

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ABDUL SHARIFF, DIVINE ALLAH, and JAMES WEST,  
Individually And On Behalf Of All Other Persons Similarly  
Situated,

Plaintiffs,

- vs -

BRIAN S. FISCHER, GLENN S. GOORD, CHARLES M.  
DEVANE, LESTER N. WRIGHT, M.P.H., STEPHEN  
BERNARDI, ROBERT RAYMOND, JOHN H. NUTTALL,  
THOMAS G. EAGEN, THOMAS M. POOLE, LAWRENCE  
WEINGARTNER, SHERYL ZENZEN, DANIEL WEINSTOCK,  
J. PETER GREGOIRE, M.D., MENALLY, NAPOLI, RITCHIE-  
CARTER, LAWRENCE SEARS, JOHN R. DEMARS, PIPPEN,  
R.N., GLEN CHAMPAGNE, M.D., LORI MANTORY,  
MICHAEL GIAMBRUNO, GERALD ELMORE, HABIB  
SHIEKY, M.D., MOHRNING, DAVE UNGER, JIM LINDSAY,  
SHERRY MONTANARI, ROBINSON, R.N., JAMES  
CONWAY, SANDRA DOLCE, RICHARD APPS, ROBERT  
ERCOLE, WILLIAM PHILLIPS, ROBERT CUNNINGHAM,  
DELORES THORNTON, FREDERICK BERNSTEIN, TOTTEN,  
KAISER, ROBERT K. WOODS, MARIA B. TIRONE, EVELYN  
WEISSMAN and the NEW YORK STATE DEPARTMENT OF  
CORRECTIONAL SERVICES,

**THIRD AMENDED  
COMPLAINT**

Civ. Action No.  
05-CV-6504(CJS)

CLASS ACTION

**JURY TRIAL  
DEMANDED**

Defendants.

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**PRELIMINARY STATEMENT**

1. This is a civil rights action, brought on behalf of state prisoners who seek to redress defendants’ failure to make their programs, services, and activities accessible to prisoners with disabilities who are in the custody of the New York State Department of Correctional Services (“DOCS”). Plaintiffs seek to represent a class of individuals that have mobility disabilities and are currently housed in DOCS facilities. These individuals are being denied access to prison services, programs and activities and are not being provided reasonable

accommodations for their disabilities. Defendants discriminate against plaintiffs and the putative class on the basis of their disabilities in violation of the Eighth Amendment of the U.S.

Constitution, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, (“Section 504”), the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the “ADA”), and 42 U.S.C. § 1983 (“Section 1983”). Plaintiffs, on behalf of the class they seek to represent, seek injunctive and declaratory relief. The named plaintiffs also seek, *inter alia*, monetary damages and reasonable attorneys’ fees.

### **JURISDICTION AND VENUE**

2. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3) and (4). The matter in controversy arises under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Section 1983.

3. Venue properly lies in the Western District of New York pursuant to 28 U.S.C. § 1391(b)(2).

### **CLASS ACTION ALLEGATIONS**

4. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all individuals with ambulatory disabilities that substantially limit one or more of their major life activities. Plaintiffs, and members of the putative class are currently incarcerated, or may become incarcerated in the future, under the custody and control of defendants at the Five Points, Franklin, Wyoming, Orleans, Attica, Green Haven and Upstate Correctional Facilities.

5. The exact size of the class is unknown to the plaintiffs but, upon information and belief, there are hundreds of class members. Thus, the size of the class is so numerous that joinder of all members is impracticable.

6. The conditions, practices and omissions that form the basis of this complaint are common to all members of the putative class and the relief sought will apply to all of the class members.

7. The claims of the named plaintiffs are typical of the claims of the putative members.

8. The prosecution of separate actions by individual members of the putative class would create a risk of inconsistent and varying adjudications which would establish incompatible standards of conduct for the defendants and would substantially impair the ability of the putative members to protect their interests.

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

10. Prisoners, including some of the named plaintiffs and unnamed members of the putative class, are regularly transferred from one prison to another. In transferring prisoners with mobility impairments, defendants do not adequately account for their disabilities, which results in prisoners with mobility impairments being transferred to inaccessible prisons.

11. There are questions of law and fact common to the members of the putative class, including defendants' violations of plaintiffs' rights under Section 504 and the ADA by denying plaintiffs the opportunity to participate in, and benefit from, the programs, services and activities offered by defendants.

12. The named plaintiffs are capable, through counsel, of fairly and adequately representing the class and protecting its interests because they are individuals with disabilities who have suffered, and continue to suffer, from defendants' violations of plaintiffs' rights under Section 504 and the ADA as described above.

### **PARTIES**

13. Plaintiff Abdul Shariff is a prisoner in the custody of defendant DOCS and is presently held at Orleans Correctional Facility in Albion, New York. During the events for which damages are sought in this Third Amended Complaint, he was held at Green Haven Correctional Facility ("Green Haven") prior to May 23, 2003, Five Points Correctional Facility ("Five Points") from May 23, 2003 to March 27, 2006, Franklin Correctional Facility ("Franklin") from March 27, 2006 to June 12, 2006, Wyoming Correctional Facility ("Wyoming") from June 12, 2006 to September 1, 2006, and Orleans Correctional Facility ("Orleans") from September 11, 2006 to the present. He is an individual with a disability as defined by the ADA and Section 504 of the Rehabilitation Act. He is, and has been at all times relevant to this Third Amended Complaint, paraplegic. His paraplegia is a physical impairment that substantially limits him in performing numerous major life activities, including caring for himself, performing manual tasks, walking, and working.

14. Plaintiff Divine Allah is a prisoner in the custody of defendant DOCS and is presently held at Five Points. During the events for which damages are sought in this Third Amended Complaint, he was held at the following DOCS facilities: Green Haven from early 2000 to February 2003, Attica from February 2003 to June 12, 2003, Five Points from June 12, 2003 to March 23, 2006, Upstate from March 23, 2006 to February 2, 2007, and Five Points from February 2, 2007 to the present. He is an individual with a disability as defined by the

ADA and Section 504 of the Rehabilitation Act. He is, and has been at all times relevant to this Third Amended Complaint, paraplegic. His paraplegia is a physical impairment that substantially limits him in performing numerous major life activities, including caring for himself, performing manual tasks, walking, and working.

15. Plaintiff James West is a prisoner in the custody of defendant DOCS and is presently held at Five Points. During the events for which damages are sought in this Third Amended Complaint, he was held at Green Haven prior to February 18, 2002, and Five Points from February 18, 2002 to present. He is an individual with a disability as defined by the ADA and Section 504 of the Rehabilitation Act. He is, and has been at all times relevant to this Third Amended Complaint, paraplegic. His paraplegia is a physical impairment that substantially limits him in performing numerous major life activities, including caring for himself, performing manual tasks, walking, and working.

16. Plaintiffs, and the class they represent, are individuals with ambulatory disabilities that substantially limit one or more of their major life activities. Plaintiffs, and members of the putative class are currently incarcerated, or may become incarcerated in the future, under the custody and control of defendants at the Five Points, Franklin, Wyoming, Orleans, Attica, Green Haven and Upstate Correctional Facilities. Members of the putative class have suffered physical injuries resulting from defendants' failure to provide proper sized urinary catheters, accessible showers, beds and other services. They have suffered urinary tract infections as a result of defendants' policy requiring plaintiffs, and the class they represent, to re-use disposable, single-use catheters. They have been denied access to the programs, services and activities run by defendants. All putative class members are individuals with disabilities as that term is defined by Section 504, 29 U.S.C. § 705(20), and the Americans with Disabilities Act, 42 U.S.C. §

17. Defendant DOCS is the agency created by the State of New York for the purpose of operating correctional facilities within New York State. DOCS receives federal financial assistance.

18. Defendant Brian Fischer is the Acting Commissioner of DOCS and is sued in his official capacity. As the Commissioner of DOCS, Mr. Fischer is responsible for the operation and administration of all DOCS correctional facilities.

19. Defendant Glenn S. Goord is the former Commissioner of DOCS, and is sued in his individual capacity.

20. Defendant Charles M. Devane is the Deputy Commissioner of Administrative Services, and is sued in his individual capacity.

21. Defendant Lester N. Wright, M.D., M.P.H. is the Deputy Commissioner/Chief Medical Officer for DOCS. As such, he is responsible for ensuring that DOCS facilities provide appropriate medical care to prisoners. Defendant Wright is sued in his individual and official capacities.

22. Defendant Stephen Bernardi is the DOCS Deputy Commissioner of Policy and Compliance Review and is sued in his official capacity. As Deputy Commissioner, Mr. Bernardi is responsible for ensuring that the policies of DOCS and all of its institutions comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

23. Defendant Robert Raymond is the Americans with Disabilities Act Coordinator for DOCS, and is sued in his official capacity. As the ADA Coordinator, Mr. Raymond is responsible for ensuring that all programs, activities and services operated by and under the

control of DOCS comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

24. Defendant John H. Nuttall is the Deputy Commissioner of Program Services for DOCS, and is sued in his individual capacity.

25. Defendant Thomas G. Eagen is the Director of the Inmate Grievance Program, and is sued in his individual capacity.

26. Defendant Thomas M. Poole is the Superintendent of Five Points, and is sued in his individual capacity.

27. Defendant Weingartner is the former Deputy Superintendent of Programs at Five Points, and is sued in his official and individual capacities. In that position, defendant Winegartner was responsible for overseeing the provision of prison programs at Five Points as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

28. Defendant Sheryl Zenzen is the Deputy Superintendent of Programs at Five Points, and is sued in her official capacity. Deputy Superintendent Zenzen is responsible for overseeing the provision of prison programs at Five Points as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

29. Defendant Daniel Weinstock is the Health Services Director at Five Points, and is sued in his individual capacity.

30. Defendant J. Peter Gregoire, M.D. is a part-time Medical Director at Five Points. Dr. Gregoire is sued in his individual capacity.

31. Defendant Menally is responsible for operating Five Points' Strip Room, and is sued in his individual capacity.

32. Defendant Napoli is Deputy Superintendent of Security at Five Points, and is sued in his individual capacity.

33. Defendant Ritchie-Carter is a nurse at Five Points, and is sued in her individual capacity.

34. Defendant Lawrence Sears is the Superintendent of Franklin, and is sued in his official capacity.

35. Defendant John R. Demars is the Deputy Superintendent of Programs at Franklin, and is sued in his official capacity. Deputy Superintendent Demars is responsible for overseeing the provision of prison programs at Franklin as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

36. Defendant Pippen, R.N. is a nurse at Franklin C.F. Nurse Pippen is sued in his/her individual capacity.

37. Defendant Glen Champagne, M.D. is the Medical Director at Franklin, and is sued in his official capacity.

38. Defendant Lori Mantroy is the Nurse Administrator at Franklin, and is sued in her official capacity.



39. Defendant Michael Giambruno is the Superintendent of Wyoming, and is sued in his official capacity.

40. Defendant Gerald Elmore is the Deputy Superintendent of Programs at Wyoming. Deputy Superintendent Elmore is responsible for overseeing the provision of prison programs at Wyoming as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations. Defendant Gerald Elmore is sued in his official capacity.

41. Defendant Habib Shieky, M.D. is the Health Services Director at Wyoming, and is sued in his official capacity.

42. Defendant Mohrning is a Medical Director at Wyoming, and is sued in his/her individual capacity.

43. Defendant Dave Unger is the Superintendent of Orleans, and is sued in his official capacity.

44. Defendant Jim Lindsay is the Deputy Superintendent of Programs at Orleans, and is sued in his official capacity. Deputy Superintendent Lindsay is responsible for overseeing the provision of prison programs at Orleans as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

45. Defendant Sherry Montanari is the Nurse Administrator at Orleans, and is sued in her official capacity.

46. Defendant Robinson, R.N. is a Nurse at Orleans, and is sued in his/her individual capacity.

47. Defendant James Conway is the Superintendent of Attica, and is sued in his official capacity.

48. Defendant Sandra Dolce is the Deputy Superintendent of Programs at Attica, and is sued in her official capacity. Deputy Superintendent Dolce is responsible for overseeing the provision of prison programs at Attica as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

49. Defendant Richard Apps is the Medical Administrator at Attica, and is sued in his official capacity.

50. Defendant Robert Ercole is the Superintendent of Green Haven, and is sued in his official capacity.

51. Defendant William Phillips is the former Superintendent of Green Haven, and is sued in his individual capacity.

52. Defendant Robert Cunningham is the Deputy Superintendent of Programs at Green Haven, and is sued in his official capacity. Deputy Superintendent Cunningham is responsible for overseeing the provision of prison programs at Green Haven as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

53. Defendant Delores Thornton is the former Deputy Superintendent of Programs at Green Haven. In that position, Deputy Superintendent Thornton was responsible for overseeing the provision of prison programs at Green Haven as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations. Defendant Thornton is sued in her individual and official capacities.

54. Defendant Frederick Bernstein is the Facilities Medical Director at Green Haven, and is sued in his official capacity.

55. Defendant Totten is the Director of Security at Green Haven, and is sued in his individual capacity.

56. Defendant Kaiser is a Lieutenant at Green Haven, and is sued in his or her individual capacity.

57. Defendant Robert K. Woods is the Superintendent of Upstate, and is sued in his official capacity.

58. Defendant Maria B. Tirone is the Deputy Superintendent of Programs at Upstate, and is sued in her official capacity. Deputy Superintendent Tirone is responsible for overseeing the provision of prison programs at Upstate as well as for overseeing the provision of reasonable accommodations and compliance with the DOCS directive on reasonable accommodations.

59. Defendant Evelyn Weissman is the Facility Health Services Director at Upstate, and is sued in her official capacity.

60. All defendants sued in their individual capacity are sued in that capacity solely for the purpose of the named plaintiffs' claims for damages under 42 U.S.C. § 1983.

### **FACTUAL ALLEGATIONS**

61. The Five Points, Franklin, Wyoming, Orleans, Attica, and Upstate Correctional Facilities, operated by DOCS, are not accessible to plaintiffs and the class they represent.

62. While the Green Haven Correctional Facility is generally accessible, the Protective Custody Housing unit within that facility is inaccessible to plaintiffs and the class they represent.

#### **FIVE POINTS CORRECTIONAL FACILITY**

63. Five Points Correctional Facility (“Five Points”) is a 1,500 bed maximum security prison located in Romulus, New York. Five Points opened in 2000 and is New York State’s newest prison.

64. Five Points was allegedly designed by DOCS to accommodate prisoners with disabilities. Nonetheless, Five Points’ cells, toileting facilities, bathing facilities, strip rooms, yards, recreation areas and program areas are not accessible to plaintiffs.

65. The beds in the cells at Five Points are placed so low to the floor as to effectively prevent plaintiffs from safely transferring between their beds and their wheelchairs. Additionally, some beds do not have grab-bars or other devices near the beds to facilitate these necessary transfers. Finally, the bunk beds are inaccessible to plaintiffs because there is insufficient room between the two mattresses to enable plaintiffs to perform transfers without striking their heads against the upper mattress frame.

66. The toilets in the cells at Five Points are not high enough to allow plaintiffs to safely transfer to and from their wheelchairs. Additionally, the handrails or grab-bars near the toilets have been installed too far away from the toilets to enable plaintiffs to safely transfer to and from their wheelchairs. Both the inadequate height of the toilet and the misplaced handrails make it difficult and unsafe for plaintiffs to transfer between the toilet and their wheelchairs.

Finally, there is insufficient space around the toilets to permit plaintiffs to reasonably transfer from their wheelchairs to the toilet.

67. The showers in the cells at Five Points are inaccessible to plaintiffs. There are lips at the entrances to the showers that prohibit plaintiffs from safely entering the showers in their wheelchairs. The seats in the showers are too low, and the shower handrails are misplaced, making plaintiffs' transfers to and from the showers both difficult and unsafe. The showers lack accessible hand controls to enable plaintiffs to control the water temperature, which is often scalding hot. These circumstances are particularly dangerous for plaintiffs because their disabilities prevent them from quickly removing themselves from the scalding water. The metal shower seats become slick when wet and do not adequately support plaintiffs in sitting upright while showering and lathering their bodies.

68. On April 6, 2003, Five Points' inaccessible showering facilities resulted in Mr. Shariff slipping off the shower seat, directly resulting in injuries to his head, back and neck. Mr. Shariff, thereafter, cleaned himself with a washcloth, wetted in the sink, to avoid the danger of using the shower bench.

69. The sinks in the cells at Five Points are inaccessible to plaintiffs because they do not extend a sufficient distance from the wall to enable plaintiffs to use the sinks while seated in their wheelchairs.

70. The cell-door windows are not accessible to plaintiffs because they are located approximately five feet, four inches above the floor.

71. On one or more occasions, while guiding their wheelchairs into or out of their cells blocks, Mr. Shariff and putative class members have been smashed or otherwise injured when the cell doors were prematurely closed by the door operators.

72. In addition to the safety concerns posed by the inaccessible features of the cells, the design of the cells makes it difficult for plaintiffs to contact staff in emergency situations. The cells have solid doors and walls with a small rectangular window high up on the door. Plaintiffs, because of their disabilities, cannot reach up to the window to get an officer's attention. Further, there are no in-cell call buttons. Additionally, half of the cells considered by DOCS to be accessible at Five Points are located on the second floor. Plaintiffs housed in these cells are at severe risk of death or serious injury by fire because the elevators shut down in the event of a fire, leaving the inaccessible prison stairs as the only route to safety.

73. In April and May of 2004, and at other time throughout his incarceration at Five Points C.F., Mr. Shariff suffered unnecessary pain as a result of the failures of defendants Lawrence Weinstock and Thomas G. Eagen to adequately respond to Mr. Shariff's multiple letters and grievances, complaining about lack of hot water in which to wash his urinary catheters and other requests related to his disability.

74. On June 8, 2003, and on other occasions, Mr. Shariff complained by written letter to defendant Thomas M. Poole regarding his receipt of catheters that were too big, the use of which caused Mr. Shariff to suffer pain and bleeding. Defendant Poole failed to adequately address Mr. Shariff's legitimate medical concerns, thereby causing Mr. Shariff to endure unnecessary pain.

75. On July 11, 2004, and again on July 26, 2004, Mr. Shariff composed and sent letters to defendant Thomas M. Poole, notifying defendant Poole that his cell was not receiving

hot water. Mr. Shariff explained that he cannot adequately clean his urinary catheters without hot water, and that failure to adequately clean his urinary catheters exposes Mr. Shariff to an unreasonable risk of repeatedly contracting Urinary Tract Infections.

76. On September 26, 2004, Mr. Shariff composed and sent a letter to defendant John H. Nuttall, Deputy Commissioner for Program Services for DOCS, detailing the lack of sporting and recreational programs for disabled inmates and requesting defendant Nuttall to remedy the same.

77. On October 19, 2004, Mr. Shariff composed and sent a letter to defendant Glenn S. Goord, then Acting Commissioner of DOCS, detailing the inaccessible features of Five Points, and requesting defendant Goord to transfer Mr. Shariff to an accessible facility to avoid the possibility of physical injury resulting from the inaccessible features of Five Points.

78. On November 3, 2004, defendant Devane responded to Mr. Shariff's letter on behalf of defendant Goord, denying Mr. Shariff's claims that Five Points facilities are inaccessible and denying Mr. Shariff's request to be transferred to an accessible facility to avoid the possibility of physical injury resulting from the inaccessible features of Five Points.

79. The bathrooms in the program and activity buildings, where programs such as inmate orientation, school and vocational shops are held, are inaccessible to plaintiffs. The toilet stalls lack adequate wheelchair turning room. The toilets in these buildings are too low to enable plaintiffs to safely transfer to and from their wheelchairs. There are no handrails or grab-bars near the toilets to facilitate plaintiffs' safe transfer to and from their wheelchairs.

80. During his incarceration at Five Points, Mr. Shariff needed to use the toilet while he was present in the program area. Because the toilets in the program area are inaccessible, Mr.

Shariff requested permission to return to his cell to use the toilet therein, or, in the alternative, to catheterize during program hours. Five Points officials refused Mr. Shariff's requests. Because Mr. Shariff was not allowed to return to his cell, he was forced to defecate on himself.

81. The tables in the block yard and the main yard, where prisoners play cards and other games, are not accessible to plaintiffs because of the concrete seats around the perimeter of the tables, and the posts under the tables, block plaintiffs' wheelchairs and prevent plaintiffs from getting close enough to the tables to use them in the manner intended. The ramps to the block yard and main yard are too steep and too narrow for wheelchairs to navigate safely. The pull-up bars and dip-bars in the block and main yards are not accessible to plaintiffs. The exercise machines located in the block yard are not equipped or modified for use by plaintiffs. The manner in which those machines are arranged denies plaintiffs adequate maneuverability between the machines. The television in the main yard is located in a rough-terrain area and is therefore inaccessible to plaintiffs. The main yard lacks a concrete jogging path around the perimeter of the yard, thereby denying plaintiffs an opportunity to exercise in a manner afforded to non-disabled prisoners.

82. The gym area at Five Points is inaccessible to plaintiffs. There is no gym equipment accessible to wheelchair users and there is no accessible path of travel in the weight room. The gym bathroom is also not accessible. It has a wide door with no grab-bars and the toilet is too low for safe transfers between plaintiffs' wheelchairs and the toilet.

83. The Recreation Pen ("Rec Pen") is inaccessible to plaintiffs because there are several stairs which prevent plaintiffs from entering the area. The Rec Pen area is particularly hazardous to plaintiffs because the fire exit is blocked by an 8 to 10 inch stair. Further, the doors



lack any handles that plaintiffs can grab to assist in opening the doors, and the activity areas within the Rec Pen are so cramped that plaintiffs cannot maneuver their wheelchairs therein.

84. Various recreation program areas with occupancy limits (i.e., card room and weight room) are inaccessible to plaintiffs because the defendants refuse to implement a policy that will give plaintiffs an equal chance to compete with non-disabled inmates for the small number of slots available in those areas.

85. Defendant Menally forced Mr. Allah, and other putative class members, to undress in Strip Rooms without providing Mr. Allah and the other disabled inmates with any grab-bars or other devices to assist in the necessary transfer from their wheelchairs to the bed/chair upon which they undress.

86. Defendant Napoli, Deputy Superintendent of Security, discriminated against plaintiffs by failing to fix faulty elevators in Five Points' cell block area, thereby denying plaintiffs the same level of physical access to prison facilities, programs and services that is provided to non-disabled inmates.

87. The Visiting Room is not accessible to plaintiffs because the wall under the table in the prisoners' seating area blocks plaintiffs' legs and prevents plaintiffs from sitting forward-facing in their wheelchairs in the individual visiting stalls.

88. Defendants have failed to properly maintain and repair wheelchairs used by plaintiffs, resulting in their lack of access to programs, services and activities provided to non-disabled prisoners.

89. Defendant Weingardner has discriminated against plaintiffs by providing and coordinating recreational programs for non-disabled inmates, but failing to provide or coordinate similar recreational programs for plaintiffs.

90. While incarcerated at Five Points, Mr. Shariff was forced to use urinary catheters that were too large in size, causing him to suffer repeated internal injury, continual bleeding and a Urinary Tract Infection. Mr. Shariff complained about the catheter size and resulting injuries, but was denied a medical interview for more than one week following his May 22, 2003, arrival at Five Points. When Mr. Shariff was finally allowed a medical interview, Dr. Gregoire incredibly instructed Mr. Shariff to continue using the oversized catheters until June 22, 2003, at which time Five Points finally provided Mr. Shariff with proper-sized catheters.

91. The inadequate medical care and attention forced upon Mr. Shariff, including the failure to provide sufficient quantity of urinary catheters, caused Mr. Shariff to suffer multiple Urinary Tract Infections throughout his incarceration at Five Points. Mr. Shariff complained about these symptoms on May 30, 2003, June 3, 2003, June 8, 2003, June 9, 2003, June 16, 2003, February 25, 2004, February 27, 2004, June 22, 2004, May 19, 2004, May 27, 2004, May 30, 2004, October 28, 2004, November 4, 2004, November 7, 2004, November 11, 2004, June 29, 2005, July 7, 2005, July 8, 2005, July 20, 2005, July 24, 2005, August 4, 2005, and August 7, 2005.

92. While incarcerated at Five Points, Mr. Allah has also suffered multiple Urinary Tract Infections. His requests for medical attention, treatment, and pain medication, including by handwritten letter to defendant Daniel Weinstock, dated July 28, 2005, have not been accommodated by defendants Daniel Weinstock and nurse Ritchie-Carter, resulting in Mr. Shariff's unnecessary suffering of severe pain.

93. Defendant Lester M. Wright failed to adequately respond to Mr. Shariff's handwritten letter, dated July 23, 2005, describing his need for medical attention and pain medication, his multiple visits to Sick Call, and his failure to be granted access to a doctor for three months, thereby resulting in continued pain and suffering to Mr. Shariff.

#### **FRANKLIN CORRECTIONAL FACILITY**

94. Franklin Correctional Facility ("Franklin") is a medium security prison located in Malone, New York.

95. The beds in the cells are not accessible to plaintiffs because they are too low to the floor, are not equipped with a trapeze-mechanism or grab-bars, and are fitted with bedrails that plaintiffs are unable to retract without the assistance of another individual.

96. The toilets in the cells are not high enough to allow plaintiffs to safely transfer to and from their wheelchairs.

97. The showers in the cells have been constructed with a 2" x 12" drainage ditch which renders the showering stalls inaccessible to plaintiffs. The showers are also fitted with wooden-slab seats that become slick when wet and do not adequately support plaintiffs in sitting upright while showering and lathering their bodies.

98. The water fountains in the cells are inaccessible to plaintiffs because they are located too high off the floor.

99. The walkways throughout the facility are not accessible to plaintiffs because such walkways are riddled with potholes and uneven slabs of cement.

100. Doorways throughout the facility are inaccessible because they are constructed with high thresholds that are difficult for plaintiffs to safely traverse.

101. Restrooms in all bathrooms throughout the facility are inaccessible to plaintiffs for reasons similar or identical to the restrooms in plaintiffs' cells, as described above.

102. Defendant John R. Demars, Deputy Superintendent of Programs at Franklin, continuously discriminates against members of the putative class by providing and coordinating recreational programs for non-disabled inmates, but failing to provide or coordinate recreational programs for plaintiffs.

103. Beginning on or about May 2, 2006, Nurse Phippen prevented Mr. Shariff from receiving more than four single-use catheters per week. This action directly caused Mr. Shariff to suffer additional symptoms of Urinary Tract Infections, of which he complained on May 3, 2006, and May 8, 2006.

104. During Mr. Shariff's incarceration at Franklin, he was forced to urinate on himself during an 11-hour van ride in which he was not afforded an opportunity to catheterize.

#### **WYOMING CORRECTIONAL FACILITY**

105. Wyoming Correctional Facility ("Wyoming") is a medium security prison located in Attica, New York.

106. The cubicles in the Wyoming dormitories are inaccessible to plaintiffs because they are constructed and configured in a manner that denies sufficient space to plaintiffs in which to turn and maneuver their wheelchairs.

107. Lower-level lockers in the cubicles, provided for safekeeping of prisoners' personal belongings, are inaccessible to plaintiffs because they are located too low to the floor.

108. The electrical outlets in the cubicles are inaccessible to plaintiffs because they are sandwiched between the lockers and the beds in a manner that prevents plaintiffs from getting close enough to the outlet to plug and unplug electrical cords in a safe manner.

109. The showers in the cubicles are not accessible to plaintiffs because of the misplacement of the grab-bars, the low-rise of the stationary shower-benches, and the excessively heavy garden hoses attached to each shower in lieu of a handheld shower-head.

110. The sinks in the cubicles are not accessible to plaintiffs because they have been mounted so close to the walls that plaintiffs' feet and wheelchairs do not fit under the sink, thereby preventing plaintiffs from getting close enough to the sink to use it in a reasonable manner.

111. Wyoming's designated Disabled Dormitory is inaccessible to plaintiffs because the dormitory contains only one accessible toilet to serve the toileting needs of the large disabled population residing therein.

112. The restrooms outside of the dormitory area are inaccessible to plaintiffs for reasons similar or identical to the restrooms in the plaintiffs' cubicles, as described above.

113. The water fountains in the gym, yard, activities building and clinic areas are inaccessible to plaintiffs because they are located too high off the floor.

114. The bathroom, water fountain, and television in the Wyoming yard are inaccessible to plaintiffs because they abut a dangerously steep hill. To access these facilities,

plaintiffs must traverse the steep hill in their wheelchairs, subjecting themselves to an unreasonably high chance of sustaining physical injury by slipping out of their wheelchairs or toppling over backward.

115. In the Wyoming yard, the tables, exercise/walking path around the perimeter of the yard, and the exercise equipment are inaccessible to plaintiffs.

116. The doorway thresholds throughout the Wyoming facilities, including the dormitories, activity building, clinic, school building, commissary and package room are too high to be safely traversed by plaintiffs.

117. Defendant Gerald Elmore, Deputy Superintendent of Programs at Wyoming, continuously discriminates against plaintiffs by providing and coordinating recreational programs for non-disabled inmates, but failing to provide or coordinate recreational programs for plaintiffs.

118. For two weeks following his arrival at Wyoming, Mr. Shariff was provided with size-14 catheters which, as described above, were too large for him. Mr. Shariff informed the Wyoming nursing staff of this problem, but was told he must use the size-14 catheters. Mr. Shariff suffered bladder spasms, bleeding and a Urinary Tract Infection. Wyoming medical personnel provided Mr. Shariff with medication for the bladder spasms and the pain. Mr. Shariff complained to Medical Director Mohrning about the physical injuries he suffered from the oversized catheters. However, due to defendant Mohrning's failure to adequately respond to Mr. Shariff's complaint, Mr. Shariff did not receive the proper-sized catheters until late June, 2006, causing Mr. Shariff to suffer further unnecessary pain.

## **ORLEANS CORRECTIONAL FACILITY**

119. Orleans Correctional Facility (“Orleans”) is a medium security prison located in Albion, New York.

120. The cubicles in the Orleans dormitories are inaccessible to plaintiffs because they are constructed and configured in a manner that denies sufficient space to plaintiffs in which to maneuver their wheelchairs.

121. The small lockers in the cubicles, and the shelving therein, provided for safekeeping of prisoners’ personal belongings, are inaccessible to plaintiffs because they are located too low to the floor.

122. The electrical outlets in the cubicles are inaccessible to plaintiffs because they are sandwiched between the lockers and the beds in a manner that prevents plaintiffs from getting close enough to safely plug and unplug electrical cords.

123. The sinks in the cubicles are not accessible to plaintiffs because they are mounted so close to the walls that plaintiffs’ feet and wheelchairs do not fit under the sink, thereby preventing plaintiffs from getting close enough to the sink to use it in a reasonable manner.

124. The beds in the cubicles are inaccessible to plaintiffs because they lack trapezes and have instead been fitted with makeshift grab-bars which are rigidly attached to 12 x 12 inch wooden boards held in place by plaintiffs’ thin mattresses. These grab-bars prevent plaintiffs from safely transferring to and from bed.

125. The water fountains in the dormitory are inaccessible to plaintiffs because they are located too high off the floor.

126. The microwave in the dormitory is inaccessible to plaintiffs because it is located too high off the floor, exposing plaintiffs to an unreasonable risk of bodily injury when removing soups or other hot fluids.

127. The restrooms throughout Orleans, including those located in the gym, yard, clinic, school building, activities building, and mess hall are inaccessible to plaintiffs because the toilet stalls are too narrow, the sinks are too close to the walls, and the mirrors are too high off the floor.

128. The mess hall tables, two of which have been ineffectively modified for disabled inmates, are not accessible to plaintiffs because a stabilization bar located under each table prevents plaintiffs' wheelchairs from sliding under the tables. Hence, plaintiffs are forced to sit sideways at the mess hall tables, or to hold a tray of hot liquids and foods on their laps while sitting in the aisles.

129. The exterior doors throughout Orleans are inaccessible to plaintiffs because they require greater force to push or pull open than is reasonably possible to exert while seated in a wheelchair.

130. Orleans personnel discriminate against plaintiffs by providing and coordinating recreational programs for non-disabled inmates, but failing to provide or coordinate recreational programs for plaintiffs.

131. Orleans personnel discriminate against plaintiffs, including Mr. Shariff, by denying admission to the Behavioral Modification Program on the grounds that the housing units utilized by the program are not wheelchair accessible.



132. Orleans personnel discriminate against plaintiffs, including Mr. Shariff, by denying job opportunities, including clerical positions, on the grounds that plaintiffs' disabilities prevent them from standing and retrieving items from shelves.

133. Mr. Shariff arrived at Orleans on September 11, 2006. During his first month at Orleans, Mr. Shariff received thirty-five (35) single-use, disposable urinary catheters per week, to accommodate his need to self-catheterize five times each day. On October 10, 2006, Nurse Robinson restricted Mr. Shariff to seven (7) single-use, disposable catheters per week. From October 17, 2006 to the present, Nurse Robinson has further restricted Mr. Shariff to two (2) single-use, disposable catheters per week, despite Mr. Shariff's need to self-catheterize five times per day. As a result of defendant's failure to supply an adequate number of urinary catheters, Mr. Shariff has experienced three Urinary Tract Infections while at Orleans.

#### **ATTICA CORRECTIONAL FACILITY**

134. Attica Correctional Facility ("Attica") is a maximum security prison located in Attica, New York.

135. The showers in the cells at Attica are inaccessible to plaintiffs. There are no handrails in the showers and there are no pads on the shower seats to prevent plaintiffs from sliding off of the shower seats when they lather their bodies. As a result, plaintiffs are unable to properly maintain their personal hygiene.

136. The law library at Attica is inaccessible to plaintiffs. The library is constructed and arranged in a narrow and restrictive manner that prevents plaintiffs from reasonably maneuvering their wheelchairs in the law library.

## **GREEN HAVEN CORRECTIONAL FACILITY**

137. Green Haven Correctional Facility (“Green Haven”) is a maximum security prison located in Stormville, New York.

138. The toilets in Green Haven’s Protective Custody Housing unit are not accessible to plaintiffs because they lack the necessary handrails to facilitate plaintiffs’ transfer between plaintiffs’ wheelchairs and the toilets.

139. Between February and May 2003, Mr. Shariff repeatedly complained to DOCS and Green Haven officials, including Superintendent Phillips, Deputy of Programs Thornton, Deputy of Security Totten, and Lieutenant Kaiser, about the inaccessibility of this restroom facility, but each of these defendants failed to adequately respond to Mr. Shariff’s complaints. On or about April 26, 2003, Mr. Shariff fell and injured his shoulder while attempting to transfer from his wheelchair to this inaccessible toilet.

140. Defendants force plaintiffs to undress in Strip Rooms without providing them any method of transferring themselves from their wheelchairs to the bed/chair upon which they are to undress.

141. The restrooms in the yard are inaccessible to plaintiffs because there are no grab-bars to enable plaintiffs to safely transfer between their wheelchairs and the restroom facilities.

## **UPSTATE CORRECTIONAL FACILITY**

142. Upstate Correctional Facility (“Upstate”) is a maximum security prison in Malone, New York.

143. The beds in the Upstate cells are inaccessible to plaintiffs because there are no grab-bars to assist plaintiffs in safely transferring to and from their beds.

144. The showers in the Upstate cells are inaccessible to plaintiffs because they are not fitted with hand-held shower heads necessary to enable plaintiffs to clean their bodies.

145. Upstate personnel refused to provide Mr. Allah with more than one single-use, disposable urinary catheter per week, directly resulting in Mr. Allah suffering one or more Urinary Tract Infections.

#### **STATEMENT OF CLASS AND INDIVIDUAL CLAIMS**

146. Defendant DOCS receives federal financial assistance and operates programs or activities as those terms are defined by Section 504, 29 U.S.C. § 794(b)(1)(a).

147. Following the enactment of Section 504 in 1973 and the ADA in 1990, Defendant DOCS has spent billions of public dollars constructing, renovating, modifying and operating prison facilities and renovating existing prison facilities.

148. Section 504 and the ADA require that all new building and any renovation or remodeling comply with federal accessibility standards, including the Americans With Disabilities Accessibility Guidelines. 29 U.S.C. §794, 42 U.S.C. §§ 12101 et seq.

149. Defendants have designed, constructed and renovated correctional facilities in New York State in a manner that violates federal accessibility standards in the design. Defendants continue to design, construct and renovate correctional facilities in New York State in a manner that violates federal accessibility standards.

150. As a result of defendants' unlawful failure to comply with federal accessibility standards, plaintiffs have been injured in their attempts to use the programs, facilities, activities and services offered by defendants.

151. Defendants have failed, and continue to fail, to provide plaintiffs and members of the putative class with properly sized urinary catheters. Defendants' misconduct caused, and continues to cause, plaintiffs to suffer physical pain and injuries.

152. Defendants have failed, and continue to fail, to provide plaintiffs and members of the putative class with a sufficient supply of single-use, disposable urinary catheters. Defendants' misconduct caused, and continues to cause, plaintiffs to suffer repeated Urinary Tract Infections.

153. Defendants have failed to make DOCS facilities accessible to plaintiffs, and have failed to furnish appropriate auxiliary aids and services where necessary to afford plaintiffs and members of the putative class the opportunity to participate in the programs, activities, services, benefits and jobs they offer generally to other non-disabled individuals under defendants' custody and control.

#### **CLAIMS FOR RELIEF**

154. Defendants' acts, omissions, and course of conduct, set forth in the FACTUAL ALLEGATIONS section above, were intentional.

155. The acts, omissions and course of conduct of defendants, set forth in the FACTUAL ALLEGATIONS section above, violate the Eighth Amendment of the U.S. Constitution.

156. The acts, omissions and course of conduct of defendants, set forth in the FACTUAL ALLEGATIONS section above, violate Section 504 of the Rehabilitation Act, 29 U.S.C. §794.

157. The acts, omissions and course of conduct of defendants, set forth in the FACTUAL ALLEGATIONS section above, violate the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

158. The acts, omissions and course of conduct of defendants, set forth in the FACTUAL ALLEGATIONS section above, perpetrated under color of state law in violation of plaintiffs' federally protected rights, also violate 42 U.S.C. § 1983.

### **RELIEF REQUESTED**

WHEREFORE, plaintiffs pray that this Court grant the following relief:

A. Declare the suit is maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1) and 23(b)(2);

B. Adjudge and declare that the conditions, practices and omissions described above are in violation of the rights of the plaintiffs and the class they represent under Section 504, the ADA and Section 1983;

C. Preliminarily and permanently enjoin the defendants, their agents, employees and all persons acting in concert with them, from subjecting plaintiffs and the class they represent to the illegal conditions, practices and omissions described above;

D. Require defendants to provide reasonable accommodations in order to make the correctional facilities that are the subject of this litigation and the programs, services and

