in the Close Management Unit to permit plaintiff to talk to a psychologist and their use of Mace and the writing of a disciplinary report rather than meeting his mental health needs. His grievance was rejected by the Florida Department of Corrections on September 25, 1998. A second grievance, raising a similar issue, was denied on the same day.
- B. The refusal of staff to arrange a cell change, resulting in plaintiff being assaulted by his cellmate and then receiving disciplinary action. The Florida Department of Corrections improperly rejected plaintiff's grievance on October 28, 1998, on the grounds that it was not a "sensitive nature" grievance.

43. Plaintiff Alvin M. Few has used the grievance process without success to grieve the following issues:

- A. That the isolation, lack of out-of-cell recreation time, and lack of group activity, results in depression, hatred, anxiety and mental deterioration. His grievance was rejected by the Florida Department of Corrections on July 27, 1999.
- B. The refusal to permit Close Management inmates to have a radio results in psychological harm. His grievance was rejected by the Florida Department of Corrections on July 27, 1999.

44. Plaintiff Lavictor Flournoy used the grievance process without success to grieve the following issues:

- A. That the absence of any programs for Close Management inmates poses a threat to his sanity and mental well-being and is likely to produce counterproductive behavior. His grievance was rejected by the Florida Department of Corrections on February 15, 1999.
- B. To complain about the use of chemical agents adversely affecting inmates not involved and to complain about the general unsanitary condition of the Close Management cells. His grievance was rejected by the Florida Department of Corrections on March 1, 1999.
- C. To complain about the condition of the mattresses supplied to Close Management inmates. His grievance was rejected by the Florida Department of Corrections on February 22, 1999.
- D. To complain about the inadequacy of the heating system in the Close Management Unit. His grievance was rejected by the Florida Department of Corrections on February 15, 1999.
- E. To complain about lack of sanitation when meals are served. His grievance was rejected by the Florida Department of Corrections on March 16, 1999.
- F. To complain about lack of opportunities to participate in programs and consequent lack of gaintime, resulting in having to serve a longer sentence. His grievance was rejected by the Florida Department of Corrections on December 12, 1998.

45. Plaintiff Frank S. Lowry used the grievance process without success to grieve the following issues:

- A. The fact that inmates on Close Management were not permitted to possess the same type of personal items as is permitted inmates in general population. His grievance was rejected by the Florida Department of Corrections on August 27, 1999.
- B. The inability to obtain a pen when needed to prepare legal or other written materials. His grievance was rejected by the Florida Department of Corrections on August 27, 1999.
- C. The inability to obtain materials from the law library in a timely manner. His grievance was rejected by the Florida Department of Corrections on August 27, 1999.
- D. Lack of library books to read. His grievance was rejected by the Florida Department of Corrections on September 9, 1999.

46. Plaintiff Brian D. Messenger has used the grievance process without success to grieve the following issues:

- A. To complain that inmates on Close Management were not permitted to have radios, or other privileges, and that a radio would cure a lot of depression and psyche problems. His grievance was rejected by the Florida Department of Corrections on August 12, 1999.
- B. To complain about lack of out-of-cell time, about isolation from other prisoners, about lack of access to telephones, to family, and to television, and to stress that Close Management damages the mental and physical well-being of inmates. His grievance was rejected by the Florida Department of Corrections on August 12, 1999.
- C. To complain that Close Management inmates could not purchase food items from the canteen and to ask that Close Management inmates be given more privileges. His grievance was rejected by the Florida Department of Corrections on August 12, 1999.

47. Plaintiff Robert Peri used the grievance process without success on the following issues:

- A. To ask that the rule limiting the items Close Management inmates can purchase from the canteen be changed to permit Close Management inmates to purchase food products. The reply of the Florida Department of Corrections, dated August 15, 1996, informed the plaintiff that "the grievance process is not to be utilized to request rule changes."
- B. To ask that the time for outdoor yard privileges be increased. The Florida Department of Corrections rejected the grievance on July 17, 1997.

48. Plaintiff Salvatore Ricci used the grievance process without success on the following issues:

- A. That the oppressive housing conditions in the Close Management Unit caused a deterioration in his mental health. His grievance was rejected by the Florida Department of Corrections on September 20, 1999.
- B. That the heat, lack of ventilation, and the bright lights left on almost all night was having an adverse affect on his mental health. His grievance was rejected by the Florida Department of Corrections on July 13, 1999.
- C. That plaintiff Ricci's documented needs for protection are ignored while he is housed in Close Management. His grievance was rejected by the Florida Department of Corrections on June 9, 1999.
- D. That items of personal property obtained from the prison canteen and permitted in one Close Management Unit are not permitted in another Close Management Unit. His grievance was rejected by the Florida Department of Corrections on May 28, 1999.

49. Plaintiff Hector M. Rivas grieved without success his placement on CM I despite the fact that he was acquitted by reason of insanity of escape, the reason advanced by the Florida Department of Corrections for his placement on Close Management status. Plaintiff Rivas' grievances were rejected by the Florida Department of Corrections on June 17, 1998 and December 21, 1998.

50. Plaintiff Carlos Ruiz used the grievance process to complain about the punitive nature and psychological trauma caused by Close Management and to ask that Close Management inmates have the same opportunities as general population inmates. His grievance was rejected by the Florida Department of Corrections on July 28, 1999.

51. Plaintiff Carlos Ruiz also filed a grievance at Charlotte Correctional Institution grieving that the conditions of Close Management are "cruel, inhuman, barbaric and animalistic," destroys inmates' minds, and renders them the "equivalent of human vegetables." His grievance was rejected at Charlotte Correctional Institution on August 2, 1999. Although Plaintiff Ruiz filed a timely appeal to the Florida Department of Corrections, the Florida Department of Corrections has failed to respond in a timely manner.

52. Plaintiff Lawrence J. Sargent has used the grievance process without success to grieve the limitation on canteen purchases, specifically the limitation of purchases of postage stamps which prevents him from remaining in contact with his family members. His grievance was rejected by the Florida Department of Corrections on May 4, 1999.

53. Plaintiff Antonio L. Ward used the grievance process without success to complain that Close Management conditions resulted in Cruel and Unusual Punishment and the mental deterioration of those subject to such conditions. His grievance was

rejected by the Florida Department of Corrections on August 11, 1999.

54. Plaintiff Willie J. Watson used the grievance process without success on the following issues:

- A. Excessive heat and lack of ventilation in the cells, compounded by the covers placed over the windows which prevent air from coming in. His grievance was rejected by the Florida Department of Corrections on August 11, 1999.
- B. To complain about being restrained during visitation by handcuffs, handcuff cover (black box), waist chain and leg irons. His grievance was rejected by the Florida Department of Corrections on August 27, 1999.
- C. To complain about the unjustified writing of major disciplinary infraction for minor rules deviations caused by lack of understanding or carelessness. His grievance was rejected by the Florida Department of Corrections on July November 18, 1999.
- D. To complain about a pattern of threats and harassments directed toward Close Management inmates by staff. His grievance was rejected by the Florida Department of Corrections on January 5, 1999.
- E. Lack of opportunity to properly clean the Close Management cells. His grievance was rejected by the Florida Department of Corrections on December 17, 1998. A similar grievance about unhealthy living conditions was rejected by the Florida Department of Corrections on May 5, 1999.
- F. To complain about dirty showers in the Close Management Unit. His grievance was rejected by the Florida Department of Corrections on December 17, 1998.
- G. To complain that CM II and CM III inmates are housed in two man cells. His grievance was misread and then approved for further inquiry on February 12, 1999. On further inquiry, the grievance was rejected.

55. Plaintiff Nebuchadnezzar Wrisper used the grievance process without success to complain about deprivation of vocational, educational, and work activities, about lack of canteen

privileges, lack of a proper recreation yard, destruction of personal in-coming mail, inability to watch T.V. or listen to a radio, and lack of visitation. His grievance was rejected by the Florida Department of Corrections on June 30, 1999.

56. In addition to the grievances filed by the named plaintiffs, members of the plaintiffs' class have literally filed hundreds, if not thousands of grievances directed toward the punitive conditions encountered by Close Management inmates. On information and belief, not a single grievance challenging the restrictions imposed by Chapter 33-601.801-813, Florida Administrative Code, has ever been granted.

CLASS ACTION ALLEGATIONS

57. This action is brought by the named plaintiffs as a class action, pursuant to the provisions of Rule 23(b)(2) of the Federal Rules of Civil Procedure, for injunctive and declaratory relief on behalf of a class of all persons similarly situated.

58. The class of plaintiffs consists of all persons who are currently assigned to Close Management in prisons operated by the Florida Department of Corrections or who in the future will be assigned to Close Management. Within the general class are three subclasses, (1) persons who are currently or will be assigned to Close Management One, (2) persons who are currently or will be assigned to Close Management Two, and (3) persons who are currently or will be assigned to Close Management Three.

59. The plaintiffs' class consists of an unknown but large number of inmates, numbering in the thousands at any given time, so that joinder of all members is impracticable.

60. Controlling issues of law and fact are common to all members of the plaintiff class in that the imposition of Cruel and Unusual Punishment by way of the conditions imposed upon those in Close Management is common to all inmates in the custody of the Florida Department of Corrections and is imposed as a matter of policy, pattern, practice and custom, in accordance with the specific provisions of Chapter 33-601.801-813, Florida Administrative Code.

61. The claims of the individual plaintiffs are typical of the claims of the members of the plaintiff class. The named plaintiffs' right to be free from cruel and unusual punishment has been abridged and will be abridged in the future, contrary to the Eighth Amendment to the Constitution of the United States.

62. The defendants have acted on grounds generally applicable to the plaintiff class as a whole thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

63. The policy, pattern, practice and custom with respect to Eighth Amendment rights of the plaintiff class present common questions of law and fact which predominate over any questions affecting only individual members of the class and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

64. The plaintiffs will fairly and adequately protect the interests of the members of the plaintiffs' class.

FACTUAL ALLEGATIONS

65. Pursuant to Rule 33-601.801, Florida Administrative Code:

Close management is the confinement of an inmate apart from the general population, for reasons of security, or the order and effective management of the institution, where the inmate, through his own behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others. The goal of Close Management shall be toward assignment of the inmate to the least restrictive level to meet the management needs of the inmate and returning the inmate to open population as soon as the facts of the case suggest it is in the best interest of the security and order of the institution and public safety. To aid in this transition back into open population, the Close Management review team is authorized to place Close Management III inmates in work assignments outside the Close Management Unit and in assignments usually assigned to open population inmates. The secretary shall designate which institutions are authorized to house Close Management inmates, based on the needs of the department.

66. On information and belief, there are in excess of 3,200 inmates currently assigned to Close Management at various prisons operated by the Florida Department of Corrections.

67. Close Management cells do not exceed 80 square feet in area and are equipped with one or two bunks and a combination toilet and sink. Some Close Management cells have foot lockers, which are bolted to the floor. No other furniture is permitted.

68. Close Management cells have a window, generally placed high up on a wall and covered with security screening on the outside.

69. Inmates assigned to Close Management eat in their cells.

70. Close Management consists of three levels, known as Close Management I ("CM I"), Close Management II ("CM II"), and Close Management III ("CM III").

71. CM I consists of single cell housing, which can last as long as 37 months, unless, as is often the case, it is further extended by the defendants.

72. Inmates assigned to CM I remain in their cells 24 hours per day, seven days per week, with the exception of three showers per week and three hours per week of outside exercise per week after 30 days of Close Management. The only other reasons why a CM I inmate might leave his cell are things such as visits every 90 days, medical callouts, or an attorney appointment.

73. CM II consists of single or double cell housing which can last as long as 25 months, unless further extended by the defendants.

74. Inmates assigned to CM II remain in their cells 24 hours per day, seven days per week, with the exception of three showers per week and three hours of outside exercise per week after 90 days. The only other reasons why a CM II inmate might leave his cell are things such as visits once every 60 days,

medical callouts, attorney visits, or in the case of a very few CM III inmates, a work assignment.

75. A few inmates assigned to CM II have an opportunity for work after a 90 day period of satisfactory adjustment following the first month of assignment to CM II if they have maintained a clear disciplinary record. On information and belief, the number of CM II inmates with work assignments is a very small percentage of the total CM II inmate population.

76. If they do have a work assignment, inmates in CM II can only work in the CM I area, the CM II area, or the death row housing area.

77. CM III consists of two-man cell housing for a period that by Rule should not exceed 13 months in duration, except at Florida State Prison, where CM III can last indefinitely.

78. Inmates in CM III can work inside or outside the Close Management Unit.

79. The restrictions set forth in this paragraph, all of which are set out in Chapter 33-601.801-813, Florida Administrative Code, are imposed on all Close Management inmates:

A. Inmates assigned to Close Management have no opportunity to participate in educational programs, with the exception of self-study in their cells.

B. Inmates in Close Management do not have the opportunity to participate in vocational, educational or self-betterment programs, other than by enrolling in correspondence courses if they can pay the cost.

C. Inmates in Close Management are not permitted to watch television.

D. Inmates in Close Management are not permitted to listen to a radio.

E. Inmates in Close Management are deprived of most of the personal property that inmates in general population are permitted to possess, including items that would help to alleviate the isolation caused by Close Management, such as chess sets.

F. Inmates in Close Management receive, at most, three hours of out-of-cell recreation per week, usually all on one day.

G. Inmates in Close Management are limited to three showers per week.

H. Inmates in Close Management are not permitted to visit the law library. They must request specific items from runners or clerks. Frequently, the requested items are never received.

I. Inmates in Close Management are not permitted to visit the regular library. A limited number of books are available in the Close Management Unit.

J. Inmates in Close Management, except for those with work assignments, are placed in restraints every time they leave their cell, even if only to take a shower.

K. Inmates in Close Management are not permitted to attend religious services or otherwise participate in group religious activities. Religious volunteers are not allowed to visit Close Management inmates.

L. Inmates in Close Management are not permitted to attend regular sick call. Instead, they must rely on the services of a non-physician to relay their complaints to the prison doctor.

80. Pursuant to Chapter 33-601.803-813, Florida Administrative Code, inmates assigned to CM I:

A. Can only participate in available approved programs that can be performed within their cells and then only after a minimum period of at least six months with a clear disciplinary record since assignment to Close Management.

B. Can only check out 1 soft back book from the library one time per week; possess no more than four personal soft back books.

C. Can only conduct routine inmate bank transactions once per month.

D. Can only make canteen purchases once per month, and then can only purchase a maximum of five health and comfort items and writing supplies, including stamps. They cannot purchase any food items.

E. Can subscribe to one magazine and possess no more than four magazines.

F. Can subscribe to one newspaper and possess no more than four issues.

G. Can only make emergency telephone calls and telephone calls to an attorney.

H. Can only receive a personal visit after 90 days following the first month in Close Management and then only if they have maintained a clear disciplinary record. All visits are non-contact, with the inmate restrained by leg irons, waist chain, handcuffs and handcuff cover (the "black box").

I. Have no access to a day room or common room.

81. The same restrictions imposed by Chapter 33-601.803 and .811, Florida Administrative Code, on inmates assigned to CM I are imposed on inmates assigned to CM II, except that CM II inmates may have visits every 60 days.

82. The same restrictions imposed by Chapter 33-601.803 and .811, Florida Administrative Code, on inmates assigned to CM I are imposed on inmates assigned to CM III, except that CM III inmates may have visits every 30 days, with the possibility of contact visits, and may be permitted to use the day room after six continuous months with a clear disciplinary record and above satisfactory adjustment, and then only once a week for no more than two hours, and may be permitted to purchase a maximum of four food items from the canteen each month.

83. During the warm months, the heat and humidity in the Close Management cells is unrelenting.

84. In most Close Management Units, communication between inmates is forbidden and inmates who attempt to talk or otherwise exchange information are subject to further discipline.

85. In some Close Management Units, where the "no talking" rule is not enforced, the noise level can best be described as bedlam.

86. Out-of-cell recreation consists of placement in a small, generally concrete-floored cage (called "dog runs" or "kennels" by inmates). No recreation equipment is provided. CM I inmates are placed in individual cages. CM II and CM III inmates may be placed together in the small cages. When that happens, the small size of the cage precludes any meaningful physical activity.

87. Religious volunteers are not permitted in Close Management Units. Inmates on Close Management must rely for all their religious needs on the Prison Chaplain. If they and the Chaplain are not of the same faith, their needs go unmet.

88. Those Class members who lack the ability to read, have no means of contact with the outside world and nothing to occupy their time.

89. Prisoners assigned to Close Management are totally dependent on custodial staff for their every need. The harsh and punitive conditions imposed on the prisoners causes some staff members to treat prisoners in a hostile and uncaring manner and results in frequent harassment and threats directed at those in their care.

INDIVIDUAL PLAINTIFFS

Mark E. Osterback

90. Plaintiff, Mark E. Osterback, is currently a Close Custody inmate at Walton Correctional Institution.

91. Plaintiff Osterback has previously been assigned to Close Management on two separate periods, for several months in 1995 and then between August 21, 1996 and October 30, 1997.

92. Plaintiff Osterback is serving a life sentence. There is a real possibility that he will again be placed on Close Management because of the length of his sentence and because the established policy, practice, custom and procedure calls for the return to Close Management of inmates who commit even minor infractions after release from Close Management.

93. While he was on Close Management, each of the restrictions set forth in Paragraphs 67 through 89 applied to plaintiff Osterback.

94. On or about January 7, 1997, while he was assigned to Close Management at Everglades Correctional Institution, plaintiff Osterback attempted to commit suicide.

95. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Osterback's mental and physical health deteriorated while he was assigned to Close Management.

Frederick Clark

96. Plaintiff, Frederick Clark, is assigned to CM II at Everglades Correctional Institution.

97. Plaintiff Clark was originally placed on CM I on or about July 7, 1996, while at Sumter Correctional Institution, and continued in that status until on or about January 19, 1999.

98. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Clark.

99. Plaintiff Clark is currently a Psych III inmate. Prior to his placement on close Management, He was a Psych I inmate.

100. Prior to placement on Close Management, plaintiff Clark had not required any mental health treatment. While on Close Management, plaintiff Clark has attempted suicide, has required mental health treatment, and has received psychotropic medications.

101. Between December 10, 1997 and February 16, 1998, plaintiff Clark was housed at the mental Health Crises Stabilization Unit at the South Florida Reception Center.

102. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Clark's mental and physical health has deteriorated while he has been assigned to Close Management.

Danny L. Eldridge

103. Plaintiff, Danny L. Eldridge, is assigned to CM III at Taylor Correctional Institution.

104. Plaintiff Eldridge has been on CM III since on or about March 30, 1998, and was in confinement beginning in September, 1997.

105. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Eldridge.

106. Although given a job assignment on paper on May 1, 1999 as a Close Management Orderly, plaintiff Eldridge did not actually go to work.

107. Plaintiff Eldridge is eligible to receive visits monthly. When he does have a visit, it is a non-contact visit and he is restrained with handcuffs, a waist chain, handcuff cover and leg irons.

108. Plaintiff Eldridge is not allowed to use the day room.

109. Plaintiff Eldridge has a history of mental health treatment dating to age 5. He has been on psychotropic medications, has attempted suicide, and has been an in-patient in a mental health treatment facility.

110. During his time on Close Management, plaintiff Eldridge has often seen the prison psychiatrist because of his mental problems.

111. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Eldridge's mental and physical health has deteriorated while he has been assigned to Close Management.

Alvin M. Few

112. Plaintiff, Alvin M. Few, is assigned to CM I at Washington Correctional Institution.

113. Plaintiff Few has been on CM I since on or about May 13, 1999.

114. Previously, plaintiff Few has been assigned to Close Management from July, 1996 to January, 1997 and then again from July, 1997 to January, 1998.

115. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Few.

116. Plaintiff Few has received psychiatric care and psychotropic drugs in the past and has twice been sent to a Crisis Stabilization Unit by the Florida Department of Corrections.

117. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Few's mental and physical health has deteriorated while he has been assigned to Close Management.

Lavictor Flournoy

118. Plaintiff, Lavictor Flournoy, is assigned to CM I at Taylor Correctional Institution.

119. Plaintiff Flournoy was originally assigned to CM II on or about October 8, 1997, while at Santa Rosa Correctional Institution. On or about October 7, 1998, his status was changed to CM I.

120. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Flournoy.

121. The isolation and lack of activity in the Close Management Unit is compounded by plaintiff Flournoy's inability to obtain an sufficient amount of reading material to keep him occupied.

122. The isolation and lack of activity in the Close Management Unit is compounded by the strict enforcement of the no-talking rule, which prevents plaintiff Flournoy from communicating with other inmates.

123. The isolation and lack of activity in the Close Management Unit is compounded by plaintiff Flournoy's inability to obtain religious materials from the Chaplain and by the inability of religious volunteers to visit the Close Management Unit.

124. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Flournoy's mental and physical health has deteriorated while he has been assigned to Close Management.

Frank S. Lowry

125. Plaintiff, Frank S. Lowry, is assigned to CM I at Santa Rosa Correctional Institution.

126. Plaintiff Lowry was assigned to CM III on or about January 17, 1996, while at Washington Correctional Institution, and then transferred to Okaloosa Correctional Institution on January 19, 1996, where he remained on CM III, except for a 16 day period, until June 17, 1997, when he was transferred to the North Florida Reception Center for medical care. While at the North Florida Reception Center, plaintiff Lowry continued on CM III.

127. In the late summer or early fall of 1997, plaintiff Lowry began experiencing major mental health problems, including depression, anger and anxiety. Medications were prescribed.

128. In June, 1998, plaintiff Lowry was transferred, still on CM III, to Columbia Correctional Institution.

129. Plaintiff Lowry has a lengthy psychiatric history, including auditory and visual hallucinations, and has been treated with medication for depression and depressive symptoms.

130. On March 24, 1999, plaintiff Lowry declared a psychological emergency and was placed on suicide precautions. From March 30, 1999 through April 16, 1999, he was housed at a Crisis Stabilization Unit and then transferred to Lake Correctional Institution for inpatient mental health treatment.

131. On June 8, 1999, plaintiff was transferred to Santa Rosa Correctional Institution, where he was placed on CM I.

132. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Lowry.

133. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Lowry's mental and physical health has deteriorated while he has been assigned to Close Management.

Brian D. Messenger

134. Plaintiff, Brian D. Messenger, is assigned to CM I at Washington Correctional Institution.

135. Plaintiff Messenger has been on CM I since on or about December 10, 1997.

136. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Messenger.

137. Although plaintiff Messenger is eligible to receive visits, he does not want his family to visit because it will be a non-contact visit of two hours or less, during which time he will be restrained with handcuffs, a waist chain, handcuff cover and leg irons.

138. Although the Prison Chaplain visits the Close Management Unit periodically, he only ministers to and distributes Christian religious materials. Plaintiff Messenger, whose faith is other than Christian, has no access to the religion of his choice.

139. The Close Management Unit at Washington Correctional Institution is very noisy. Because of the continual yelling and screaming, it can be very difficult to sleep. Some Close Management inmates ask for psychotropic medications solely to be able to sleep.

140. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Messenger's mental and physical health has deteriorated while he has been assigned to Close Management.

Robert Peri

141. Plaintiff, Robert Peri, is assigned to CM I at Columbia Correctional Institution.

142. Plaintiff Peri has been on CM I since on or about July 13, 1996, beginning at Okeechobee Correctional Institution.

143. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Peri.

144. On May 4, 1999, while at the South Florida Reception Center for medical reasons, plaintiff Peri learned that he would be returned to the Close Management Unit at Okeechobee Correctional Institution. In an effort to avoid that, he cut his arms and swallowed two razor blades. He was then transferred to his current place of incarceration, the Close Management Unit at Columbia Correctional Institution.

145. Plaintiff Peri has received psychiatric care and psychotropic drugs in the past, including treatment at Florida State Prison during an earlier commitment.

146. Plaintiff Peri has undergone surgery three times for swallowing objects, including razor blades, and has been placed on psychotropic medications on account of that behavior.

147. Plaintiff Peri has gone on several hunger strikes to protest Close Management conditions.

148. Although Plaintiff Peri has received psychiatric care in the past, during his current placement on Close Management he has not received any psychiatric counselling.

149. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Peri's mental and physical health has deteriorated while he has been assigned to Close Management. In particular, plaintiff Peri has lost strength in both his arms and legs, is depressed, and lives in constant fear.

Salvatore J. Ricci

150. Plaintiff, Salvatore J. Ricci, is assigned to CM I at Columbia Correctional Institution.

151. Plaintiff Ricci was placed on CM I on or about September 25, 1996. On July 3, 1997, he was assigned to CM II. On CM II plaintiff Ricci was required to live in a two-man cell. Because of a need for protection, plaintiff refused to live in a two-man cell. Rather than accommodate his need for protection, he was returned to CM I, where he remains.

152. Plaintiff was originally assigned to Close Management at Washington Correctional Institution. In August, 1998, he was transferred to Santa Rosa Correctional Institution, where he remained on CM I. In September, 1999, he was transferred to his present place of incarceration, where he continues to remain on CM I.

153. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Ricci.

154. While at Santa Rosa Correctional Institution, during the warm months, the heat in the Close Management cells was oppressive. Despite the oppressive heat, the Close Management cells lack fans or meaningful ventilation.

155. At Santa Rosa Correctional Institution, lights were on for all but 6 ½ hours per day, resulting in sleep deprivation.

156. Plaintiff Ricci is a Psych 3 inmate and has a history of mental illness and receives psychotropic medications. He hallucinates, can't remember things, hears voices, and is gener-

ally very depressed. While on Close Management, plaintiff Ricci has attempted suicide and has also attempted to injure himself.

157. Plaintiff Ricci has difficulty sleeping, which he attributes to the stress and anxiety caused by his Close Management and by the harassment he receives from Correctional Officers.

158. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Ricci's mental and physical health has deteriorated while he has been assigned to Close Management.

Hector M. Rivas

159. Plaintiff, Hector M. Rivas, is assigned to CM I at Florida State Prison.

160. Plaintiff Rivas has been on CM I since on or about October 27, 1995.

161. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Rivas.

162. Plaintiff Rivas has been diagnosed in the past as extremely paranoid, agitated, and with a poor grasp of reality. Prior to his incarceration, he received both in-patient and out-patient mental health care. He currently takes prescribed psychotropic medications.

163. The reason for plaintiff's initial placement on CM I was his escape from custody at Glades Correctional Institution. Plaintiff was found not guilty of escape by reason of insanity.

164. Plaintiff's current psychiatric grade is III.

165. While on CM-I, plaintiff Rivas has attempted suicide and has attempted to otherwise harm himself.

166. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Rivas' mental and physical health has deteriorated while he has been assigned to Close Management.

Carlos Ruis

167. Plaintiff, Carlos Ruis, is assigned to CM I at Charlotte Correctional Institution.

168. Plaintiff Ruis has been on CM I since on or about May 14, 1997. Previously, he has been assigned to Close Management Units for periods of time totalling nearly ten years.

169. During his time on Close Management, plaintiff Ruis has been at Washington Correctional Institution, Santa Rosa Correctional Institution, Union Correctional Institution, and Florida State Prison.

170. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Ruis.

171. Plaintiff Ruis has severe mental health problems and has received psychiatric care and psychotropic drugs in the past, both on and off Close Management. He has attempted suicide and

has been placed on suicide precautions. Currently, he is refusing to take his psychotropic medications.

172. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Ruis' mental and physical health has deteriorated while he has been assigned to Close Management.

Lawrence J. Sargent

173. Plaintiff, Lawrence J. Sargent, is assigned to CM II at Martin Correctional Institution.

174. Plaintiff Sargent has been on CM II since on or about December 23, 1998.

175. Plaintiff Sargent is housed in a two-man cell.

176. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Sargent.

177. The Prison Chaplain visits the Close Management Unit approximately once a month. Because plaintiff Sargent is Catholic, and the Chaplain is not, plaintiff's religious needs go unmet.

178. Prior to his transfer to Martin Correctional Institution, plaintiff Sargent was on Close Management at Washington Correctional Institution. There, he was subject to constant bedlam and pandemonium in the Close Management Unit.

179. While at Washington Correctional Institution, sleep was difficult because the lights remained on all night. Even after plaintiff left Washington Correctional Institution, he suffered from sleep disorder.

180. Prior to his placement on Close Management, plaintiff Sargent was receiving psychotropic medication and was, at one time, assigned to a Crisis Stabilization Unit. While on Close Management, he has not received any mental health care.

181. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Sargent's mental and physical health has deteriorated while he has been assigned to Close Management.

Antonio L. Ward

182. Plaintiff, Antonio L. Ward, is assigned to CM I at Baker Correctional Institution.

183. Plaintiff Ward was placed on CM I on or about June 2, 1999.

184. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Ward.

185. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Ward's mental and physical health has deteriorated while he has been assigned to Close Management.

Willie J. Watson

186. Plaintiff, Willie J. Watson, is assigned to CM I at Santa Rosa Correctional Institution.

187. Plaintiff Watson was placed on CM I on or about May 21, 1997, while at Washington Correctional Institution. He transferred to Santa Rosa Correctional Institution on September

23, 1997, and, on May 6, 1998, he was reclassified to CM II. On or about June 9, 1999, plaintiff Watson returned to CM I.

188. Plaintiff Watson was previously on Close Management at Florida State Prison from August 13, 1993 to May 10, 1994.

189. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Watson.

190. During the time plaintiff Watson was assigned to CM II, he was housed in a two man cell.

191. During the time plaintiff Watson was assigned to CM II, and now while assigned to CM I, he does not have a job or the opportunity to participate in any educational or other programs.

192. Plaintiff can have a visit monthly. It is a non-contact visit and plaintiff is restrained with leg irons, waist chain, handcuffs and handcuff cover.

193. Out-of-cell exercise takes place in a cage which is not equipped with any items that can be used for recreation or exercise. There is nothing to do but walk around in very limited space.

194. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Watson's mental and physical health has deteriorated while he has been assigned to Close Management.

Nebuchadnezzar Wrisper

195. Plaintiff, Nebuchadnezzar Wrisper, is assigned to CM I at Florida State Prison.

196. Plaintiff Wrisper was placed on CM I in December, 1994.

197. Each of the restrictions set forth in Paragraphs 67 through 89 applies to plaintiff Wrisper.

198. While on Close Management, plaintiff Wrisper has attempted suicide and has attempted to otherwise harm himself.

199. While on Close Management, plaintiff Wrisper has been sent to a Crisis Stabilization Unit.

200. Out-of-cell exercise takes place in a cage which is not equipped with any items that can be used for recreation or exercise. There is nothing to do but walk around in very limited space. Plaintiff Wrisper does not participate in out-of-cell recreational opportunities because he believes that the outdoor cages – like dog kennels – impose cruel and unusual punishment.

201. As a result of the isolation, lack of opportunity for human interaction, and excessively restrictive practices of the defendants, plaintiff Wrisper's mental and physical health has deteriorated while he has been assigned to Close Management.

CAUSE OF ACTION

Cruel and Unusual Punishment

202. Plaintiffs repeat and reallege Paragraphs 1 through 201 as if the same had been fully set forth herein.

203. Prisoners on Close Management have very little contact with other human beings. They are not permitted to work at normal prison jobs or to attend programs or other rehabilitative and vocational activities. They must eat in their cells.

Visitation is extremely limited, non-contact, and takes place while the inmate is fully restrained. There are no organized religious programs available, no religious volunteers permitted, no library access, and limitations on the quantity of reading material. Nor can Close Management inmates listen to a radio or watch television. Out-of-cell recreation, one time per week for no more than 3 hours, consists of placement in a barren, small cage.

204. The effects of Close Management on the plaintiffs, and the Class they represent, are profound. Placement of prisoners with serious mental disorders on Close Management exacerbates their underlying mental disorders, induces psychosis, and increases the risk of suicide or other self-inflicted harm. Even mentally healthy prisoners are likely to develop mental illness after placement on Close Management.

205. Due to their mental disorders, some Class members never voluntarily leave their cells, even to shower.

206. The restrictions imposed on inmates in Close Management, as alleged in this Complaint, are so punitive, atypical and harsh that they violate the Cruel and Unusual Punishments Clause of the Eighth Amendment, made applicable to the states by the Fourteenth Amendment.

207. If the punitive, atypical and harsh conditions imposed on inmates in Close Management are imposed for reasons of security, and not simply as punishment, they constitute a grossly exaggerated response to the problems created by inmates whose

behavior justifies heightened security and bear no rational relationship to any legitimate penological interest.

208. Each of the defendants knows, and has known for years, that a substantial number of the prisoners assigned to Close Management suffer from serious mental disorders.

209. Each of the defendants knows, and has known for years, that their Close Management policies, practices, procedures and customs exacerbate the mental disorders of the Class members.

210. The policies, practices, procedures and customs of the Florida Department of Corrections do not preclude placement of inmates with serious mental illness in Close Management.

211. As a result of the deliberate indifference of the defendants, inmates whose behavior is a function of mental illness are placed in Close Management and remain there, isolated and virtually untreated for years.

212. Many of the individuals assigned to Close Management either develop serious mental illness or aggravate their pre-existing mental illness while assigned to Close Management.

213. Class members, when they are removed from Close Management for purposes of mental health treatment, are returned to Close Management upon completion of their treatment. The time spent in treatment does not count against the time periods for the three levels of Close Management placement set out in Chapter 33-601.802. Typically, the mental condition of prisoners returned to Close Management continues to deteriorate.

214. The double celling of inmates on CM II and CM III, in a very small area, with no opportunity for privacy, or even the ability to be alone for a short period of time, greatly increases the incidence of mental health problems, aggressive behavior and violence.

215. The near total social isolation, and the extraordinarily restricted environment, contributes to a high level of violence and frequent violations of the rules of the Department of Corrections.

216. When inmates assigned to Close Management act in a disruptive manner on account of those problems, the defendants impose even harsher restrictions, resulting in further mental and physical deterioration.

217. When inmates assigned to Close Management with mental health problems act in a disruptive manner, the defendants use physical force and/or chemical agents to restore order and to the offender.

218. When inmates assigned to Close Management with mental health problems act in a disruptive manner and the defendants use chemical agents, the use of the chemical agents adversely affects innocent bystanders, such as inmates in adjacent cells.

219. When inmates assigned to Close Management with mental health problems act in a disruptive manner, the noise and commotion they create adversely affects other inmates and contributes to the aggravation of their mental illness.

220. The conditions to which individuals assigned to Close Management are subjected causes a decline in the general physical health of many Close Management inmates.

221. Once confined to Close Management, inmates with pre-existing mental illness find it even harder to comply with prison rules, especially the harsh and punitive rules imposed on those assigned to Close Management. As a result, they receive additional disciplinary charges and additional Close Management time, their mental and physical health deteriorates even further, and the cycle continues.

222. Inmates who enter Close Management without diagnosed pre-existing mental illness are likely to develop mental illness as a result of the harsh and punitive conditions of Close Management.

223. The housing of inmates in Close Management, as herein described, for long periods of time, and with extremely limited opportunities for social intercourse, participation in religious services and programs, and participation in rehabilitative programs and activities, and with extremely limited opportunities for exercise and recreational activities, results in the physical and mental deterioration of inmates assigned to Close Management.

224. Defendants know that the extraordinarily harsh, atypical and punitive conditions exacerbate existing mental illness and trigger serious mental illness in inmates who were not previously mentally ill.

225. Defendants know that the extraordinarily harsh, atypical and punitive conditions lead to a decline in the physical health of the inmates assigned to Close Management.

226. With full knowledge of the adverse affect Close Management has on the mental and physical health of inmates assigned to Close Management, defendants refuse to take any action to alleviate the harsh, atypical and punitive conditions of the Close Management system.

227. The policy, pattern, practice and custom of the defendants, as alleged in this complaint, violates the Cruel and Unusual Punishments Clause of the Eighth Amendment.

WHEREFORE, plaintiffs request that this Court:

A. Certify this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

B. Declare that those portions of Chapter 33-601.801-813, Florida Administrative Code, governing Close Management, to the extent they impose restrictions on inmates in Close Management which are unnecessarily punitive violate the Eighth Amendment to the Constitution of the United States.

C. Declare that the conduct of the defendants, as alleged, violates plaintiffs' Eighth Amendment rights.

D. Require the defendants to submit a plan to this Court for approval which will remedy the unconstitutional conditions experienced by inmates in Close Management.

E. Enter permanent injunctive relief enjoining the defendants, their successors in office, and their servants, agents and employees, and those acting in concert with them, from engaging in punitive conduct directed at inmates needing Close Management, and specifically enjoin the defendants to adopt policies, procedures and practices which will have the immediate impact of eliminating the unnecessarily punitive conditions imposed on those in Close Management.

F. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

G. Grant plaintiffs such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

Peter M. Siegel, Esq.
Randall C. Berg, Jr., Esq.

Florida Justice Institute, Inc.
2870 First Union Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2310
305-358-2081
305-358-0910 (FAX)

and

Christopher Jones, Esq.
Florida Institutional Legal
Services, Inc.
925 N.W. 56th Terrace
Gainesville, Florida
(904) 336-2260

Attorneys for Plaintiffs

By: Peter M. Siegel, Esq.
Florida Bar No. 227862

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished to Kathleen M. Savor, Esquire, Assistant Attorney General, Office of the Attorney General, 110 S.E. 6th Street, 10th Floor, Fort Lauderdale, Florida 33301 by United States Mail on October 30, 2003.

Peter M. Siegel, Esquire