

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALAN BROWN, CARL JOHNSON, EDWARD MITCHELL,)
JOHNATHAN LEE "X" SMITH, FRANK J. COPPOLA,)
JOSEPH GIARRATANO, and WILLIE LLOYD TURNER,)

Plaintiffs,)

v.)

TERRELL DON HUTTO, ROBERT M. LANDON,)
THOMAS J. TOWBERMAN, RAYMOND B. KESSLER,)
EDWARD C. MORRIS, SAMUEL V. PRUETT, WILLIAM)
A. CRENSHAW, HAROLD CATRON, OFC. WILLIAM)
OLIVER, SGT. LARRY HAWKINS, OFC. JAMES)
BARNER, LT. ROBERT L. GOODE, SGT. THOMAS W.)
POWELL, CPT. HERMAN BOYD, CPL. TROY N.)
BELSER, CPL. CLAUDE WILLIAMS, SGT. BILLY E.)
HUGHINS, SGT. HENRY DUNN, SGT. WILLIE)
SPEEDE, LT. R.B. BAKER, CPT. GENE)
ZIMMERMAN, CPT. WILLIAM HENRY, CPL. PHILLIP)
JUST, LT. ORIS V. JONES, NURSE BYRON)
KINSLEY, DR. OSCAR GULMATICO, and)
DR. WILLIAM LEE,)

Defendants.)

COMPLAINT

On behalf of themselves and the class alleged herein, plaintiffs state the following for their complaint against defendants.

I. PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of all prisoners who are or will be confined at the Mecklenburg Correctional Center (hereafter MCC), an institution operated by the Commonwealth of Virginia Department of Corrections in Boydton, Virginia. Plaintiffs contend that the totality of the conditions at the MCC falls beneath standards of human decency, inflicts needless suffering on prisoners and creates an environment which threatens prisoners' mental and physical well being and results in the unnecessary deterioration of prisoners confined there. Plaintiffs contend that the totality of

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~~confined there. Plaintiffs contend that the totality of~~
conditions at the prison violates the United States and Virginia
Constitutions, as well as the statutes of the State of Virginia.

2. The MCC was opened in 1977 and was designed for
confining inmates whom the Department of Corrections transferred
from other prisons. The MCC was designed as a highly structured
behavioral modification program. However, because of the lack of
treatment staff assigned to the facility, the treatment
contemplated when the facility was constructed is not provided;
prisoners are simply locked in their cells with virtually nothing
to occupy their time. All prisoners are held in segregated
individual cells with limited time out of cell. The rigor of
these segregated conditions is exacerbated by the defendants'
policies and practices of denying positive programs and services
to prisoners. The defendants' policies and practices of imposing
these conditions of confinement at MCC on prisoners for
indefinite periods in the absence of objective criteria for
release to other Department of Correction institutions create a
hopeless and helpless atmosphere that results in physical and
psychological deterioration.

3. As a result of the lack of trained program staff, the
failure to train and supervise guard staff properly, the highly
repressive conditions at the MCC, the lack of any positive
treatment programs and activities, and the lack of adequate
medical and psychiatric services, there is a continuing
atmosphere of violence. Numerous inmates have suffered injuries
in physical confrontations with guards, and the use of excessive
and unreasonable physical force by guards is commonplace. The
combined effects of the isolated confinement, lack of offsetting
positive programming and atmosphere of pervasive violence result
in the debilitation of prisoners and threaten their physical and
mental well being.

4. Plaintiffs ask this court to declare that the totality
of conditions at the prison are unconstitutional under the United

States and Virginia Constitutions and that the conditions violate applicable Virginia statutes. Plaintiffs request injunctive relief requiring defendants to modify the excessively repressive elements of confinement of the MCC, establish objective criteria for transfer to and continuation in confinement in the MCC, provide adequate medical and psychiatric care, and provide properly trained and supervised guard staff so as to end the atmosphere of violence pervading the institution.

II. JURISDICTION AND VENUE

5. The first, second and third claims for relief are filed under 42 U.S.C. §1983 to redress injuries suffered by plaintiffs and the class they represent for deprivation under color of state law of rights secured by the first, eighth, ninth and fourteenth amendments to the United States Constitution. The claims also arise directly under the first, eighth, ninth and fourteenth amendments. Accordingly, this court has jurisdiction over the claims pursuant to 28 U.S.C. §§1331 and 1343(3).

6. Plaintiffs' fourth and fifth claims for relief are derived from common nuclei of operative facts involving substantially identical issues of fact and law, such that the entire action constitutes a single case which would ordinarily be expected to be tried in one judicial proceeding. In the interest of judicial economy, convenience and fairness, and in order to avoid unnecessary duplication and multiplicity of actions, this court's jurisdiction of the fourth and fifth claims, which are based in part on Virginia law, is pendent to the court's jurisdiction over the first, second and third claims.

7. Venue in the Eastern District of Virginia is proper. Each of the defendants resides in the Eastern District of Virginia and the claim for relief arose in this district.

III. PARTIES

8. Each of the plaintiffs is currently a prisoner at the MCC at Boydton, Virginia.

9. Plaintiffs Alan Brown and Carl Johnson are currently confined in Segregation status.

10. Plaintiffs Edward Mitchell and Jonathan Lee "X" Smith are currently confined in Phase II status.

11. Plaintiffs Frank J. Coppola, Joseph Giarrantano, and Willie Lloyd Turner are confined in Death Row status.

12. Defendant Terrell Don Hutto is Director of the Virginia Department of Corrections, a position he has held since May 1, 1977. As such, he is responsible for overseeing the enforcement of laws and regulations governing penal institutions in Virginia and for the overall supervision, care and treatment of all prisoners confined in institutions operated by the Department of Corrections.

13. Defendant Robert M. Landon is Deputy Director for Adult Institutional Services of the Virginia Department of Corrections. Prior to May 16, 1981, he was the Assistant Director for Institutional Services. As such, he is responsible for the supervision, treatment and security of all persons confined at the penal institutions in which adults are incarcerated.

14. Defendant Thomas J. Towberman is the Administrator of Region II - Central for the Virginia Department of Corrections. As such, he is the Regional Administrator responsible for the MCC and is responsible for the overall supervision, care and treatment of all persons confined at the MCC.

15. Defendant Raymond B. Kessler is Administrator of Health Services for the Virginia Department of Corrections. As such, he is responsible for the overall supervision of medical care and treatment of all prisoners confined in institutions operated by the Department of Corrections.

16. Defendant Edward C. Morris is Superintendent of the MCC. As such, he is directly responsible for the supervision, care and treatment of all prisoners confined at the MCC.

17. Defendant Samuel V. Pruett is Assistant Superintendent for Operations at the MCC. As such, he is a subordinate of defendant Morris and is directly responsible for the day-to-day operation of the MCC.

18. Defendant William A. Crenshaw is Assistant Superintendent for Programs at the MCC and is also Chairman of the Institutional Classification Committee of the MCC. As such, he is directly responsible for the programs and for the classification system for prisoners at the MCC.

19. Defendant Harold Catron is Chief of Security at the MCC. As such, he is directly responsible for the supervision of the guard staff.

20. Defendants Ofc. William Oliver, Sgt. Larry Hawkins, Ofc. James Barner, Lt. Robert L. Goode, Sgt. Thomas W. Powell, Cpl. Herman Boyd, Cpl. Troy Belser, Cpl. Claude Williams, Sgt. Billy E. Hudgins, Sgt. Henry Dunn, Sgt. Willie Speede, Cpt. Gene Zimmerman, Cpt. William Henry, Cpl. Phillip Just, Lt. R.B. Baker and Lt. Oris V. Jones are members of the correctional staff at the MCC.

21. Defendant Byron Kinsley is a nurse at the MCC.

22. Defendant Dr. Oscar Gulmatico is the Chief Medical Officer of the MCC.

23. Defendant Dr. William Lee is Chief of Psychiatric Services at the MCC.

24. All defendants are sued in their official and individual capacities.

IV. CLASS ACTION ALLEGATIONS

25. This is a class action under Rule 23(a) and 23(b)(1) and (2) of the Federal Rule of Civil Procedure.

26. Plaintiffs are representative parties of a class that is composed of all persons confined at the MCC at Boydton, Virginia, or who may be so confined in the future.

27. Plaintiffs Alan Brown, Carl Johnson, Edward Mitchell, and Jonathan Lee "X" Smith are representative parties of a subclass of all persons other than Death Row prisoners confined at the MCC, or who may be so confined in the future.

28. Plaintiffs Frank J. Coppola, Joseph Giarratano, and Willie Lloyd Turner are representative parties of a subclass of all Death Row prisoners confined at the MCC, or who may be so confined in the future.

29. Plaintiffs are members of the class and their claims are typical of the claims of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

30. The class is so numerous that joinder of all members is impracticable. Current members of the class number approximately 360.

31. The questions of law and fact presented by the plaintiffs are common to the class.

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

V. FACTUAL ALLEGATIONS

33. The totality of the conditions of confinement at the MCC violates the constitutional and statutory rights of the plaintiffs and has caused and is causing the prisoners irreparable harm.

A. General Background

34. The MCC is a maximum security institution used for the confinement of prisoners who have allegedly violated the rules and regulations at other institutions within the Commonwealth of Virginia Department of Corrections, or who are assigned to special purpose housing. Prisoners in protective custody, under investigation for a criminal offense, assigned to the Special Management Unit, or under sentence of death compose the group of prisoners assigned to special purpose housing.

35. The complex at the MCC consists of five buildings, each of which has three pods. Each pod consists of a dayroom and a two-tier cellblock with 12 cells on each side so that the capacity of each pod is 24 and the capacity of the entire facility is 360 prisoners.

B. Physical Conditions

36. Cells at the MCC are approximately 6 feet by 9 feet and contain a metal bunk, toilet and sink. With the exception of the isolation cells, the cell doors at the MCC are solid except for a narrow vertical window approximately eight inches by three inches.

37. There are two doors on isolation cells. One is a solid door with a small window. The small door covering this window cannot be operated by the prisoner. The inner door is barred with a slot for the food tray.

38. Prisoners cannot control the opening of the cell windows.

39. Prisoners cannot control the artificial light in their cells, which is on between the hours of 4:00 p.m. and 11:00 p.m. only, although the staff may in its discretion turn on the lights earlier on cloudy days. The only artificial light in the cell is provided by one 60-watt incandescent light in the corner of the

cell. Prisoners are not provided with chairs. For a large number of cells, the light in the cell, both artificial and natural, is insufficient to make reading, writing, and other normal activities practical for large segments of the day.

40. Prisoners in the Special Management Unit of Building 2 are also subject to placement in physical restraints while within their cells.

C. Prisoner Statuses

41. Prisoners who have allegedly violated rules of the MCC are placed in the Isolation Unit in Building 1 of the MCC. Prisoners are confined in isolation for a continuous period of up to fifteen days.

42. Prisoners in segregation status and under sentence of death are also confined in Building 1. If an inmate is considered guilty of a rule infraction while in segregation status, he may be placed on cell restriction and lose recreation time for up to thirty days.

43. Prisoners in the Special Management Unit are confined in Building 2. At times prisoners are assigned to the Special Management Unit prior to an appearance before the Institutional Classification Committee regarding alleged rules infractions. Although the staff purports to evaluate each prisoner in the Special Management status every forty-five days, there is no maximum length of confinement in the unit, nor are there objective criteria for release.

44. There is no maximum length of confinement in segregation status, nor are there objective criteria for assignment or release from segregation status.

45. Prisoners in the general population are divided into three phases. The criteria for classification as Special Management and classification in Phases I-III are vague and non-objective. For example, the criteria for promotion to a higher

phase include evidence of satisfactory interpersonal relationships with staff and other inmates, and satisfactory progress in programs.

46. There are no stated criteria for release from Special Management status.

D. Death Row

47. Inmates under sentence of death are ordinarily confined on Death Row.

48. Prisoners on Death Row are ordinarily allowed a maximum of three hours per week for out-of-cell exercise and three five-minute showers per week. Temporarily through September, 1981, Death Row prisoners are also being allowed two hours of evening exercise three nights per week.

49. Prisoners on Death Row are denied all contact visitation with friends and loved ones and are allowed only four one-hour visits per month.

50. Prisoners on Death Row are limited to one-hour visits to the law library at night.

51. Such access is completely inadequate to allow meaningful access to the courts, particularly for persons challenging their sentence of death.

E. Cell Confinement

52. Prisoners in Isolation, Segregation, Special Management and Phase I status eat all meals in their cells in close proximity to their open toilet.

53. Prisoners in Isolation are ordinarily locked in their cells continuously twenty-four hours a day except for three five minute showers per week.

F. Exercise

54. Prisoners in Isolation status are denied exercise out of their cell. Prisoners in Segregation, Special Management and Phase I are allowed a maximum of three hours per week for out-of-cell exercise and three five-minute showers per week.

55. Three hours per week out-of-cell exercise is inadequate to prevent physical and mental deterioration under the totality of conditions prevailing at the MCC. The absence of adequate exercise exacerbates the level of tension and violence at the MCC.

56. Until recently, prisoners who were out of their cells for exercise during the nurse's medication rounds were ordinarily denied medication during that medication rounds, forcing prisoners to choose between their right to exercise and their right to reasonable medical care.

G. Visitation

57. Prisoners in Phase I, Special Management and segregation, are limited to a maximum of three non-contact personal visits per month, not to exceed one hour in duration. Prisoners in Phase II are limited to three contact visits per month, not to exceed one hour in duration. Prisoners in Phase III are limited to four contact visits per month, not to exceed ninety minutes in duration. Prisoners in Isolation are not allowed either contact or non-contact regular visitation.

58. Visitation is essential for reducing tension and preventing the deterioration of prisoners by strengthening ties with family and friends. The frequency and length of visits allowed prisoners at the MCC are inadequate to maintain ties with the outside world; this inadequacy contributes to the mental and physical deterioration to which prisoners at the MCC are subject.

H. Violence

59. Because of the improper training and supervision given correctional staff, and the failure of the defendants to investigate and discipline correctional staff when appropriate, an atmosphere of violence exists at the MCC. Violent incidents between staff and inmates, resulting in the use of unnecessary and excessive force upon inmates, are commonplace. The combined effect of the deplorable living conditions, idleness and violence results in the unnecessary debilitation of prisoners and threatens their physical and mental well-being.

60. With the exception of Willie Lloyd Turner, all of the named plaintiffs have been the victims of the use of excessive and unnecessary force by the staff of the MCC.

61. Upon information and belief, defendants Cpl. William Oliver, Sgt. Larry Hawkins, Ofc. James Barner, Lt. Robert L. Goode, Sgt. Thomas W. Powell, Cpl. Herman Boyd, Cpl. Troy N. Belser, Cpl. Claude Williams, Sgt. Billy E. Hudgins, Sgt. Henry Dunn, Sgt. Willie Speede, Lt. R.B. Baker, Cpt. Gene Zimmerman, Cpt. William Henry, Cpl. Phillip Just, Lt. Oris V. Jones, and Nurse Byron Kinsley have personally used excessive and unnecessary force on members of the plaintiff class. In many cases, these defendants have engaged in a practice of the use of excessive and unnecessary force, and these particular named defendants are to a significant degree responsible for the general atmosphere of violence prevailing at the MCC.

62. Conditions now existing present an immediate and intolerable threat to the safety and security of the prisoners confined within the MCC. As a result of the atmosphere of violence within the prison, effective programs cannot and do not occur; debilitation is inevitable.

I. Medical and Psychological Services

63. Medical and psychological care and treatment are totally inadequate and constitute deliberate indifference to prisoners' serious medical and psychological needs. There are insufficient competent physicians, psychiatrists, psychologists, and other medical staff.

64. Prisoners with serious psychiatric and psychological disturbances are treated as if they were disciplinary problems, with the result that such prisoners are denied appropriate medical and psychiatric treatment. At times, certain prisoners whose bizarre behavior including handling of their own bodily wastes, are confined without psychiatric attention, creating a squalid and unhygienic atmosphere for themselves and for other normal prisoners confined in close proximity to them.

J. Plumbing

65. Despite the fact that the MCC is a relatively new facility, the plumbing is inadequate. Because of the inadequate plumbing, prisoners are not able to flush their toilets more often than once every four hours. At times, they are unable to flush their toilets for longer periods. Because most prisoners must eat their meals in their cells, the necessity to eat next to their bodily wastes creates a squalid and unhygienic atmosphere.

K. Lack of Programming

66. There is a total lack of rehabilitative correctional programming at the MCC. Until recently, there was no organized chaplaincy program. There is no general reading library. There are no vocational programs or classroom educational programs. The primary educational program essentially amounts to facilitating individuals studying for general educational

development (GED) high school equivalency examinations in their cells.

L. Denial of Access to the Courts

67. Prisoners confined in Isolation status are denied access to the law library. In theory such prisoners, along with all other prisoners in the facility, have access to one attorney appointed by the Circuit Court of Mecklenburg County. However, this attorney does not provide meaningful advise to prisoners regarding habeas and §1983 challenges against the MCC, and prisoners in Isolation status have no effective access to the courts for such habeas and §1983 claims.

68. Prisoners are limited to a one-hour visit to the law library. There is after a two-week delay in obtaining a visit after a request. Such access is completely inadequate to allow meaningful access to the courts.

M. Denial of Correspondence and Newspapers

69. Prisoners in Special Management and Isolation status are totally denied newspapers and magazines.

70. Prisoners in Phase I, Segregation, Investigative Hold and Orientation are limited to receipt of newspapers once a week.

71. All prisoners allowed magazines are nevertheless allowed to receive such magazines only once each week. All prisoners are arbitrarily denied all mail services on Saturday.

72. The practices described in paragraphs 69-72 are punitive in nature and have no purpose apart from the suppression of free expression.

N. Denial of Religious Freedom

73. The MCC allows only one protein substitute when a

prisoner's religious beliefs prohibit his consumption of pork or other foods. This single substitute is often the only substitute available for a prolonged period of time. For example, for over a year peanut butter was the only protein substitute offered. Because the MCC prison diet makes extensive use of pork, the refusal to allow substitutions for pork with food items with comparable nutritional value arbitrarily and unreasonably interferes with the free exercise of religion by adherents of the Nation of Islam and similar Islamic groups.

74. The MCC does not consistently label items containing pork, with the result that prisoners desiring to abstain from pork for religious reasons are uncertain as to whether many food items including cheese are suitable for consumption consistent with their religious beliefs. In addition, the serving practices of the MCC often contaminate pork-free foods with pork foods served to other prisoners.

75. Although the MCC accommodates to some extent the celebration of Ramadan by adherents of certain Moslem denominations, the MCC makes no accommodation for the Ramadan celebration of the Holy Nation of Islam.

O. Totality of Circumstances

76. The totality of circumstances at the MCC, including the failure to train and supervise the staff properly; the highly repressive conditions at the MCC; the lack of programs and activities for prisoners; the lack of adequate medical and psychiatric services; and the resulting atmosphere of violence; has caused and is causing irreparable harm to the members of the plaintiff class.

VI. FIRST CLAIM FOR RELIEF

77. Paragraphs 1-76 are incorporated herein by reference.

78. The totality of the conditions at the MCC including the facilities programs, practices and policies subjects prisoners to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

VII. SECOND CLAIM FOR RELIEF

79. Paragraphs 1-43 and 67-68 are incorporated herein by reference.

80. The denial of reasonable access to the courts to prisoners for the purpose of asserting §1983 claims denies such prisoners the right to reasonable access to the courts pursuant to the first and fourteenth amendments to the United States Constitution.

VIII. THIRD CLAIM FOR RELIEF

81. Paragraphs 1-43 and 66-75 above are incorporated herein by reference.

82. The denial of Saturday mail delivery, newspapers and magazines and food substitutions, when necessitated by religious beliefs, as alleged herein, violates the prisoners' rights to freedom of religion, expression and association, privacy and due process of law as guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution.

IX. FOURTH CLAIM FOR RELIEF

83. Paragraphs 1-76 above are incorporated herein by reference.

84. The totality of the conditions at the MCC including the facilities, programs, practices and policies subjects prisoners to cruel and unusual punishment in violation of Article 1, §9 of the Constitution of Virginia.

X. FIFTH CLAIM FOR RELIEF

85. Paragraphs 1-43 and 66-75 are incorporated herein by reference.

86. The denial of Saturday mail delivery, newspapers and magazines and food substitutions, when necessitated by religious beliefs, as alleged herein violates the prisoners' rights to freedom of speech and freedom of religion guaranteed by Article 1, §§12 and 16 of Constitution of Virginia.

XI. SIXTH CLAIM FOR RELIEF

87. Paragraphs 1-76 above are incorporated herein by reference.

88. Defendants have failed and refused to fulfill their statutory duties to (1) provide reasonable access the courts; (2) repair and expand the shops; (3) provide prisoners with access to newspapers and magazines; (4) provide employment; (5) provide necessary examinations of the physical and mental condition of prisoners; (6) make reasonable accommodations to religiously-based dietary requirements; and (7) make adequate provision for the prevention of corporal punishment, all in violation of Va. Code Ann. §§53-21.2, 53-26, 53-34, 53-45, 53-47, 53-48 and 53-55.

XII. PRAYER FOR RELIEF

89. Wherefore, plaintiffs pray for the following relief:

1. That this court determine, pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this action is a proper class action and that plaintiffs are proper class representatives.

2. That the court enter a declaratory judgment pursuant to 28 U.S.C. §§2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the totality of the circumstances of confinement, the facilities, conditions, programs, practices and policies at the MCC violate the rights of plaintiffs and the members of the class to freedom of religion, expression and association, privacy, due process of law and the right of the plaintiffs and their class to be free from cruel and unusual punishment guaranteed by the first, eighth, ninth and fourteenth amendments to the United States Constitution and Article I, §§9,12 and 16 of the Virginia Constitution.

3. That the court enter a declaratory judgment that defendants have failed to fulfill their statutory duties to repair and expand the shops; provide prisoners with access to newspapers and magazines; provide employment; provide necessary examinations of physical and mental condition; make reasonable accommodations to religiously-based dietary requirements; and make adequate provision for the prevention of corporal punishment, as required by Va. Code Ann. §§53-21.2, 53-26, 53-34, 53-45, 53-47, 53-48 and 53-55.

4. That the court enter a permanent injunction enjoining defendants, their agents, employees and those persons acting in concert with them from:

a. continuing a practice of the use of unnecessary and excessive force upon the plaintiff class and the arbitrary use of physical restraints upon inmates in Special Management status.

b. failing to formulate a plan to ensure that adequate training and supervision of staff to ensure an end to the climate of violence prevailing at the MCC.

c. failing to take appropriate disciplinary and/or other actions against staff members who use unnecessary or excessive force upon the plaintiff class.

d. failing to provide reasonable and adequate medical and psychiatric services for all prisoners.

e. continuing to confine any inmate in Segregation, Special Management, or Phase I, II, or III, in the absence of specific, objective criteria for placement in and out of such status.

f. failing to establish appropriate rehabilitative programming, including educational and vocational programming and a general library.

g. confining any inmate in a double-door cell with the solid door closed.

h. confining any prisoner in his cell without an opportunity of a minimum of one hour per day out-of-cell exercise.

i. confining any prisoner in a cell without lighting and facilities adequate for reading and other normal cell activities or without plumbing that can be operated by the prisoner.

j. denying adequate access to legal services for all prisoners to prisoners, and in particular denying adequate access to prisoners on Death Row in light of the special need of that group.

k. restricting access to magazines and newspapers to prisoners, except by means of such reasonable time, place and manner restrictions that are least restrictive of the prisoners' right of free expression and refusing to provide Saturday mail delivery.

l. failing to label food items containing pork, failing to provide substitutes of comparable nutritional value for pork items on the menu for those prisoners whose religious beliefs prohibit the consumption of pork and failing to assuring that food service practices prevent pork-free diets from contamination with pork items.

m. failing to make reasonable accommodation for celebration of Ramadan by adherents of the Nation of Islam.

5. That defendants pay the costs, expenses and attorneys' fees for this action, as authorized by the Civil Rights Act of 1976, 42 U.S.C. §1988; and

6. That the court grant such other and further relief as the court deems just and proper.

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